

## LEGAL FORCE AND NOTARY DEED CONSEQUENCES OF APPOINTMENT OF CHILDREN AFTER GOVERNMENT REGULATION NUMBER 54 YEAR 2007 CONCERNING CHILD ADOPTION RELATED TO NOTARY PROFESSIONAL ETHICS

Hutami Wahyu Haryanto Putri  
Anjar Sri Ciptorukmi Nugraheni  
Andina Elok Puri Maharani

### ABSTRACT

*Prior to the promulgation of Government Regulation No. 54 on the implementation of child adoption in 2007, notaries public played a role in drawing up child adoption contracts, and before this regulation came into effect, the appointment of children could only be done through notarized contracts. This rule only applies to foreigners of Eastern Chinese, so children outside of this rule are not allowed to adopt. After the implementation of Government Regulation No. 54 on the adoption of children in 2007, efforts have also been made to prove the role of the notary in the adoption process. Although the role of the notary is not clear, the notary's ability to make an adoption contract still needs to be approved by the court. If the notary can play a role in providing guidance on the implementation of child adoption through consultation and negotiation with all parties involved in child adoption, this is to allow the community, especially the parties to the adoption contract, to obtain information and understand the requirements, children adoption procedures. Because in counseling and consulting regarding legal actions to be carried out by the parties, the notary must refer to the laws and regulations relating to the legal act. However, with the Government Regulation Number 54 of 2007, the role of the Notary regarding child adoption implementation has changed, causing new problems in community regarding the legal force of adoption deed which was made before the enactment of this Government Regulation, in addition to polemics that have emerged in the community regarding legal certainty over the deed of adoption that they have made, so that it will make people confused and worried about the status of their adopted child. It should be noted that the precautionary principle is in accordance with the notary code of ethics which can be carried out by a notary who will issue an authentic deed that has perfect evidentiary power.*

Keywords: child adoption, notarial deed, notary code of ethics

### INTRODUCTION

The legal basis for regulating child adoption prior to Government Regulation enactment Number 54 of 2007 concerning Child Adoption Implementation, is carried out based on customary law, sharia law, and also based on a deed of adoption made before a notary, but after the Government Regulation enactment Number 54 in 2007 concerning Child Adoption Implementation, the adoption must be carried out through a court decision or court determination<sup>1</sup>.

Child adoption is aimed at the best interests of the child in order to realize the welfare of the child and the protection of the child, which is carried out based on local customs, so it is very necessary for a court decision or determination to realize justice and legal certainty for children. This is stated in the government regulation which states that "adopted children are children whose rights are transferred from the family circle of parents, legal guardians, or other people who are responsible for the care, education, and rearing of the child, into the family environment of adoptive parents based on a court decision or determination."<sup>2</sup>

Prior to the Government Regulation enactment Number 54 of 2007 concerning Child Adoption Implementation, a notary played a role in making a child adoption deed agreement, where prior to the enactment of the regulation, child adoption could only occur with a notarial deed.<sup>3,4</sup> This regulation applies only to Chinese foreign eastern groups, so adoption of children outside this regulation is not justified<sup>5</sup>. After it regulation, there were also efforts to show the role of the notary in the adoption process, although the role of the notary was not explicitly and clearly but it was possible in the case that the notary made a deed of adoption which still had to go through court ratification<sup>6</sup>.

The role of a notary is very important in helping to create legal certainty and protection for the community, because a notary as a public official is authorized to make an authentic deed, as long as the making of an authentic deed is unreserved for public officials. This legal certainty and protection can be seen through the authentic deed he made as perfect evidence in court. The evidence is perfect because the authentic deed has three proof powers, viz. outward proof power (*uitwendigebewijskracht*), formal proof power (*formelebewijskracht*) and material proof power (*materialebewijskracht*)<sup>7</sup>.

Legal product of a notary is a notary deed, where a notary deed can used as written evidence. Evidence that is valid or accepted in a civil case is basically in the form of statements from witnesses, confessions, oaths and in writing which can be in the form of writings that have evidentiary value. The parameter regarding the validity of a deed is a provision regulated in the Civil Code which states that "an authentic deed is a deed made in the form determined by law made by or before a public official

<sup>1</sup>Article 1 Number 2 Government Regulation Number 54 of 2007 Concerning the Implementation of Adoption

<sup>2</sup>*ibid*

<sup>3</sup>*ibid*

<sup>4</sup>Article 10 Paragraph (1) *Staatsblad*1917 Number 129 Concerning Child Adoption

<sup>5</sup>Article 6 of *Staatsblad*1917 Number 129 Concerning the Adoption of Children

<sup>6</sup>Article 13 Letter I, J Government Regulation Number 54 of 2007 Concerning the Implementation of Adoption of Children

<sup>7</sup>KomarAndasasmita, *Notary with History, Role, Duties, Secrets of His Office*, (Bandung: Sumur, 1981), p 37

authorized for that at the place where the deed was made and Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions in notary authority terms<sup>8</sup>.

With the deed made before a notary, deviations in a child adoption process can be minimized, so that legal problems can be anticipated, because the parties are clearly the parties authorized to carry out legal acts of adoption, and the interests of the child will be better protected the parties in balanced position, and the background of the appeaser's are clearly identified through legal supporting documents, because the notary in carrying out his position is obliged, among others, to not take sides and protect the interests of the parties involved in legal actions.<sup>9</sup>

In addition, it's also implied that notary role in legal acts of adoption, where they may play a role in providing guidance on Child Adoption Implementation through counseling, consultation with parties related to child adoption, it's done so the community, especially the legal act of adoption parties, obtain information and understand about the requirements and procedures for adopting a child, because in counseling and consulting regarding legal actions to be carried out by the parties, a notary must refer to the laws and regulations relating to legal act<sup>10</sup>.

However, with the Government Regulation Number 54 of 2007, the notary role has changed regarding Child Adoption Implementation, thus creating new problems in the community regarding the legal force of adoption deed that they made before the enactment of this government regulation, besides that there's a polemic in the community regarding legal certainty over the adoption deed that they have made, so that it will make people confused and anxious about their adopted child status.

## RESEARCH

The research method used to write this research is a normative legal research method. Normative law research is a method of studying library materials. Normative legal research is research aimed at obtaining objective laws or legal norms, ie. Through the study of legal issues<sup>11</sup>. This research is normative legal research, supported by second-hand data, using legal methods, analytical methods and case methods<sup>12</sup>. The legal approach is implemented by reviewing all laws and regulations related to the legal issues being dealt with<sup>13</sup>. The legal method is a method of using laws and regulations. Case law is the study of the application of legal norms or rules in legal practice, especially the case that has been judged by the court as the research object<sup>14</sup>.

## RESULTS AND DISCUSSION

### 1. Legal Force of Notary Deed of Adoption of Children After Government Regulation Enforcement Number 54 of 2007

Deed made by a notary must have content certainty, date and subject or person, article 1870 of the Civil Code stipulates that the true contract has the absolute right of proof, is binding on the parties, and is the law of the person who made the agreement. Therefore, if there is a dispute between the parties to the agreement, the content recorded in the contract is trusted by the judge. Binding and complete evidence must be considered true (as long as the facts are not proven in other ways), no additional evidence is required. The notary must be able to assess the strength of evidence from the contract he made. Sometimes the power of external evidence is stronger than the power of formal and material proof, because the content of the contract is too much. Elements of legal action<sup>15</sup>.

A notary deed made by deviating from the applicable provisions is a deed that contains legal defects and a deed like this according to Article 1869 of the Civil Code only has the power as evidence of an underhand letter if it's signed by parties concerned. For example, a contract that contains legal defects is a contract that is not made in accordance with the manufacturing procedure stipulated in Article 38 of Law No. 2 of 2014, which is about amending Law No. 30 of 2004 on the form and nature of the notary. The pacifier does not meet the requirements set out in Article 38 of Law No. 2 of 2014, which involves amendments to Law No. 30 of 2004. Regarding the position of a notary, according to Article 40, a notary shall be present in the absence of a witness. Under the circumstances, the contract was read out in Law No. 2 of 2014 concerning the amendment to Law No. 30 of 2004 concerning the position of a notary, and the content of the contract violated applicable laws and regulations, etc. Based on this, the responsibility of the notary for his actions must be supported by an explainable moral will. A real contract made by a notary public means that the real contract is the perfect evidence of what is done in it, and the real contract has three proving powers, among others<sup>16</sup>:

- a. Outward proof power, viz. the ability of the deed itself to prove itself as an authentic deed. If it's seen from the outside (its birth) as an authentic deed and in accordance with the legal rules that have been determined regarding the requirements of an authentic deed, until it's proven otherwise, that is until someone proves that the deed is not an outwardly authentic deed. In this case, the burden of proof is on the party who denies the authenticity of the notary deed<sup>17</sup>.
- b. Formal evidence power, where a notary deed must provide certainty that an event and fact mentioned in the deed was actually carried out by a notary or explained by parties appearing at the time stated in deed in accordance by procedures specified in deed making.<sup>18</sup>

<sup>8</sup>Habib Adjie, *Civil and Administrative Sanctions Against Notaries as Public Officials*, (Bandung: RefikaAditama, 2009), p. 47

<sup>9</sup>SutanSiregar, *Implementation of Adoption Based on Government Regulation Number 54 of 2007 (Study in Padangsidimpuan District Court)*, Volume 1 Number (1) 2019

<sup>10</sup>Article 26, 27 Government Regulation Number 54 of 2007 on the Implementation of Adoption

<sup>11</sup>Koentjorodiningrat, *Metode -MetodePenelitianMasyarakat*, (Jakarta: GramediaPustaka, 1997), p. 12

<sup>12</sup>Jhonny Ibrahim, *Teori Dan MetodePenelitianHukumNormatif*, (Malang: Bayu Media, 2005), p

<sup>13</sup>Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2010), p 93

<sup>14</sup>Jhonny Ibrahim, *Op. Cit.*, p 268

<sup>15</sup>R. Subekti, *Law of Evidence*, (Jakarta: PadyaParamita, 2007), p. 51

<sup>16</sup>Muhammad, *Notary Science*, (Bandung: SinarBaru, 1984), p 10

<sup>17</sup>*Ibid*, p 11

<sup>18</sup>*Ibid*, p 11

- c. Material evidence power, viz. certainty about a deed is very important, that what is stated in the deed is valid evidence against the parties who made the deed or those who have rights and applies to the public, unless there is evidence to the contrary. The information or statement that is poured or contained in official deed, or the statements of parties given or submitted before a notary and parties must be judged to be true<sup>19</sup>.

The above three aspects are the perfection of the notarization contract as a real contract, and everyone is bound by the contract. If it can be proved in a court hearing that a certain aspect is untrue, then the contract is only probative as a subordinate contract, or the contract as a subordinate contract has reduced probative power as a subordinate contract. The role of a notary is very important in helping to create certainty and legal protection for the public, because as a public official, a notary has the right to make a true contract. As far as the formulation of a true contract is concerned, it is not reserved for other public officials<sup>20</sup>.

Adoption of a child through a notary is an order from *Staatsblad* 1917 Number 129 concerning Child Adoption, 152 which requires an agreement between prospective adoptive parents and the party who will hand over the adopted child. *Staatsblad* Number 129 Regarding Child Adoption states that "for adoption there must be an agreement from the person or persons who do it."<sup>21</sup> Adoption according to *Staatsblad* Number 129 concerning Child Adoption in principle only provides opportunities for adoption to men who is married or has been married and gives exceptions to divorced widows<sup>22</sup>.

Prospective adoptive parents who are in a marriage bond must have an agreement from the husband and wife of the prospective adoptive parents. For men, widowers or widows, it's enough to agree with the person concerned. The agreement on the prospective part adopted child is given by his parents or guardian and the inheritance hall. If the prospective adopted child has reached the age of fifteen, he must also give his consent. The agreement between the party who will adopt and the party who will hand over the adopted child is stated in the form of a notarial deed<sup>23</sup>. The parties must appear in person before a notary or be represented by their proxies who are specifically empowered to do so with a notarial deed. Such arrangements are expected to reduce the emergence of disputes regarding child adoption and to provide legal certainty in child adoption<sup>24</sup>. The provisions for child through a notary are a method of a child as regulated in the *Staatsblad* adopting, besides that it is determined that the adoption of a child carried out by means other than a notary deed is null and void<sup>25</sup>.

In its development, adopting a child purpose is different from the original goal and prospective adopted children are not only Chinese men, so they must involve the court. In addition, legal act nature of adoption cannot be considered as the agreement result between parties alone. Adoption must be considered as an institution that creates a legal relationship between adopted children and the family environment of adoptive parents based on court decisions or decisions, therefore adoption through a notary is no longer in accordance with legal developments in society.<sup>26</sup>

Along with the need for an institution regarding child adoption, the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning Child Adoption Implementation was issued. Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning Child Adoption Implementation basically regulates the procedures for adopting children. The provisions for adoption contained in the regulation include:

a. Adoption of Children between Indonesian Citizens

Customary adoption of children is carried out in accordance with the procedures applicable in the community concerned<sup>27</sup>. Applications for adoption that have met the requirements are submitted to the court to obtain a court order, then the court submits a copy of the adoption determination to the relevant agencies<sup>28</sup>. A person can adopt a child at most twice with a minimum gap of two years. In the event that the prospective adopted children are twins, the child adoption can be carried out simultaneously with the twins by the prospective adoptive parents<sup>29</sup>.

b. Adoption of Children between Indonesian Citizens and Foreign Citizens

Applications for adoption by foreigners who have met the requirements are submitted to the court to obtain a court decision, then the court submits a copy of the adoption decision to the relevant agencies<sup>30</sup>. In process of licensing the adoption of a child, the minister is assisted by a team of consideration for licensing child adoption. Further provisions regarding the consideration team for child adoption licensing are regulated by a ministerial regulation<sup>31</sup>.

Furthermore, regarding the deeds made by a notary before the enactment of this government regulation, it remains valid and still has binding legal force for the parties who agree to make them before a notary. Security and protection the law can be seen through the authentic deed he made as evidence perfect in court. Perfect evidence because the authentic deed has three The power of proof is the power of outward proof (*uitwendige bewijskracht*), the power of formal proof (*formele bewijskracht*) and the power of material proof (*materiale bewijskracht*). As explained above. This is also as stated in the transitional regulation which states that at the time this government regulation comes into effect, all laws and regulations relating to Child Adoption Implementation will remain valid as long as they do not conflict with this government regulation.

<sup>19</sup> *Ibid*, p 13

<sup>20</sup> *Ibid*, p 37

<sup>21</sup> Article 8 Paragraph (1) *Staatsblad* 1917 Number 129 Concerning Adoption

<sup>22</sup> Article 5 Paragraph (3) *Staatsblad* 1917 No. 129 On Adoption

<sup>23</sup> Article 10 of *Statute* No. 129 Yang In 1917 Imperative Adoption Determines That Can Only Be Poured In A Shape In Deed

<sup>24</sup> J. Satrio, *Family Law on the Position of Children in Law*, (Bandung: Citra Aditya Bakti, 2000), p. 224

<sup>25</sup> Article 15 Paragraph (2) of *Staatsblad* 1917 Number 129 Concerning the Adoption of Children

<sup>26</sup> Project for Improving Legal Order and Law Development, *Some Important Civil Jurisdictions and the Relationship between Civil Procedure Law Provisions*, (Jakarta: Supreme Court, 1992), p. 546

<sup>27</sup> Article 19 of Government Regulation of the Republic of Indonesia Number 54 of 2007 on Child Adoption Implementation

<sup>28</sup> Article 20 of Government Regulation of the Republic of Indonesia Number 54 of 2007 on Child Adoption Implementation

<sup>29</sup> Article 21 of Government Regulation of the Republic of Indonesia Number 54 of 2007 Concerning Child Adoption Implementation.

<sup>30</sup> Article 22 of Government Regulation of the Republic of Indonesia Number 54 of 2007 on Child Adoption Implementation

<sup>31</sup> Article 25 of Government Regulation of the Republic of Indonesia Number 54 of 2007 Concerning Child Adoption Implementation

## 2. Legal Consequences of Notary Child Adoption and Its Relation to Notary Professional Ethics Adopting

In connection to legal consequences of child before a notary, the author cites an article published by Suara.com news about a case that was very much discussed by the public regarding a child adopted by his adoptive parents, namely Angeline who was adopted as a child by Margareth and then killed by herself<sup>32</sup>.

Based on the court's decision, it was proven that Angeline was killed by her adoptive parents, Margaret<sup>33</sup>. What is interesting that the author can discuss is the case that in this case one of the evidences was a notarial deed made by a notary domiciled on Teuku Umarstreet, Denpasar, Bali named AnnekeWibowo, SH. The deed is a child adoption recognition made before a notary at the request of the parties who are none other than the biological parents of the child and the prospective adoptive parents at that time.

In the deed the parties discussed several things, one of which was the issue of inheritance and since the signing by parties, the deed was considered as strong evidence that the child had been legally adopted and then gave rise to the right to become heirs of the adoptive parents.

The deed of acknowledgment of adoption under Number 18 was drawn up at 13.30 WITA on Thursday, 24-05-2007, before Notary AnnekeWibowo SH, who is domiciled in Denpasar Bali in presence of witnesses known to notary. Mr. AchmadRosyidi was born in Banyuwangi on 04-6-1986, residing in Banyuwangi Neighborhood Regency, Gombang, Gombengsari village, RT 001, RW 002, Kalipuro sub-district, as the first party as the biological parents of the adoptive candidate who at that time had not been given permission name.

In addition, there was also the biological mother of adopted child, Mrs. Hamidah, who was born in Banyuwangi on 06-11-1987, a housewife who lived with her husband who also at that time gave up their child for adoption.

Mrs. Margareth Christina Megawe was born in Sanga on 03-03-1955, a housewife residing in Pekanbaru, Garudastreet, Number 07, RT 01, RW 06, LbTimur village, PayungSesaki sub district, as the second party who didn't others are prospective adoptive parents. Which coincidentally at that time was in Denpasar.

The parties who appear before notary state that they agree and agree to make an agreement to acknowledge the child adoption which will be poured into a notarial deed, in the deed the parties discuss several things, viz. in the first article the first party has been willing to give up the child voluntarily and sincerely their biological daughter is a daughter who was born in Tibubeneng (Cangu) on 19-05-2007, and therefore, the second party since the signing of this deed has adopted this deed, has adopted the girl as a legitimate child, with the intention and purpose of making the child a legal child as his heirs at a later date.

In article 2, the parties state that they are aware that they are fully aware of the legal consequences of this appointment and the first party states that in the interests of second party to relinquish all the rights they have and can perform and discharge all the obligations they bear on the child and especially relinquish the rights to inherit from the adopted child, the rights of which will subsequently become the rights and second party authorities, while the heirs of the second party will be considered and become adopted child heirs, if the child died without leaving a will.

The next article, namely Article 3, states that the second party will consider the child as his own legitimate child and therefore the child will be given rights as his own legitimate child, especially that the child will be given and will receive proper education and care, and also have the right to inherit from the first party as their own parents.

Article 4 the parties have reached an agreement not to disclose the identity of the first party as the biological parent to the child until the child reaches adulthood. Article 5 first party gives full power to the second party to give the name as desired which will be used everywhere and forever.

In last article of the deed, the parties choose a general and unchanged legal domicile at the Registrar's Office of the District Court in Denpasar. These deeds were made in Denpasar at 13.30 on 24-05-2007 with witnesses known to the notary.

The above is an example of acknowledgment deed of adoption made before a notary, it was made in the same year where Republic of Indonesia Regulation Number 54 of 2007 concerning Child Adoption Implementation was enacted. There are several things that can be studied regarding the deed of adoption.

The most basic thing is that although a government regulation regarding Child Adoption Implementation has just been enacted in the same year as the adoption deed was made, there are other rules regarding child adoption that must be considered by a notary, namely the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection which has now undergone changes and became Law Number 35 of 2014 concerning Child Protection.

The second thing is about religion, where the child protection law article 39 paragraph (3) states that "prospective adoptive parents must be of the same religion as the religion adopted by the prospective adopted child". Here it can be seen that the biological parents of the prospective adopted child are Muslim while the prospective adoptive parents are Christian. Another thing that creates uncertainty is that when the deed is made before a notary, it is not known what religion the child is, even Article 5 of the deed of adoption states that the first party, in this case the biological parents, gives full rights and power to the second party to give it to the child name in accordance with the wishes and desires of the second party itself. Article 39 paragraph (1) of the Child Protection Law states that adoption can only be carried out for the best interests of the child and is carried out based on local customs and provisions of laws and regulations, paragraph (2) states that the adoption of a child as referred to in paragraph (2) (1) does not break the blood relationship between the adopted child and his biological parents. The deed made in Article 4 states that the parties agree not to disclose the identity of the biological parents to the adopted children until the adopted child has reached adulthood, where it is not clear what adult age is used as a benchmark.

Article 1 of the UUN states that a notary is the only public official authorized to make an authentic deed, unless the law assigns or excludes other officials. The word "only" here is intended to emphasize that the notary is the only one who has the general authority, does not belong to other officials. All other officials only have certain powers, meaning that their authority does not exceed that of making authentic deeds that are expressly assigned to them by law<sup>34</sup>. Although the law states that a notary is

<sup>32</sup><https://www.suara.com/news/2015/06/19/111945/isi-lengkap-akta-pengangkatan-angeline-jadi-anak-margaret>, downloaded 12 September 2020

<sup>33</sup>GHS LumbanTobing, *Notary Office Regulations*, (Jakarta: GeloraAksaraPratama), 1999, p. 34

<sup>34</sup>GHS LumbanTobing, *Notary Office Regulations*, (Jakarta: GeloraAksaraPratama), 1999, p. 34

authorized to make an authentic deed, another thing that must be seen is as long as the deed does not conflict with other laws or regulations. However, in this case, it is not true when the deed state contents that the child still has the right to inherit from the biological parents but the biological parents do not have inheritance rights from the child if the child dies without leaving a will. The parties agree that the heirs of the child are given rights to the second party as the adoptive parents<sup>35</sup>.

Notary in carrying out his duties is free to formulate the contents of the deed according to the request of the parties facing him, but in the case of adoption, it is not recommended to discuss inheritance, because basically even a notary deed does not necessarily make the prospective adopted child legally a child lift. Based on the law in force, it must be legally determined or decided by a court<sup>36</sup>.

To the extent that laws and regulations regarding Child Adoption Implementation have been enacted, every deed made by a notary is considered null and void because it has clearly violated the applicable provisions, namely taking the authority of the court. So, a notary who still does this must be sanctioned according to the applicable notary code of ethics.

The code of ethics is "a guide, guidance or moral or decency guide for a particular profession or is a list of obligations in carrying out a profession which is compiled by members of the profession itself and binds them in practicing it." Thus, the notary code of ethics is the guidance, guidance, or moral or moral guidance of a notary both as a person and a public official appointed by the government in the context of providing public services, especially in the field of making deeds.<sup>37</sup> In this case, it can include both the notary code of ethics applicable in the organization, as well as the notary position regulations. The notary code of ethics contains material elements regarding obligations, prohibitions, exceptions and sanctions that will be imposed if it is proven that a notary violates the code of ethics. In addition, the notary code of ethics also regulates the procedure for enforcing the code of ethics for temporary dismissal as a notary member<sup>38</sup>.

Notary responsibility in carrying out a notary code of ethics is very necessary, this is because a notary who runs a notary code of ethics will automatically carry out the laws and regulations properly and of course this will increase the sense of legal certainty for those who use notary services in all matters relating to the functions and their duties<sup>39</sup>.

Based on this reason, it's necessary to pay attention to the precautionary principle that can be carried out by a Notary who will later issue an authentic deed that has perfect evidentiary power, viz. in the clarity and legal status of the parties. In framework of making a notarial deed, documents related to identity and important events regarding population administration records are in accordance with those required by Law Number 23 of 2006 concerning Population Administration jo. Government Regulation of Republic of Indonesia Number 37 of 2007 concerning Law Implementation Number 23 of 2006 about the Administration of Population of the parties must be requested by a Notary, as a basis for knowing the authority of the parties who will carry out the child adoption. From the document study, it'll state the validity of a family relationship, especially for biological parents with a child who will be handed over as an adopted child, prospective adoptive parent's clarity, the origin of the child to be adopted.

In addition, the making of deed must also refer to the laws and regulations governing the agreement. The legality of adoption must go through a court decision. In order to obtain the court's stipulation, the role of the Notary in adoption agency's possible based on Article 13 of PP Number 54 of 2007 concerning Child Adoption Implementation (in the process of adopting a child). Especially at this stage what is required by Articles 12 and 13 of PP Number 54 of 2007 concerning Child Adoption Implementation must be fulfilled. In addition, based on Law Number 30 of 2004 on the Office of Notaries, in Chapter III on Authorities, Obligations and Prohibitions, in Part One: Authorities, in Article 15 paragraph 1 states that: "Notaries are authorized to make authentic deeds, agreements and stipulations required by legislation and/or required by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosses, copies and quotations of the deed, all of which during the making of the deeds are not assigned or exempted to another office or other person prescribed by law."

From duties terms, the Notary serves, among others, to provide advice in the field of law but is limited to those related to the wishes of the parties on a legal act, hear and analyze the impacts that are likely to be caused by the wishes of the public to come facing him<sup>40</sup>.

What is no less important in the principle of notary prudence is that the notary must be visible as specified in article 16 paragraph 1 letter a (Obligations of Notaries) Law Number 30 of 2004 on the Notary Office as follows:

"In carrying out his office, Notary is obliged: Act honestly, carefully, independently, and safeguard the interests of the parties involved in legal acts";

Based on the provisions of Articles 26 and 27 of Government Regulation Number 54 of 2007 on Adoption Implementation , in connection with the making of a Notary deed on legal acts of adoption, the Notary may play a role in providing guidance on Adoption Implementation through extension, consultation to parties related to adoption, it is done so that the public, especially the parties in legal act of adoption, obtain information and understand about the requirements, procedures and procedures for adoption. Because in the extension and consultation on legal acts to be done by the parties, the Notary must refer to the legislation related to the legal act. In providing such advice, the Notary must be impartial, and always refer to the legislation governing the legal acts to be performed by the parties involved in the agreement. This is a principle of notary prudence that must be neutral as specified in article 16 paragraph 1 letter a (Obligations of Notaries) Law Number 30 of 2004 on the Notary Office as follows:

"In carrying out his office, Notaries are obliged: Act honestly, carefully, independently impartiality, and safeguard the interests of the parties involved in legal acts"

<sup>35</sup>Ade Kusuma, *Notary Authority in the Making of Wills for Foster Children in Islamic Law and Adoption of Children in the Book of Civil Law*, in <http://journal.fh.unsri.ac.id/index.php/repertorium/article/view/168/93> , downloaded 10 September 2020

<sup>36</sup>Ruth TriaEnjelinaGirsang, *Legal Protection And Legal Certainty Against Adopted Children The Process of Appointment Through a Notary Deed Outside the Adoption/Adoption System, the Deed Must Be Made by a Notary Deed (STB. 1917 NO. 129)*, Law Review Volume XVII, No. 3\_– March 2018, p. 12

<sup>37</sup>*Ibid*, p. 194

<sup>38</sup>*Ibid*, p. 194

<sup>39</sup>*Ibid*, p. 194

<sup>40</sup>SyafranSofyan, Notary OpenbareAmbtenaren, in <http://www.Jimlyschool.com>. Downloaded September 10, 2020

## CONCLUSION

### 1. Conclusions

- a. Deeds legal force made by a notary before Government Regulation enactment Number 54 of 2007 on adoption implementation, is valid and the deed remains in force and still has binding legal force for the parties who agreed to make it before a notary. This is as stated in the transitional rule which states that at the time of the enactment of this government regulation, all legislation relating to the adoption implementation shall remain in force as long as it does not conflict with this government regulation.
- b. Adoption Deed made by a Notary is if based on the provisions of Stb. 1917 No. 129, the provision of adoption of a child through a Notary is a means of adopting a child, in addition it is determined that the adoption of a child performed in a manner other than by a Notary's deed is void by law. After the issuance of Republic of Indonesia law number 54 of 2007, the adoption process is done through the Court. For that it's necessary to pay attention to the principle of caution that can be done by a Notary who will later issue an authentic deed that has perfect proof power.

### 2. Suggestions

- a. The government should create a special agency for the supervision of adoption deeds both before and after the Government Regulation enactments on adoption, so that the rights of children cared for by their adoptive parents, because in fact many adopted children are still abandoned in the adoption implementation today contained in the adoption act can be fulfilled in time.
- b. It's recommended that notaries in making a deed must always pay attention to the principle of prudence and the provisions of applicable law so as not to violate the law and may be subject to sanctions in accordance with the applicable notary code of ethics.

## REFERENCES

### Book

- G.H.S. Lumban Tobing, 1999, *Peraturan Jabatan Notaris*, Jakarta: Gelora Aksara Pratama
- Habib Adjie, 2009, *Sanksi Perdata Dan Administratif Terhadap Notaris Sebagai Pejabat Publik*, Bandung: Refika Aditama
- Ikatan Notaris Indonesia, 2000, *Jati Diri Notaris, Dulu, Sekarang Dan Di Masa Datang*, Jakarta: PP Ikatan Notaris Indonesia
- Jhonny Ibrahim, 2005, *Teori Dan Metode Penelitian Hukum Normatif*, Cetakan Pertama, Malang: Bayu Media
- Koentjorodiningrat, 1997, *Metode-Metode Penelitian Masyarakat*, Jakarta: Gramedia Pustaka
- Komar Andasasmita, 1981, *Notaris Dengan Sejarah, Peranan, Tugas Kewajiban, Rahasia Jabatannya*, Bandung: Sumur
- Muhammad, 1984, *Ilmu Pengetahuan Notariat*, Bandung: Sinar Baru.
- Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta: Kencana
- Proyek Peningkatan Tertib Hukum Dan Pembinaan Hukum, 1992, *Beberapa Yurisprudensi Perdata Yang Penting Serta Hubungan Ketentuan Hukum Acara Perdata*, Jakarta: Mahkamah Agung.
- R. Subekti, 2007, *Hukum Pembuktian*, Jakarta: Padya Paramita.

### Journal

- Ade Kusuma, *Kewenangan Notaris Dalam Pembuatan Akta Wasiat Untuk Anak Piara Dalam Hukum Islam dan Pengangkatan Anak Dalam Kitab Undang-Undang Hukum Perdata*, in <http://journal.fh.unsri.ac.id/index.php/repertorium/article/view/168/93> , downloaded September 10, 2020.
- Ruth Tria Enjelina Girsang, *Perlindungan Hukum Dan Kepastian Hukum Terhadap Anak Angkat Yang Proses Pengangkatannya Melalui Akta Notaris Di Luar Sistem Pengangkatan Anak Angkat/Adopsi Yang Aktanya Wajib Dibuat Dengan Akta Notaris (STB. 1917 NO. 129)*, Law Review Volume XVII, No. 3— Maret 2018.
- Sutan Siregar, *Pelaksanaan Adopsi Berdasarkan Peraturan Pemerintah Nomor 54 Tahun 2007 (Studi di Pengadilan Negeri Padangsidempuan)*, Volume 1 Nomor (1) 2019, downloaded September 12, 2020.

### Internet

- <https://www.suara.com/news/2015/06/19/111945/isi-lengkap-akta-pengangkatan-angeline-jadi-anak-margaret>, downloaded 12 September, 2020.
- Syafran Sofyan, Notaris Openbare Ambtenaren, dalam <http://www.JimlySchool.com>. downloaded September 10, 2020.

### Constitution

Government Regulation of the Republic of Indonesia Number 54 of 2007 Concerning Child Adoption Implementation

Law Number 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary.

Law Number 35 of 2014 concerning Child Protection

Hutami Wahyu Haryanto Putri  
*Notary Masters Student at Sebelas Maret University*  
*Email: hutamiwhp@gmail.com*

Anjar Sri Ciptorukmi Nugraheni  
*Notary Masters Lecturer at Sebelas Maret University*  
*Email: anjarsri@staff.uns.ac.id*

Andina Elok Puri Maharani  
*Notary Masters Lecturer at Sebelas Maret University*  
*Email: andinaelok@staff.uns.ac.id*