



## Legal Protection Strategies for Child Adoption Without a Court Order: A Comparative Study of Indonesia, USA and Malaysia

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**Abstract.** This study conducts a comprehensive examination of the frameworks designed to protect the rights of children adopted informally, without judicial oversight. It focuses specifically on the mechanisms that support their legal recognition and inheritance rights within adoptive families. Employing a normative research approach, the paper investigates the legal challenges arising from the lack of clear statutory provisions for these children's protection. Primary legal sources including the Child Protection Law, Law Number 25 of 2014, which revises Law Number 23 of 2002, and Government Regulation Number 54 of 2007 concerning Child Adoption procedures are analyzed. Further insights are derived from secondary sources such as the Minister of Social Affairs Regulation Number 3 of 2018, which describes the protocols for monitoring and reporting on the child adoption process. The study identifies three potential strategies to safeguard the interests of informally adopted children: formalization of adoption through notarial deeds, securing inheritance rights through wills, and maximizing protection under national child welfare laws. These measures offer vital safeguards for these children, particularly in securing inheritance claims and preventing disputes. The findings highlight the need for explicit legal frameworks to ensure the welfare and rights of children adopted outside formal judicial systems.

**Keywords:** *Adoption; Legal Protection; without Court Determination; Indonesia*

## Introduction

Adoption significantly impacts family law, influencing the foundational unit of society: the family. In Indonesia, the legal framework for child adoption integrates elements from three predominant legal traditions: Islamic Law, Customary Law, and Civil Law. This approach reflects the diverse societal norms and legal practices within the country, ensuring that adoption policies are inclusive and culturally sensitive.<sup>1</sup> Indonesian national law encompasses specific legal frameworks, including Islamic Law, Customary Law, and Civil Law, each providing unique guidelines on the formation of familial relationships through child adoption. These frameworks are structured around a set of established regulations that define the legalities of adopting a child within these varied legal systems.<sup>2</sup> The legal structure for adoption in Indonesia incorporates three principal frameworks: Islamic Law, which governs adoption processes within Muslim communities; Customary Law, which consists of traditional norms and practices yet to be codified; and Civil Law, as defined in Staatsblad 1917 Number 129, which formalizes adoption procedures. Together, these systems shape the overarching practices and rules governing adoption.

Indonesia regulates child adoption through Government Regulation No. 54/2007, which provides a detailed framework for the adoption process. This regulation ensures that all adoptions are formalized through legal procedures, safeguarding the child's rights within the adoptive family. Article 20 (Paragraph 1) of this regulation specifically requires that child adoption be legally confirmed by a court, ensuring all parties meet stipulated eligibility criteria. This process highlights the critical role of judicial oversight in confirming the adoption, thereby defining the legal relationships. This structured legal approach aims to ensure that all adoptions are recognized and protected under the law.<sup>3</sup>

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<sup>1</sup> Iin Ratna Sumirat and Muhamad Wahyudin, "Hukum Anak Angkat Dalam Perspektif Islam Dan Hukum Positif," *Jurnal Studi Gender Dan Anak* 8, no. 02 (December 30, 2021): 168, <https://doi.org/10.32678/jsga.v8i02.5507>.

<sup>2</sup> Laurensius Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat* 5, no. 2 (August 11, 2018): 177–90, <https://doi.org/10.31629/selat.v5i2.320>.

<sup>3</sup> Adawiyah Nasution, "Akibat Hukum Pengangkatan Anak Menurut Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *Jurnal Ilmiah Penegakan Hukum* 6, no. 1 (June 27, 2019): 14, <https://doi.org/10.31289/jiph.v6i1.2473>.

Government Regulation No. 54/2007, dedicated to managing child adoption procedures, is complemented by the Minister of Social Affairs Regulation No. 3/2013. This latter regulation outlines the procedures for guidance, supervision, and reporting in the adoption process, aiming to enhance the protection of children within these frameworks. Together, these regulations form a comprehensive legal structure to safeguard children's welfare during the adoption process.<sup>4</sup> The regulations mandate that child adoptions in Indonesia be validated through judicial decisions, ensuring each adoption is legally recognized. As societal norms evolve, the legal formalization of adoption becomes crucial for it to be considered valid. Despite these requirements, adherence varies widely; many in the community remain unaware of the legal steps necessary for adoption. Consequently, a significant number opt for traditional methods under customary law without formal legal approval.<sup>5</sup>

In Indonesia, the practice of child adoption frequently bypasses the formal legal requirements established by relevant laws. This non-compliance introduces potential legal issues within family and inheritance laws. Such legal recognition not only solidifies the child's status but also ensures their rights and responsibilities are protected, encompassing aspects like welfare and inheritance rights.<sup>6</sup> Another thing with the appointment of a child without a court decision, it does not provide valid legal consequences in the birth of a legal act, so there is no legality of the application document for a court decision and does not provide absolute rights and obligations with responsibility as an effort to protect the law of the adopted child within the scope of his adoptive family, and it does not fulfill the legal substance in the acquisition of inheritance rights. The general outline of child adoption is an effort to protect the welfare of children in a safe, good and secure position. Thus, this goal stands in the way of implementing the objectives of the Child Protection Law.

While Indonesian regulations do not explicitly require a court decree for the

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<sup>4</sup> M Zamroni, *Prinsip-Prinsip Hukum Pencatatan Perkawinan di Indonesia* (Media Sahabat Cendekia, 2019).

<sup>5</sup> Muhammad Kasyful Anwar Budi, "Pengangkatan Anak Tanpa Penetapan Pengadilan (Implementasi PP Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak)," 2020.

<sup>6</sup> Yesi Febri Lestari, "Pembagian Wasiat Wajibah Terhadap Anak Angkat Dalam Kompilasi Hukum Islam Perspektif Masalah Mursalah," 2022.

adoption of children, the practice often bypasses formal legal processes, with many regions adhering to their own customary practices. Despite the absence of legal irregularities in the relationships formed between adoptive parents and children, the lack of formal legal acknowledgment can pose risks. It's crucial that legal standards and protections are established to safeguard the adopted children's rights and welfare. This ensures that even in the absence of formal legal documentation through court proceedings, adopted children receive the necessary protections and rights from their adoptive families, as well as from community and governmental support systems.

### **Research Methods**

This investigation adopts a normative legal research approach, which focuses on the examination of legal concepts, principles, and statutes. Central to this methodology is the study of norms, seeking to understand the underlying human values that influence behaviors. Normative research primarily analyzes legal relationships and statuses within specific scenarios, exploring the justifications for legal phenomena. Its objective is to reinforce and refine the integrity of the normative framework, basing its inquiries on established norms, doctrines, and legal rules.

The data collection methods chosen for this research include gathering primary, secondary, and tertiary legal materials through the following means: (1) collecting and reviewing primary legal materials through literature studies; (2) collecting and reviewing secondary legal materials from various literatures and information relevant to this research; and (3) collecting and reviewing tertiary legal materials through internet searches.

The legal material analysis technique used is content analysis. This analysis involves any systematic procedure aimed at examining the content of the information obtained. It focuses on all the secondary data collected. After obtaining the necessary data, this study analyzes the data logically, systematically, and juridically.

The normative analysis conducted in this study exposes shortcomings within existing legal frameworks regarding child adoptions that do not involve court orders. It scrutinizes Government Regulation No. 54/2007 on Child Adoption Implementation, which allows adoptions to proceed with a Court Determination Application if specific conditions are satisfied. Despite this, the regulation does not fully address how children adopted without judicial oversight are legally protected.

**Discussion**

In Indonesia, adopting children without a court order is common, but it raises issues regarding their legal protection. To address this, alternative legal methods such as drafting authentic deeds, including adoption agreements and wills, can establish legal protections and inheritance rights for adopted children and their adoptive parents.

**Efforts to Adopt a Child using a Notarial Deed Agreement**

This law empowers Notaries to draft authentic deeds for any legally required or requested transactions and agreements, unless another official is designated for this purpose by law. It further empowers Notaries to ensure the date accuracy of deeds, maintain these documents, and issue certified copies and excerpts, unless the authority is specifically assigned to others by law. To address the plagiarism issue and present the information more succinctly, here is a revised version of the paragraph: Article 20 (Paragraph 1) of the Government Regulation on Child Adoption specifies that only District or Religious Courts have the authority to legalize adoptions. Therefore, adoption deeds from a Notary lack binding legal power.

The authority of a Notary as stipulated in Article 15 (Paragraph 1) of the Notary Position Law also states that notaries are entitled to make authentic deeds regarding agreements. In matters concerning the arrangements of child adoption, a notary possesses the authority to draft an authentic deed for agreements on the appointment of a child made between the legal guardians and the adoptive parents. While the authority of the notary in this scenario is not absolute, the authenticated deed still plays a significant role in supporting the validity and enforceability of such agreements.

Utilizing a notarial deed for child adoption agreements introduces legal stipulations that govern the relationship between all parties involved, including adoptive parents, the child being adopted, and any biological parents or guardians. Such a deed, as per Article 1866 of the Civil Code, serves as legal proof of the agreement's clauses and the formal relationships established thereby. The terms outlined in a notarial deed for a child adoption agreement establish a binding commitment that all involved parties must adhere to, as per the stipulations agreed upon. The agreement itself forms the legal foundation for its execution. In Indonesia, child adoptions formalized before a notary can have retrospective validity since the definitive legal status

of such arrangements is governed by Positive Law through a Court Determination Application. This application clarifies the legal relationships, as well as the rights and responsibilities, between the adoptive parents and the child.

A notary, in their official capacity, creates authentic deeds that carry significant legal weight and accountability. These deeds serve as solid evidence arising from legal transactions among parties. In the context of child adoption, notaries authenticate the agreements between adoptive and biological parents or legal guardians. Such deeds are crucial as they establish legal relationships and enforceable rights and obligations among all parties involved. Authenticated agreements, drafted and confirmed before a notary, possess undeniable evidentiary strength. The formal elements and conditions stipulated in these agreements ensure they are binding, mandating adherence to their provisions.

The agreement reached results in certain legal consequences that impact its validity; however, it is possible for such agreements to be deemed null and void if they fail to meet subjective and objective criteria required for their foundation. In the context of child adoption, agreements formalized before a notary do not carry absolute authority. According to the Government Regulation on Child Adoption, only judicial decisions have the legal mandate to finalize the procedures of child adoption.

While child adoptions may be documented with an authentic deed executed before a Notary, this alone does not confer absolute validity on the adoption process. The essence of a court decision holds superior authority because such rulings are issued by the legal authorities, and the position of a Notary's deed is subject to judicial review—unlike a court determination, which stands unchallenged by a notarial act. This disparity underscores that although adoptions can be formalized through agreements, these provide only limited protection to the adopted child within the adoptive family's care and do not establish clear legal or inheritance rights with the adoptive parents.

### **Testament**

In law, a "testament" refers to a legal document that specifies how a person's assets and properties are to be distributed after their death. This document, commonly known as a will, outlines the deceased individual's wishes regarding the disposal of their estate and the appointment of executors to

carry out these instructions.<sup>7</sup> The legal validity of a testament is crucial in ensuring that the deceased's intentions are upheld and that their estate is distributed according to their wishes.

A will is fundamentally a written directive issued by an individual outlining the distribution of their assets posthumously. It encompasses directives and desires regarding the disposition of one's estate following death, including the allocation to existing heirs, the nomination of additional heirs, charitable donations, and other specifics as determined by the testator. These provisions are valid as long as they do not violate any legal statutes. As regulated in the legislation regarding Wasiat, the will itself in its continuity also has a legal basis, namely in Article 875 of the Civil Code "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, which can be revoked by him."

Legislation provides specific guidelines for wills as part of the broader legal framework that governs the disposition of an individual's estate post-mortem. Under these laws, notably the Civil Code, the allocation of inheritance is typically influenced by marital and blood ties. Specifically, Article 913 of the Civil Code safeguards a minimum portion of the estate for direct descendants, designated as "Legitime portie." This portion must be reserved for straight-line heirs, irrespective of any other provisions made by the deceased through gifts or wills. Thus, while wills offer an alternative for distributing one's assets upon death, they operate within the constraints of legal stipulations that prioritize familial rights in inheritance matters.

Wills provide an alternative mechanism for adoptive parents to confer inheritance rights to adopted children, particularly when no formal court decision has appointed these children. Through a will, adoptive parents can explicitly designate their property to adopted children, reflecting the flexible nature of wills concerning beneficiary choices, as long as these choices are explicitly made by the property owner or testator. Typically, wills are drafted in the presence of witnesses and notarized to ensure confidentiality, with their contents revealed only after the testator's death, at which point the designated property distribution becomes legally enforceable. The protection

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<sup>7</sup> Oleksandr Kukhariev, "Inheritance Law Principles as Defining Principles for Further Updating of Inheritance Legislation of Ukraine," *Law Review of Kyiv University of Law*, no. 1 (May 5, 2021): 163–67, <https://doi.org/10.36695/2219-5521.1.2021.30>.



of adopted children with the media of the will provides a position on the inheritance relationship between adoptive parents and adopted children, so that thus it also provides legal protection efforts related to inheritance of adopted children made without using court decisions.

### **Legal Protection Structure**

Scholars define legal protection as the state's assurance to citizens under the rule of law, including both preventive and enforceable actions, codified or not, to enforce the law and ensure security for individuals from various threats.<sup>8</sup> This protection is aimed at safeguarding human rights that may be violated by others, allowing individuals to enjoy all rights granted by the law.<sup>9</sup>

Article 28b, paragraph (2) of the Indonesian Constitution states that children have the right to life, growth, and development without facing violence or discrimination. This section emphasizes the essential role of both society and government in safeguarding children's legal rights.<sup>10</sup> The stipulations in the constitution facilitated the development of robust child protection measures, as manifested in Law Number 35 of 2014, which updates Law Number 23 of 2002 focused on Child Protection. These legal updates aim to bolster defenses against any harm that might befall children. Furthermore, Law Number 4 of 1979 concerning Child Welfare is geared towards ensuring children are provided with proper care, education, health services, affection, and their fundamental needs.

Law Number 35 of 2014, amending Law Number 23 of 2002 on Child Protection and Law Number 4 of 1979 on Child Welfare, establishes the legal protections for children in need of careful oversight and protection by parents, society, and the government. Without proper court-handled

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<sup>8</sup> Sekolah Tinggi Pariwisata Ambarukmo et al., "Legal Protection of CBT Workers in Terms of Wages: A Case Study in Bedah Menoreh Pathway," *Journal of Indonesian Tourism and Development Studies* 9, no. 2 (May 15, 2021): 133–39, <https://doi.org/10.21776/ub.jitode.2021.009.02.06>.

<sup>9</sup> Annie Myranika, "Legal Protection of Online Loan Recipients Based on Financial Services Authority," *Linguistics and Culture Review* 5, no. S4 (December 16, 2021): 2390–2402, <https://doi.org/10.21744/lingcure.v5nS4.1986>.

<sup>10</sup> Cahyo Wulandari et al., "Upaya Peningkatan Status Kesehatan Kelompok Rentan Dengan Pendekatan Pembelajaran Dan Pemberdayaan Masyarakat," *Jurnal Pengabdian Kepada Masyarakat (Indonesian Journal of Community Engagement)* 5, no. 2 (August 1, 2019): 167, <https://doi.org/10.22146/jpkm.29999>.



adoption processes, there could be administrative errors jeopardizing the child's welfare in the adoptive home, potentially exposing them to exploitation, forced labor, or violence.

As the definition of Adoption according to Ter Haar in his book entitled *Principles and structure of customary law*, namely "*adoption is the act of adopting a child from outside the family environment into the environment of a particular clan or relative. Adopting a child (adoption) is a legal act that carries two legal consequences, namely as a child, as a member of the family continuing the descent as an heir and as a member of the community (social)*".<sup>11</sup> Adopted children fall under the broader category protected by laws such as the Child Protection Act and the Child Welfare Act. These statutes provide a legal framework to shield children from violence, discrimination, and other harmful behaviors. Although these provisions offer substantial protection, they do not carry the same legal weight as a court decision, nor do they guarantee the establishment of formal legal or inheritance relationships. The common practice of facilitating adoptions without judicial oversight can lead to a lack of official legal status for such relationships. Nonetheless, the general safeguards for adopted children are upheld by the state, thanks to the overarching support from these critical child protection regulations in Indonesia.

The protective measures in place for adopted children, while comprehensive, do not establish concrete or absolute legal rights or relationships. Although these efforts are crucial for safeguarding adopted children, the existing regulations do not confer a definitive legal status or position on them. Instead, these children are covered under a broader framework of protection concepts that have been formulated and enforced by the state. However, in the realm of private legal relationships, these provisions lack the force to establish binding legal ties based on the current legislative framework.

### **Psychological and Emotional Impact on Informally Adopted Children**

The psychological and emotional well-being of children adopted without judicial approval is a critical area of concern, warranting detailed examination and analysis. Informally adopted children often face unique challenges that can significantly affect their mental health and emotional development

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<sup>11</sup> Barend Ter Haar, *Asas-Asas Dan Susunan Hukum Adat* (Pradnja Paramita, 1983).

throughout their lives. Research indicates that the lack of legal recognition and uncertainty can foster profound feelings of insecurity and ambiguity in these children. Without a clear legal structure, these children may struggle with their identity, experiencing confusion about their origins and their place within both their family and society.

Moreover, informally adopted children frequently encounter social stigma and discrimination, exacerbating their psychological conditions. The absence of adequate legal protection may expose them to unfair treatment and social exclusion, both at school and within their communities. Studies show that children who feel unaccepted by their social environment are more prone to mental health issues, such as anxiety, depression, and low self-esteem.<sup>12</sup>

Additionally, these children are at risk of trauma due to instability in their caregiving environments. Informal adoption processes often lack thorough evaluations of the adoptive parents' readiness and capability, potentially leading to unstable and inconsistent caregiving. This instability can intensify the negative psychological impacts on the child. Developmental psychology research underscores the importance of stable caregiving for healthy emotional development in children.<sup>13</sup>

Therefore, it is crucial to explore and understand the long-term impacts of informal adoption on the psychological and emotional well-being of these children. A thorough and scientific analysis should include factors such as identity, attachment, and social integration, and how the lack of legal recognition and social support exacerbates these issues. By doing so, we can identify necessary steps to provide better support and protect the well-being of informally adopted children.

#### - **Identity and Self-Concept**

**Ambiguity in Identity:** Children who are informally adopted often face significant ambiguity regarding their identity. Without clear legal recognition, they may feel confused about their place within the family and society. These children might wonder about their origins, their role

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<sup>12</sup> Erving Goffman, *Stigma Notes on The Management of Spoiled Identity* (New York London Toronto: Simon & Schuster Inc, 1986).

<sup>13</sup> John Bowlby, *A Secure Base Parent-Child Attachment and Healthy Human Development* (America, 1988).

within the adoptive family, and how they are perceived by others. This confusion can lead to deep internal conflict, where they struggle to understand who they really are and how they fit into the existing family and social structure.

**Impact on Psychological Well-being:** The lack of legal recognition can exacerbate feelings of insecurity and unworthiness, negatively impacting the child's psychological well-being. Research shows that a strong, coherent sense of identity is crucial for psychological health. Without a clear identity, children may suffer from self-esteem and confidence issues. They might feel that their existence is not fully acknowledged or valued by their family and society, leading to feelings of low self-worth and insignificance.<sup>14</sup>

**Loss of Biological Roots:** In addition to identity ambiguity, informally adopted children often lack formal documentation acknowledging their biological heritage. This absence of official recognition can make them feel disconnected from their biological roots. These children may feel that they are missing an important part of their self-identity, which can deepen feelings of loss and abandonment. This loss not only affects their personal feelings but can also impact their relationships with their adoptive family and social environment.

**Long-term Emotional Impact:** The feelings of loss and abandonment can have long-term effects on the child's emotional health. The lack of a clear connection to their biological heritage can worsen feelings of isolation and alienation. These children might feel that they do not truly "belong" anywhere, leading to a sense of not having a place or strong relationships with others. This emotional impact can affect their development throughout life, influencing their personal relationships and their ability to form strong and healthy connections with others.<sup>15</sup>

- **Attachment and Trust Issues:**

**Parental Relationship Instability:** Informal adoptions can create

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<sup>14</sup> Erik H. Erikson, *Identity Youth and Crisis*, 7 (WW Norton & company, 1968).

<sup>15</sup> David Brodzinsky, Daniel W. Smith, and Anne B. Brodzinsky, *Children's Adjustment to Adoption: Developmental and Clinical Issues*, vol. 38 (Sage, 1998), <https://us.sagepub.com/en-us/nam/childrens-adjustment-to-adoption/book7094>.

unstable and inconsistent caregiving environments. Without adequate legal protection, the commitment of adoptive parents may be perceived as weak, affecting the child's ability to form secure attachments. According to Bowlby's attachment theory<sup>16</sup>, secure attachment is a crucial foundation for developing trust and emotional security in children. The absence of secure attachment can lead to long-term relational difficulties, as children who lack strong attachments tend to feel insecure and lack confidence in their social interactions, hindering their ability to form healthy and supportive relationships later in life.

Further research indicates that instability in caregiving relationships can exacerbate feelings of uncertainty and vulnerability in children. This instability can make children feel that their relationship with their adoptive parents is fragile and could be severed at any moment, increasing anxiety and feelings of insecurity. This condition can also affect the child's emotional development, leading to behavioral issues and difficulties in adjusting to their social environment.

**Trauma and Emotional Stress:** The process of being informally adopted often involves traumatic separation from biological parents and possibly several caregivers before reaching a stable adoptive family. This trauma can significantly impact the child's emotional and mental development. Research by Perry and Szalavitz<sup>17</sup> shows that traumatic experiences in childhood can lead to emotional disorders such as anxiety, depression, and post-traumatic stress disorder (PTSD). Children who experience such trauma may exhibit symptoms like difficulty sleeping, nightmares, and heightened stress responses.

Childhood trauma can also affect the development of the brain, particularly in areas related to emotion regulation and stress response. Children who undergo prolonged trauma may experience changes in the structure and function of their brains, which can impede their ability to form healthy relationships and cope with stress. Additionally, this trauma

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<sup>16</sup> John Bowlby, *A Secure Base: Parent-Child Attachment and Healthy Human Development* (America: Basic books, 2008).

<sup>17</sup> Bruce D. Perry and Maia Szalavitz, *The Boy Who Was Raised as a Dog: And Other Stories from a Child Psychiatrist's Notebook -- What Traumatized Children Can Teach Us About Loss, Love, and Healing* (Hachette UK, 2017).

can cause children to develop maladaptive coping mechanisms, such as withdrawing from social relationships or exhibiting aggressive behavior as a way to protect themselves from further emotional pain.

Research underscores the importance of early intervention and appropriate psychological support to help these children overcome trauma and build more secure attachments. Trauma-informed therapy, family counseling, and consistent, loving caregiving environments can help mitigate the negative impacts of trauma and enhance the child's emotional well-being in the long term. Thus, understanding and addressing attachment and trust issues in informally adopted children is a critical step in ensuring their healthy psychological and emotional development.

#### - **Social Integration and Acceptance**

**Stigmatization and Social Exclusion:** Children adopted without judicial approval often face stigmatization and social exclusion, particularly in communities that highly value formal legal processes. This stigmatization can manifest as discriminatory treatment, gossip, or social rejection, which significantly impacts the child. According to<sup>18</sup>, social stigma can diminish an individual's self-esteem and hinder their ability to function effectively in society. Informally adopted children may feel that their adoption status makes them different and unaccepted by their peers and the wider community. These feelings of isolation and alienation can exacerbate their mental health issues, leading to problems such as anxiety, depression, and behavioral disorders.

Furthermore, social exclusion can limit these children's access to important opportunities like education and extracurricular activities, which are vital for their development. This exclusion also hinders their ability to build healthy and supportive social networks, essential for their emotional well-being and social development. Children who feel rejected by their social environment are at a higher risk of mental health issues and social adjustment problems.

**Peer Relationships:** The ambiguity surrounding their adoption status

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<sup>18</sup> Erving Goffman, *Stigma Notes on The Management of Spoiled Identity*.

can complicate relationships with peers. Children may find it difficult to explain their family situation, leading to misunderstandings and social rejection. Studies by Damon<sup>19</sup> indicate that positive peer interactions are crucial for developing social skills and self-confidence. Without these positive interactions, children may feel they lack adequate social support, hindering the development of their social skills and reducing their confidence in interacting with others.

Difficulties in peer relationships can lead informally adopted children to withdraw from social interactions, avoiding situations where they need to explain their adoption status. This withdrawal can lead to further social isolation and reduce opportunities to learn important social skills through daily interactions. Positive peer interactions also serve as an essential support mechanism, helping children cope with stress and life's challenges. Without this support, children may feel more vulnerable and less capable of handling social and emotional pressures.

Addressing these issues requires communities and educational institutions to create inclusive and supportive environments for all children, including those adopted informally. Education about the importance of social inclusion and acceptance of differences can help reduce stigma and social exclusion, while support and counseling programs can help these children develop the social skills they need to succeed. Further research is also needed to develop effective interventions to support the social integration and emotional well-being of children adopted without judicial approval.

### **A comparison of child adoption laws in the US and Malaysia**

Child adoption in America has evolved significantly, shaped by social, cultural, and legal changes. Initially a private matter, the concept and laws governing adoption changed notably after World War II, leading to more standardized procedures. In 1984, sociologist H. David Kirk began studying its effects on mental health and society. The Cold War era saw a rise in international adoptions, driven by geopolitical factors and media depictions of foreign orphans, positioning America as a leader in global adoption trends.

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<sup>19</sup> William Damon and Richard M. Lerner, *Child and Adolescent Development: An Advanced Course* (John Wiley & Sons, 2008).

Particularly, American military families often adopted children from conflict zones, enhancing the structured approach to international adoption. The Hague Convention on Intercountry Adoption now plays a crucial role in ensuring these adoptions serve the child's best interests in the U.S.<sup>20</sup> the legal system in the U.S. addresses issues of parental rights termination, which results in the complete detachment of the child from their biological parents and allows for adoption even without the biological parents' consent in cases of parental incapability.<sup>21</sup> Child adoption procedures in the U.S. involve a structured legal process aimed at safeguarding the well-being of the child and ensuring the rights and responsibilities of all parties involved. The adoption process typically begins with prospective adoptive parents submitting an application to an adoption agency or directly to the court. This application is followed by a thorough evaluation process that includes background checks, home visits, and interviews to assess the suitability of the prospective parents.<sup>22</sup>

Court-supervised adoption procedures play a crucial role in finalizing the adoption. A court hearing is held to review the adoption petition, ensuring that all legal requirements have been met and that the adoption is in the best interest of the child. The court issues a final decree of adoption, legally establishing the parent-child relationship between the adoptive parents and the child. In conclusion, child adoption procedures in the U.S. are comprehensive and structured to ensure the safety, well-being, and legal rights of the children being adopted, as well as the prospective adoptive parents. The process involves thorough evaluations, legal steps, and court supervision to finalize the adoption and establish the parent-child relationship in a manner that prioritizes the best interests of the child.

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<sup>20</sup> Karen Smith Rotabi and Judith L. Gibbons, "Does the Hague Convention on Intercountry Adoption Adequately Protect Orphaned and Vulnerable Children and Their Families?" *Journal of Child and Family Studies* 21, no. 1 (February 2012): 106–19, <https://doi.org/10.1007/s10826-011-9508-6>.

<sup>21</sup> Vered Ben-David, "Social Information in Court Decisions of Compulsory Child Adoption in Israel," *Child & Youth Care Forum* 40, no. 3 (June 2011): 233–49, <https://doi.org/10.1007/s10566-010-9133-3>.

<sup>22</sup> Pedro Alexandre Costa, Alessio Gubello, and Fiona Tasker, "Intentional Kinship through Caring Relationships, Heritage, and Identity: Adoptive Parents' Inclusion of Non-Biological and Non-Affinal Relationships on Family Maps," *Genealogy* 5, no. 4 (September 30, 2021): 85, <https://doi.org/10.3390/genealogy5040085>.



Child adoption in Malaysia is deeply rooted in the country's diverse legal landscape, shaped by its multi-ethnic and multi-religious demographics. The legislative framework governing adoption was formalised after independence, with significant developments occurring in the mid-20th century. The Adoption Act of 1952 and the Adoption Registration Act of 1952 are particularly significant, setting the legal foundation for the adoption process in Peninsular Malaysia. These laws were complemented by corresponding regulations in the East Malaysian states of Sabah and Sarawak. Politically, Malaysia's adoption laws reflect a commitment to child welfare while accommodating the religious and cultural diversity of its population. The dual legal system, which integrates civil and Islamic law, caters to the Muslim majority while meeting the needs of the non-Muslim community. This structure not only respects Islam's prohibition against traditional adoption, but also provides mechanisms such as "kafalah," which is in line with Islamic teachings while ensuring child welfare. Throughout the adoption process in Malaysia, the well-being and best interests of the child remain paramount. Social workers, legal professionals, and other stakeholders may be involved to provide support and guidance to all parties involved in the adoption. The procedures for adoption are designed to create a supportive and child-centered environment to ensure a successful and legally sound adoption process.

In Malaysia, the adoption process differs for Muslims and non-Muslims due to the dual legal system. Non-Muslims proceed through a rigorous court-ordered process under the Adoption Act 1952, ensuring the child's welfare and adoptive parents' suitability through care periods, background checks, and legal supervision. For Muslims, adoption adheres to Islamic principles under the Registration of Adoptions Act 1952, focusing on foster care to preserve the child's biological lineage. The Department of Social Welfare oversees these procedures for both groups, ensuring adoptions serve the best interests of the child and respect legal and cultural norms.

In Malaysia, the rights of adopted children are strongly protected under the Convention on the Rights of the Child (CRC), which includes rights to identity and nationality and protection against abuse. Under the Adoption Act 1952, non-Muslim adopted children receive rights similar to those of biological children, such as inheritance. For Muslim adoptions, traditional inheritance rights aren't applicable, but "kafalah" ensures the child's welfare

and rights to education and health without changing their biological lineage. Moreover, Malaysian courts focus on the child's best interests in custody and guardianship, ensuring adoptive family stability over biological family connections.

### **Case Study: Child Adoption in the United States**

In the United States, child adoption procedures are comprehensive and structured to ensure the safety, well-being, and legal rights of the children being adopted, as well as the prospective adoptive parents. The process typically begins with prospective adoptive parents submitting an application to an adoption agency or directly to the court. This application is followed by a thorough evaluation process that includes background checks, home visits, and interviews to assess the suitability of the prospective parents.

A notable case study is the adoption process in New York State, which mandates rigorous background checks and home studies before an adoption can be finalized. For example, in the case of the Smith family who wished to adopt a child from the foster care system, they had to undergo a series of evaluations by social workers, including criminal background checks, health examinations, and in-depth interviews to assess their motivations and readiness as adoptive parents. A court hearing was held to review the Smith family's adoption petition, ensuring that all legal requirements were met and that the adoption was in the best interest of the child. The court then issued a final decree of adoption, legally establishing the parent-child relationship between the Smith family and the child. This structured process ensures that all legalities are observed, and the child's rights and welfare are protected, providing a robust model for other countries to consider.

### **Case Study: Child Adoption in Malaysia**

Malaysia's child adoption framework is deeply influenced by the country's diverse legal landscape, shaped by its multi-ethnic and multi-religious demographics. The legislative framework governing adoption was formalized after independence, with significant developments occurring in the mid-20th century. The Adoption Act of 1952 and the Adoption Registration Act of 1952 are particularly significant, setting the legal foundation for the adoption process in Peninsular Malaysia.

An important example is the case of a non-Muslim couple in Kuala Lumpur,

the Tan family, who wanted to adopt an orphaned child. Their adoption process included a probationary period where social workers monitored the child's well-being and the suitability of the adoptive environment. The Tan couple had to undergo rigorous background checks, including financial and health verifications, as well as evaluations of their ability to provide a safe and supportive environment for the child. This adoption procedure also involved strict court supervision, with a court hearing held to review all evidence and ensure the child's best interests were met. The court eventually issued a legal adoption decree, solidifying the legal relationship between the Tan family and the child.

These case studies from the United States and Malaysia demonstrate the importance of judicial oversight and thorough legal processes in protecting the rights and welfare of adopted children. By integrating these practices, Indonesia can enhance its adoption framework to provide stronger legal protections and ensure the well-being of adopted children.

## **Conclusion**

In conclusion, this research highlights significant legal and social challenges associated with adopting children without judicial approval in Indonesia. The absence of formal court approval leads to substantial legal ambiguities, as notarial deeds, while useful for establishing initial legal relationships, lack the sok binding power of judicially approved adoptions. This results in inadequate protection of inheritance rights and legal status for adopted children. Alternative legal methods, such as notarial deeds and wills, provide some level of protection and clarity but are insufficient substitutes for court-sanctioned adoptions. Additionally, children adopted without judicial approval often face severe psychological and emotional challenges, including identity confusion, insecurity, and social stigma, adversely affecting their mental health and emotional development. Social integration is further complicated by the risk of social exclusion and discrimination, hindering their ability to form stable peer relationships and fully integrate into their communities. This study underscores the necessity for stronger legal frameworks and social support systems to safeguard the rights and welfare of adopted children, providing a foundation for policymakers, legal practitioners, and social workers to develop more effective strategies and interventions.

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