

Type: Research Article

Nullification of the Birth Certification of a Foster Child Carried Out by the Foster Parent Based on the Decision of the Supreme Court No. 2389 K/Pdt/2020

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ABSTRACT

The background of this research is based on the legal complexity and social implications that arise in the annulment of birth certificates of adopted children, especially related to the protection and rights of children and legal certainty in population administration. The formulation of the problem in this research includes how the legal considerations of the Supreme Court in canceling the birth certificate of adopted children, the application of the principles of legal certainty and protection of children's rights, and the relevance of Islamic law principles in this context. The research objectives are to understand the legal process of cancelling an adopted child's birth certificate, analyze its impact on children's rights, and examine the suitability of the Supreme Court's decision with national and Islamic legal principles. The research method used is qualitative with a descriptive-analytic approach, which involves document study, interviews, and field observations to obtain in-depth and contextual data. The results show that the Supreme Court emphasized the importance of a strong legal basis and proper procedures in cancelling the certificate. The decision rejected the cassation because there was no valid legal reason to cancel the deed, and emphasized the importance of maintaining the psychological stability and legal identity of the child. The principles of legal certainty and child protection are the main basis for the decision. In Islamic law, annulment is possible if there is a violation of the principle of nasab, which requires clarity of lineage. Conclusion: This research is expected to contribute to the development of a fairer and more comprehensive legal policy.

KEYWORDS

Cancellation of Birth Certificate; Adopted Child; Legal Certainty; Protection of Children's Rights; Principles of Islamic Law



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INTRODUCTION

Marriage is a bond between a man and a woman based on religious teachings, social norms and laws, with the aim of forming a family full of peace, love and compassion.¹ In religion, marriage is seen as an act of worship that preserves honor, channels desire legally, and produces good offspring. Socially and legally, marriage creates order, establishes the rights and obligations of husband and wife, and protects the rights of children. Thus, marriage combines spiritual, emotional, biological, and social aspects for the sake of happiness in this life and the hereafter.² Through the bond between a man and a woman that is legal according to religion and law, a family is formed. The presence of children in the family is considered an important part that complements household life. Children are individuals who are still in the stage of physical, mental and social development, making them vulnerable to violence and exploitation.³ Therefore, children need to get basic rights such as life, growth, education, and protection from discrimination. In law and culture, children are seen as parties who require special attention because they are not yet able to protect themselves.

The issue of child protection received significant international attention after the adoption of the Convention on the Rights of the Child (CRC) by the United Nations in 1989. The Convention on the Rights of the Child has become an important legal foundation in defining children's rights at the international level and has encouraged countries to pay more attention to child protection. In Indonesia, child protection is regulated in Law No. 23 of 2002 on Child Protection, which establishes children's rights to protection and respect for their dignity.⁴ Although there are regulations governing child protection, challenges in its implementation remain great, such as the high rate of violence against children, exploitation through child labor, bullying, as well as the negative impact of digital technology that affects children. Therefore, further efforts are needed to ensure more effective child protection.

Child adoption is the legal act of adopting a child who is not legally bound to his or her parents into a new family. The main purpose of child adoption is to give children the opportunity to live a better life, especially for those who come from underprivileged families or who are in a neglected situation. Child adoption aims to provide better protection, care, and education for the child.⁵ If we compare general and specific child adoptions, it can be seen that both have a similar goal, which is to give the child a better life. However, there are differences in terms of procedure and

¹ Fathul Hamdani & Ana Fauzia, "Tradisi Merariq dalam Kacamata Hukum Adat dan Hukum Islam" (2022) 3:6 J Huk Lex Gen 433-447.

² Nadia Nazmi Musfirah & Nurul Jannati Sapira, "A Critical Examination of the Sexual Violence Law from the Perspective of Feminism: Implications for Legal Reform and Social Justice" (2025) 1:1 Iuris Philos J 53-71, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal/article/view/5>>.

³ Nurhayati et al, "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes" (2023) 23:3 J Din Huk 556-572.

⁴ Tsuwaibah Abidah et al, "Comparison of the Civil Law System between the Netherlands and Indonesia in the Application of Criminal Law" (2025) 1:1 J Verum Legis Indones 38-44, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/41>>.

⁵ Asni, *PERLINDUNGAN PEREMPUAN DAN ANAK DALAM HUKUM INDONESIA (Pendekatan Integratif)* (Gowa: Alauddin University Press, 2020).



implementation. General child adoption aims to give children a better chance at life by providing protection, care, and proper education. Meanwhile, child adoption specifically focuses more on the legal procedures that must be followed, including verification of the status of the child to be adopted and evaluation of the adoptive parents, who must meet certain conditions.

Regarding the definition of a child, generally, from the perspective of Indonesian positive law is defined as someone who is not yet an adult. When referring to Article 330 of the Civil Code ("KUHPer"), it is indirectly explained that children are those who have not reached the age of 21 (twenty-one) years and have not previously been married. In addition to the Civil Code, other laws and regulations in Indonesia also explain the definition of a child. Based on Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection, children are defined as individuals who have not reached the age of 18 (eighteen) years, including children who are still in the womb. Thus, it can be concluded that a child is someone who has not reached maturity, which is characterized by young age and has psychological traits that are still unstable and vulnerable to influences from the surrounding environment.

Children who will be cared for as adopted children must have a birth certificate from their biological parents first, at the Civil Registry. According to Law No. 23/2006, child adoption is a legal action to transfer the rights of a child from the family authority of parents, legal guardians, or other people responsible for the care, education, and raising of the child into the family environment of the adoptive parents based on a court decision. The practice of adopting a child without a court decision often leads adoptive parents to list the adopted child as a biological child on the family card, causing legal confusion about the child's status. For example, in Supreme Court Decision No. 2389 K/Pdt/2020, adoptive parents requested the annulment of the appointment of a child who was already registered as a biological child. However, there are no legal rules governing the change of status of adopted children to biological children, nor the cancellation of child adoption in Government Regulation No. 54/2007, Law No. 23/2006 on Population Administration (and amendment of Law No. 24/2013), or other regulations related to child adoption.

Therefore, based on the explanation above, the author is interested in discussing issues regarding the status of children in the appointment process as well as the consideration of judges in terms of canceling the appointment of children that can be submitted by adoptive parents, especially in the perspective of civil law in Indonesia.

METHOD

This research uses a descriptive qualitative approach to deeply understand the process and impact of canceling the birth certificate of an adopted child, focusing on legal and social aspects based on Supreme Court Decision No. 2389 K/Pdt/2020.⁶ Using a normative legal approach, namely a statutory approach, a conceptual approach, a historical approach, a comparative approach, and a philosophical approach. Using primary, secondary, and tertiary legal materials, which support the

⁶ Imam Gunawan, *Qualitative Research Methods: Theory and Practice* (Jakarta: Bumi Aksara, 2014).



analysis of the annulment of the birth certificate of an adopted child based on Supreme Court Decision No. 2389 K/Pdt/2020.

RESULT & DISCUSSION

I. Consideration of the Supreme Court Judges in Deciding the Case of Canceling the Birth Certificate of an Adopted Child

Child adoption is a legal action that must be carried out by procedures established by law. The procedure involves a determination from a judge in court, with the aim that child adoption has legal certainty for both the adopted child and the adoptive parents.⁷ This certainty is very important so that no legal problems arise in the future regarding the status of the adopted child. However, in practice, it is possible that in the future, the adoptive parents may file a lawsuit with the court to annul the child adoption that has been carried out previously. In the realm of law, the term "void" has a specific meaning that indicates that an action or legal act is considered to have never occurred in the first place and has no binding legal force. Thus, when a child adoption is declared void by the court or the competent authority, then legally the status of the adopted child is considered to have never existed or never been recognized from the beginning of the adoption process.

As a result, all rights, obligations, and legal relationships previously established between the adopted child and the adoptive parents become invalid or are not officially recognized. This means that legally, the appointment does not have a strong foundation and does not provide the same legal status as biological children.⁸ Therefore, the annulment of a child's appointment is not merely administrative, but has a fundamental impact on the legal recognition and inherent rights of the child and his or her legal relationship with the adoptive parents. About the cassation lawsuit related to the annulment of the birth certificate of an adopted child, the object of this research is Supreme Court Decision Number 2389 K/Pdt/2020. In this case, the Cassation Petitioners are a married couple, namely Yacobus Lapu and Rosdiana, who reside in Parepare City. They applied to the Parepare District Court to cancel the birth certificate of their adopted son, Kristovel Arianto. This application was filed because, although Kristovel Arianto had been adopted as a child by the Applicants, they felt that the child had returned to his biological parents and therefore his status as an adopted child needed to be annulled.

In his cassation petition, the Cassation Petitioner requested the Parepare District Court to cancel the birth certificate on behalf of Kristovel Arianto registered at the Parepare City Population and Civil Registry Office with number 216/AK/KPP/I/2020 issued on January 22, 2010. The applicant felt that, because Kristovel Arianto had returned to his biological parents, the birth certificate listing them as adoptive parents should be canceled and re-registered by his biological parents. At the Parepare District Court level, the panel of judges issued Stipulation Number 76/Pdt.P/2019/PN Pre dated November 28, 2019. In this decision, the Parepare District Court rejected the Cassation Petition because the petition was

⁷ Agus Budiarto, *Family Law and Child Protection* (Jakarta: Rajawali Pers, 2019).

⁸ Rini Saputri, "The Role of the Court in Resolving Child Adoption Disputes" (2021) 20:1 *Indonesian Law Journal* 88-104.



inadmissible. The District Court also imposed court costs on the Applicant of Rp 96,000.00. This stipulation was not accepted by the Applicant, who felt that the reasons they submitted were strong enough to change the status of Kristovel Arianto's adopted child.

Dissatisfied with the decision of the Parepare District Court, the Cassation Petitioners filed a cassation to the Supreme Court on December 11, 2019. In this appeal, the Applicants hope that the Supreme Court will overturn the decision of the Parepare District Court that rejected their application and grant their appeal by annulling Kristovel Arianto's birth certificate and ordering the Population and Civil Registry Office to amend it. The Applicants argued that since the child had returned to his biological parents, his status as an adopted child should be revoked, and his civil registration documents, including his birth certificate, should be updated to reflect his biological parents.

The Supreme Court, in its deliberation, considered that the reasons raised by the Cassation Petitioner were unacceptable. The Supreme Court stated that although Kristovel Arianto is an adopted child, his birth certificate must still be recorded as a biological child to avoid the psychological burden that the child may experience. The Supreme Court also emphasized that in the minutes of the birth certificate kept at the Office of the Population and Civil Registry, Kristovel Arianto's birth certificate had been recorded by listing his biological parents.

Furthermore, the Supreme Court considered that the Cassation Petitioner's request to cancel the birth certificate was not based on valid legal grounds. The Supreme Court thought that the application was not by the applicable legal provisions, as there was insufficient evidence to cancel a birth certificate that had been recorded by the applicable provisions at the time. Thus, the Supreme Court rejected the cassation petition filed by the Cassation Petitioner.

II. The Role of the Supreme Court in Maintaining Legal Certainty and Protecting Children's Rights

In a case examined and decided through Supreme Court Decision No. 2389 K/Pdt/2020, the Supreme Court rejected the application of adoptive parents who wanted to cancel the birth certificate of their adopted child. The application was filed after the child returned to his biological parents, and the adoptive parents requested that the birth certificate be amended to contain the biological parents' names as substitutes. However, the Supreme Court considered that the reason for the request was not legally sufficient and that amending the birth certificate in such circumstances could hurt the psychological and social condition of the child concerned.

In its reasoning, the Supreme Court prioritized the principle of the best interest of the child and ensured that any legal action concerning a child's identity must consider the long-term impact on the child's welfare.⁹ A birth certificate, as a legal document that reflects a child's identity, cannot be changed without a valid reason, because it can interfere with a child's right to legal recognition, family status, and a sense of security in their social life. The rejection of the annulment is in line with the mandate in Law No. 35/2014 on Child Protection, which stipulates that every child

⁹ Ahmad Tanzeh & Suyitno, *Basics of Research* (Surabaya: Elkaf, 2006).



has the right to identity, including name and family relationship, as evidenced through official documents such as birth certificates. Therefore, any action that has the potential to remove or change this identity must go through a strict and cautious legal process.

Through various decisions that have been issued, the Supreme Court has demonstrated its strong commitment to ensuring that the application of the law is not merely a formality, but is also able to provide real and comprehensive protection of children's rights. In every decision, the Supreme Court tries to emphasize that the justice system must pay attention to essential substantive justice, namely justice that truly reflects human values and the best interests of children, not only fixated on fulfilling legal procedures. This approach indicates that the Supreme Court has a deep awareness of the importance of maintaining a balance between the rule of law and the protection of human rights, so that justice is not only technical but also meaningful in a social and humanitarian context. With this attitude, the Supreme Court shows that the protection of children, especially in terms of identity and legal status, is an important part of a fair legal system that is oriented towards the best interests of children.

Supreme Court Decision

One concrete example of the Supreme Court's role in this case can be seen in Decision No. 2389 K/Pdt/2020, in which the Supreme Court rejected a cassation petition filed by a pair of adoptive parents seeking to cancel the birth certificate of their adopted child. The application was filed with the aim of re-registering the name of the child's biological parents in the birth certificate, following the return of the child to the care of the biological parents. In the decision, the Supreme Court explicitly stated that the petition for annulment could not be granted because it was not supported by valid and sufficient legal reasons. The Court considered that changes to the legal status of children in official documents such as birth certificates cannot be made carelessly, because this can lead to legal uncertainty as well as psychological and social losses for the children concerned.

The Supreme Court thinks that a birth certificate is not only an administrative document, but also has a strategic position as legal evidence of a child's identity, which concerns the name, place, date of birth, and the status of the legal relationship between the child and the recorded parents. Thus, changes to birth certificates cannot be made except with very strong legal considerations and through strict legal procedures, as stipulated in laws and regulations such as Law No. 23/2006 on Population Administration, as well as its amendment in Law No. 24/2013. In the end, the Supreme Court decided to reject the cassation petition filed by the Cassation Petitioner. In the ruling, the Supreme Court decided to:

1. Reject the cassation petition filed by Yacobus Lapu and Rosdiana (Cassation Petitioners).
2. Punish the Cassation Petitioner to pay court costs at the cassation level in the amount of Rp500,000.00 (five hundred thousand rupiah).

In this case, the Supreme Court provided very specific and in-depth legal considerations related to the petition to annul the birth certificate of an adopted child. The Supreme Court considered that the reasons submitted by the applicants (Yacobus Lapu and Rosdiana) were not legally valid. The applicants requested the



cancellation of the birth certificate of their adopted son, Kristovel Arianto, because the child had returned to his biological parents. Although the reason related to a change in the child's status, the Supreme Court held that the birth certificate that had been issued at the Population and Civil Registry Office was still valid, because a birth certificate is an official document that records a child's status at that time and cannot be changed without a strong legal reason. In this case, the applicants could not prove that there was a valid reason for the deed to be canceled, so their application was rejected.

III. Principles of Legal Certainty and Protection of Children's Rights in Canceling the Birth Certificate of Adopted Children

A birth certificate is a document that has high legal value in the state administration system, as it is the legal proof of a child's birth and legal status. This document affects various aspects of a child's social and administrative life, ranging from the right to identity, education, inheritance rights, to the right to obtain protection from the state. In the context of adopted children, birth certificates become more complex, as they involve a different legal status from biological children. Cancellation or amendment of an adopted child's birth certificate often raises profound legal issues, both for the child, the adoptive parents, and the state.¹⁰

If an adopted child's birth certificate is canceled without a clear and strong legal basis, it will lead to legal uncertainty that has the potential to harm the child, both administratively and socially. For example, children who lose their birth certificates will face difficulties in proving their identity in the eyes of the law, which may hinder their access to various public services and state protection. This status uncertainty can also lead to chaos in the legal relationship between the child, the adoptive parents, and the biological family.

The principle of legal certainty also requires that any changes to population administration documents must be carried out with legal procedures that have been stipulated in law, such as in Law No. 23/2006 on Population Administration. This procedure guarantees that changes to population data are only made if they meet strict legal requirements, thus preventing unwarranted changes from occurring and harming related parties, especially children who are vulnerable legal subjects. Therefore, the Supreme Court needs to pay very careful attention to any application for amendment or cancellation of an adopted child's birth certificate so as not to disturb the legal certainty regarding the status of the child.

IV. Principles of Islamic Law on the Cancellation of Birth Certificates of Adopted Children

According to the perspective of Islamic law, the practice of child adoption known as *tabannī* has a principal difference compared to the adoption system in positive law in various countries, including Indonesia. If, in state law, child adoption can make adopted children have a legal status that is almost equivalent to biological children, then in Islam, this does not apply. Adopted children are still seen as clearly different

¹⁰ Sayyid Sabiq, *Fiqh Sunnah* (Beirut: Dar al-Fikr, 1993).



from biological children, especially in the aspects of nasab relationship, inheritance rights, and mahram status.¹¹

The Qur'an explicitly prohibits the disguise of lineage, as mentioned in Surah Al-Ahzab verses 4-5, which emphasizes that adopted children are not biological children and should be called by the name of their biological father. Thus, child adoption in Islam is more a form of social care and affection, not a full replacement of legal status as a biological child. One of the main principles in Islamic law regarding child adoption is that a child's nasab should not be changed. This means that even if a child is adopted by another person, the child's blood relationship or nasab with his or her biological parents cannot be abolished. This means that adopted children still have the same rights as biological children of their biological parents, including inheritance rights.

In some cases, annulment of an adopted child's birth certificate is possible when the appointment is contrary to the principles of Islamic law, or when there is a violation of the child's rights, such as neglect or the inability of the adoptive parents to provide proper physical and mental maintenance. The annulment does not mean removing all of the child's rights, but rather returning the child to his or her original status as a child of the biological parents, including his or her rights to nasab, inheritance, and identity. If the birth certificate is canceled, then according to Islamic law, the child's hereditary status will return to his or her biological parents, and rights such as inheritance also refer back to the original law, namely, from biological parents. In this case, the adopted child does not have inheritance rights from the adoptive parents, except through grants or wills that are allowed with a maximum limit of one-third of the inheritance.

CONCLUSION

Supreme Court Decision No. 2389 K/Pdt/2020 shows that the annulment of an adopted child's birth certificate must be done based on clear legal provisions and supported by strong evidence. In this case, the Supreme Court rejected the appeal because there was no valid legal basis to cancel Kristovel Arianto's birth certificate, even though the child had returned to his biological family. The Supreme Court also emphasized the importance of maintaining the psychological stability and legal identity of the child. A birth certificate, as an official document, cannot be altered arbitrarily without proper legal procedures. This decision confirms that the legal process related to adoption and its annulment must be carried out carefully while prioritizing the protection of the rights and best interests of the child.

In Islam, child adoption is permissible as a form of love and protection, but it is not allowed to change the nasab or hereditary relationship. Adopted children must still be attributed to their biological parents and do not have inheritance rights from the adoptive parents, except through a will. Cancellation of the birth certificate of an adopted child can be done if the registration of the nasab is not by Sharia or if the adoptive parents fail to fulfill their obligations. In legal cases like Kristovel Arianto's, although the birth certificate is valid according to state law, from an Islamic perspective, the inclusion of the adoptive parents' names as biological parents is invalid because it violates the principle of clarity of lineage.

¹¹ Lilik Suryani, "Child Adoption in the Perspective of Indonesian Law" (2012) 32:1 J Law Dev.



DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

REFERENCES

BOOK

- Asni, *PERLINDUNGAN PEREMPUAN DAN ANAK DALAM HUKUM INDONESIA (Pendekatan Integratif)* (Gowa: Alauddin University Press, 2020).
- Budianto, Agus, *Family Law and Child Protection* (Jakarta: Rajawali Pers, 2019).
- Gunawan, Imam, *Qualitative Research Methods: Theory and Practice* (Jakarta: Bumi Aksara, 2014).
- Sabiq, Sayyid, *Fiqh Sunnah* (Beirut: Dar al-Fikr, 1993).
- Tanzeh, Ahmad & Suyitno, *Basics of Research* (Surabaya: Elkaf, 2006).

JOURNAL

- Abidah, Tsuwaibah et al, "Comparison of the Civil Law System between the Netherlands and Indonesia in the Application of Criminal Law" (2025) 1:1 J Verum Legis Indones 38-44, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/41>>.
- Hamdani, Fathul & Ana Fauzia, "Tradisi Merariq dalam Kacamata Hukum Adat dan Hukum Islam" (2022) 3:6 J Huk Lex Gen 433-447.
- Musfirah, Nadia Nazmi & Nurul Jannati Sapira, "A Critical Examination of the Sexual Violence Law from the Perspective of Feminism: Implications for Legal Reform and Social Justice" (2025) 1:1 Iuris Philos J 53-71, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal/article/view/5>>.
- Nurhayati et al, "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes" (2023) 23:3 J Din Huk 556-572.
- Saputri, Rini, "The Role of the Court in Resolving Child Adoption Disputes" (2021) 20:1 Indones Law J 88-104.
- Suryani, Lilik, "Child Adoption in the Perspective of Indonesian Law" (2012) 32:1 J Law Dev.