

**COMPARISON OF INDONESIA AND THAILAND
ADOPTION REGULATIONS: DIALECTICS OF
LEGAL CERTAINTY AND PROTECTION OF
THE BEST INTERESTS OF CHILDREN**

JURNAL

Oleh :

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Program Studi Hukum Perdata



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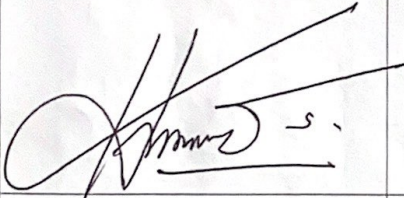
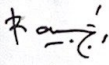
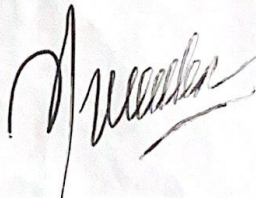
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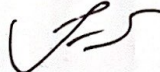
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Tugas Akhir (Jurnal) tersebut diatas telah diujikan oleh Dosen Penguji Fakultas Hukum
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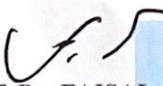
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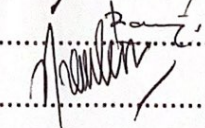

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Letter of Acceptance

Dear

Gaby Claryssa Br Ginting*, Atikah Rahmi

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It's our great pleasure to inform you that manuscript entitled "*Comparison of Indonesia and Thailand Adoption Regulations: Dialectics of Legal Certainty and Protection of the Best Interests of Children*" has been reviewed and accepted for publication in AL-RISALAH: Jurnal Ilmu Syariah dan Hukum with E-ISSN 2550-0309 P-ISSN 2252-8334, National Journal Accreditation (ARJUNA) SINTA 3 grades for Volume 26 Issue 1, May 2026. This letter of acceptance is considered as an official acceptance of your manuscript with no further amendments required.

Kindly complete pending formalities to move forward the article to production and publication phase.

Gowa, 21 January 2026
Managing Editor



Dr. Abdul Syatar



Comparison of Indonesia and Thailand Adoption Regulations: Dialectics of Legal Certainty and Protection of the Best Interests of Children

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Abstract

Adoption is a legal institution that has long-term civil implications for the identity status, family relationships, and rights of children as legal subjects. Differences in adoption regulatory approaches between countries directly impact the level of legal certainty and the quality of child rights protection. This study aims to analyze the comparative legal construction of adoption regulations in Indonesia and Thailand in ensuring legal certainty, as well as to examine the implementation of the principle of the best interests of the child as an effort to protect children's rights. This study uses a qualitative method with a normative-comparative legal approach through an analysis of related laws and regulations, doctrines with Indonesian regulatory laws, such as Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption, the Compilation of Islamic Law (KHI), and Articles 1598/19–1598/37 of the Thai Criminal Code. The results of the study indicate that Indonesia has built an adoption system within an administrative social protection framework that does not fully guarantee substantive legal certainty, particularly regarding the civil status and inheritance rights of adopted children. In contrast, Thailand has developed a legal assimilation-based adoption model that fully integrates adopted children into the family legal structure, thus providing more comprehensive and long-term legal certainty and protection of children's rights. The application of the child's best interests principle in Thailand has been institutionalized as a substantive legal standard, while in Indonesia it remains declarative-administrative. This study recommends the need for reformulation of legal policies on child adoption in Indonesia to strengthen substantive protection and ensure long-term legal certainty for adopted children.

INTRODUCTION

Adoption is a legal institution with long-term civil consequences for a child's identity, lineage status, family relations, and inheritance rights.¹ It is not merely a social act of care but a juridical event that creates a new legal relationship between a child and adoptive parents.² Because of these implications, adoption law must ensure legal certainty while simultaneously safeguarding the best interests of the child as mandated by modern child-rights principles and child protection law.³

In Indonesia, adoption is regulated by Law Number 35 of 2014 concerning Child Protection⁴ and Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption.⁵ Normatively, the regulation places the best interests of the child as the primary objective and requires a court ruling as the legal basis for adoption.⁶ However, empirical legal studies show continuing problems, including informal or illegal adoptions conducted outside court mechanisms and weak supervision of private adoption practices, which risk harming children's identity rights and civil status.⁷ In addition, Indonesia's plural legal system state law, Islamic law (kafalah concept), and customary norms produces differing interpretations of lineage and inheritance consequences, leading to uncertainty regarding the civil status of adopted children.

Comparative legal analysis is therefore essential to assess how different legal constructions address these challenges.⁸ Thailand provides a contrasting model. Adoption is governed by the Civil and Commercial Code (Sections 1598/19–1598/37), which structures adoption as a legal mechanism that integrates the child into the adoptive

¹ Hotma Siregar and Atika Rahmi, "Punishment Analysis at School Based on Article 54 of the Child Protection Act in Law Number 35 of 2014," *Budapest International Research and Critics in Linguistics and Education (BirLE) Journal* 2, no. 3 (2019): 542–49.

² Mhd Sayyid, Ihsan Rambe, and Atikah Rahmi, "PERLINDUNGAN ANAK KORBAN KEKERASAN SEKSUAL (Studi Komparatif : Hukum Nasional Dan Hukum Thailand)," *Jurnal Ilmiah Penelitian Law Jurnal* 5, no. 1 (2024): 20–30, <https://doi.org/10.59066/jel.v1i3.226.3>.

³ Joni Zulhendra Abd. Rahmad, "Judicial Rechtsvinding in the Absence of Legal Norms: A Case Study on the Revocation of Child Adoption in Indonesia," *NEGREL: Academic Journal of Law and Governance* 5, no. 2 (2025): 85–88.

⁴ UU No. 35 Tahun 2014, "UU No. 35 Tahun 2014 Tentang Perlindungan Anak" (2014).

⁵ Peraturan Pemerintah No. 54 Tahun 2007, "Peraturan Pemerintah No. 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak" (2007).

⁶ Ni Komang Ratih Kumala Dewi, "Proses Pengangkatan Anak Beda Negara Menurut Hukum Di Indonesia," *Jurnal Komunikasi Hukum* 3, no. 2 (2017): 69–83.

⁷ Margaritha Rami Ndoen and Febi Meliana Ingratubun, "Tinjauan Yuridis Terhadap Adopsi Anak Warga Negara Indonesia Oleh Warga Negara Asing," *PAULUS Law Journal* 3, no. 1 (2021): 39–49.

⁸ Finna, Kristiawanto, and Basuki, "Jurnal Studi Interdisipliner Perspektif Perlindungan Hukum Terhadap Anak Sebagai Pelaku Penyalahgunaan Narkotika Dalam Sistem Peradilan Pidana Anak" 24, no. September (2024): 1–12.

family with clear procedural stages, including institutional assessment and judicial authorization. Prior research notes that Thailand emphasizes structured evaluation and child welfare mechanisms to reduce risks of exploitation and ensure child protection in adoption practices.⁹

In the Thai legal system, adoption is carried out through quite strict stages, starting from examining the suitability of prospective adoptive parents, a probationary placement period of at least six months, to finalizing the adoption through administrative and judicial mechanisms.¹⁰ This series of procedures demonstrates the state's commitment to ensuring that adoption not only meets administrative requirements, but also takes the child's psychosocial aspects into serious consideration.¹¹

Existing Indonesian scholarship largely discusses adoption from the perspective of procedural legality or the disharmony between Islamic law and positive law, while Thai studies focus on administrative child-welfare mechanisms.¹² Cross-country research within ASEAN remains limited to normative mapping and rarely examines how the civil status of adopted children affects long-term legal certainty. This reveals a research gap: there has been no systematic comparison between Indonesia and Thailand focusing on the dialectic between legal certainty and the substantive protection of children's civil status.

A number of previous studies have examined child adoption from various legal perspectives. Research in Indonesia predominantly focuses on the procedural legality of adoption and the issue of informal or court-unregistered practices that may endanger children's civil rights and identity status.¹³ Other scholars emphasize the normative objective of adoption as a child-protection mechanism but highlight weak supervision

⁹ Wiwin Pranata and Abdul Rahim, "Penundaan Kehadiran Anak Akibat Perkawinan Usia Muda Ditinjau Menurut Hukum Islam (Studi Pada Desa Jaling, Kec. Awangpone, Kab. Bone)," *Nukhbatul 'Ulum* 4, no. 2 (2018): 101-11, <https://doi.org/10.36701/nukhbah.v4i2.44>.

¹⁰ Syifaturrohman Syifaturrohman, Anifita Dwi Zulianti, and Aulia Nur Aisyah, "Efektivitas Konvensi Hak Anak (ICRC) Dalam Kasus Eksploitasi Anak Di Thailand (Studi Kasus Tahun 2019-2022)," *WISSEN : Jurnal Ilmu Sosial Dan Humaniora* 2, no. 3 (2024): 154-71.

¹¹ Radhiya Febrina, Tri Annisa, and Atikah Rahmi, "Tantangan Dan Solusi Dalam Memberikan Advokasi Hukum Bagi Hak Anak Imigran," *Ihsan: Jurnal Pengabdian Masyarakat* 6, no. 1 (2024): 110-22, <https://doi.org/10.30596/ihsan.v>.

¹² Mahendra Ridwanul Ghoni and Pujiyono Pujiyono, "Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Implementasi Diversi Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2020): 331-42, <https://doi.org/10.14710/jphi.v2i3.331-342>.

¹³ Ajeng Savitri Thamrin, "Eksistensi Hukum Pengangkatan Anak (Adopsi) Tanpa Penetapan Pengadilan Berlandaskan Hukum Positif Indonesia," *Lex_Crimen* 12, no. 4 (2024): 1-14.

and low legal awareness as persistent problems in implementation.¹⁴ From an Islamic law perspective, Setiawan (2023) and Hidayatunnajah (2023) several studies discuss the conceptual distinction between adoption and *kafālah*, particularly concerning lineage (nasab) and inheritance consequences, which limit the full civil assimilation of adopted children.

In Thailand, prior research generally examines adoption within the framework of administrative child welfare, emphasizing institutional assessment, probationary placement, and state oversight to prevent exploitation.¹⁵ Comparative studies at the ASEAN level remain limited and mostly provide descriptive normative mapping rather than in-depth analysis of how adoption laws shape the long-term civil status and legal certainty of adopted children.¹⁶

Although these studies contribute to understanding adoption law, they reveal important limitations. Indonesian research tends to remain fragmented between procedural legality and religious–normative debates, without comprehensively linking adoption regulation to the issue of long-term civil status and legal certainty for adopted children. Thai scholarship, on the other hand, focuses more on welfare mechanisms and institutional processes, with less emphasis on comparative civil-law consequences. Moreover, existing ASEAN comparative works do not systematically examine adoption through the dual analytical lens of legal certainty and substantive protection of children’s civil identity. Consequently, there is a lack of integrative comparative analysis explaining how different legal paradigms of adoption affect the sustainability of children’s legal protection.

This study offers novelty by introducing a civil-status-oriented comparative framework that connects adoption law with theories of legal certainty and substantive child protection. Unlike prior studies that emphasize procedural legality or administrative mechanisms, this research analyzes adoption as a family-law assimilation process with direct implications for identity, inheritance rights, and long-term legal stability. By comparing Indonesia’s socio-administrative model with Thailand’s legal assimilation model, this research provides a new conceptual understanding of how

¹⁴ Bernadeta Resti Nurhayati and Ignatius Hartyo Purwanto, “Juridical Study in The Application of the Law About Foster- Child Adoption in Indonesia by Foreign Nationals,” *Media Komunikasi FPIPS* 20, no. 1 (2021): 51–55.

¹⁵ Amal Fathullah and Muhammad Abduh, “The Relationship Of Children And Their Biological Father (Comparative Study Of Positive Law Of Indonesia, Thailand And Jordan),” *SYARIAH : Jurnal Hukum Dan Pemikiran* 22, no. 2 (2022): 213–30, <https://doi.org/10.18592/sjhp.v22i2.4953>.

¹⁶ Syifaturohmah, Zulianti, and Aisyah, “Efektivitas Konvensi Hak Anak (ICRC) Dalam Kasus Eksploitasi Anak Di Thailand (Studi Kasus Tahun 2019-2022).”

adoption law can function as an instrument of sustainable child-rights protection. This perspective positions legal certainty not merely as procedural clarity but as the guarantee of stable civil status for adopted children.

This study therefore aims to: (1) compare the legal construction of adoption regulations in Indonesia and Thailand in ensuring legal certainty; and (2) analyze how the principle of the best interests of the child is implemented as a legal protection standard in both systems.

RESEARCH METHOD

This study is normative legal research employing a comparative approach.¹⁷ This research is a normative legal study using a comparative approach. It focuses on examining the legal norms, legal principles, and doctrinal constructs governing child adoption in Indonesia and Thailand, rather than observing empirical social behavior.

Legal certainty in this study is measured using the following indicators:¹⁸

1. Clarity of norms; whether adoption regulations clearly define the legal status, rights, and obligations of adopted children and adoptive parents.
2. Predictability; whether the legal consequences of adoption (identity, inheritance, guardianship) can be predicted without relying on discretionary interpretation.
3. Consistency; the absence of normative conflicts between law, religious norms, and customary practices.
4. Enforceability; the extent to which adoption regulations can be effectively implemented and prevent informal or illegal adoption practices.

The comparative method applied in this study combines two models:

1. A functional approach; comparing how Indonesian and Thai adoption laws fulfill their legal functions of integrating children into new family structures and protecting children's civil status.
2. A structural approach; comparing the normative structures governing adoption, including procedural requirements, civil consequences, and the legal status of adopted children within the family law system.

The legal materials consist of:¹⁹

1. Primary legal materials: Indonesian Law No. 35 of 2014 concerning Child Protection, Government Regulation No. 54 of 2007 concerning Child Adoption, the

¹⁷ Johnny Ibrahim, *Eori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013).

¹⁸ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016).

¹⁹ Junaidi Junaidi, "Perlindungan Hukum Terhadap Hak Anak Di Indonesia," *Journal of Law, Society, and Islamic Civilization* 8, no. 1 (2021): 1, <https://doi.org/10.20961/jolsic.v8i1.48698>.

Compilation of Islamic Law (KHI), and Articles 1598/19–1598/37 of the Thai Criminal Code.

2. Secondary legal materials: legal doctrine, scientific papers, and academic journals on adoption, child protection, and legal certainty.

The legal materials were collected through desk research using documentation techniques, followed by a qualitative normative analysis through:²⁰

1. Identification and systematization of adoption norms in both jurisdictions;
2. Assessment of norms using indicators of legal certainty (clarity, predictability, consistency, enforcement);
3. Functional and structural comparison of the two legal systems;
4. Evaluation of how the principle of the best interests of the child functions as a substantive legal standard;
5. Deductive formulation of normative findings and legal policy recommendations.

RESULTS AND DISCUSSION

1. Comparison of the Legal Construction of Child Adoption Regulations in Indonesia and Thailand in Ensuring Legal Certainty for the Parties Involved in the Adoption Process

a. Legal Construction of Child Adoption in Indonesia

The legal construction of child adoption in Indonesia is normatively framed as a child-protection mechanism rather than a purely private family arrangement. This orientation is clearly reflected in Law No. 35 of 2014 concerning Child Protection and Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption.²¹ Article 1 point (9) of the Child Protection Law defines adoption as a legal act transferring the child from the authority of parents or guardians into the family of adoptive parents. Article 39 emphasizes that adoption must prioritize the *best interests of the child*, while Article 40 requires the preservation of the child's identity. These provisions demonstrate that Indonesian law positions adoption as a public legal institution aimed at guaranteeing children's welfare and development.

Procedurally, legal certainty is strengthened by the requirement that adoption must be legalized through a court decision (PP No. 54/2007, Arts. 12–13).²² This requirement

²⁰ Alex Chandra, "Undang-Undang Sisdiknas Sebagai Payung Hukum Pendidikan Di Indonesia," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 6, no. 4 (2023): 2715–20, <https://doi.org/10.54371/jiip.v6i4.1890>.

²¹ 2007, Peraturan Pemerintah No. 54 Tahun 2007 tentang Pelaksanaan Pengangkatan Anak.

²² Suta; Renita Agustiani; Erlangga Adnus Ramadan, "Prosedur Adopsi Anak Dalam Hukum," *MANDUB: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 1 (2024): 367–77.

distinguishes formal adoption from informal caregiving and indicates that adoption constitutes a state-recognized civil act. Through this mechanism, the state assumes the role of validating the creation of a new legal relationship between the child and the adoptive parents.²³

However, although the procedural framework appears structured, substantive legal certainty concerning the civil status consequences of adoption remains incomplete. PP No. 54/2007 does not explicitly regulate post-adoption civil effects, particularly regarding inheritance rights, transformation of guardianship into permanent parental authority, or the child's integration into the adoptive family's lineage. This absence creates a normative gap, leaving courts to interpret consequences on a case-by-case basis. As a result, legal certainty becomes interpretative rather than rule-based, which potentially produces disparities in judicial outcomes.

The complexity of Indonesia's adoption regime is further intensified by legal pluralism. Alongside state law, Islamic law and customary law remain influential in determining family status. Within Islamic family law, the dominant concept is *kafālah*, which emphasizes care without altering lineage (*nasab*). This doctrinal position is reflected in the Compilation of Islamic Law (KHI), which plays a central role in cases involving Muslim families.

The KHI explicitly differentiates adopted children from biological heirs. Article 171(h) KHI defines adopted children as those whose care is transferred without a change in lineage. Meanwhile, Article 209 KHI introduces the concept of *wasiat wajibah* (obligatory will), allowing adopted children to receive a maximum of one-third of the estate, but not as heirs in the primary inheritance structure. From the standpoint of legal certainty, KHI performs a dual function. On one hand, it reduces uncertainty by providing a clear compensatory mechanism through mandatory wills. On the other hand, it confirms the limited civil integration of adopted children, reinforcing that adoption does not produce full legal assimilation.

This layered interaction between state law and Islamic law results in a semi-integrated civil position for adopted children. The state recognizes adoption procedurally, yet Islamic family law restricts the transformation of lineage and inheritance status. Consequently, the civil identity of adopted children depends not only on statutory law but also on religious legal interpretation.

²³ Ratih; Yulia; Marlia Sastro Purwasih, "Perlindungan Hukum Terhadap Anak Angkat Tanpa Penetapan Pengadilan (Studi Penelitian Di Jorong Katimahar, Kecamatan Panti, Kabupaten Pasaman)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH)* 8, no. 54 (2025): 1-19.

The implications of this construction can be illustrated through practical scenarios. In a formal court-recognized adoption, an adopted child raised in a Muslim family enjoys social and emotional integration. Nevertheless, upon the death of the adoptive parent, the child does not inherit as an heir under KHI. The child's entitlement is limited to *wasiat wajibah* (Art. 209 KHI), and realization of this right may still depend on judicial affirmation. Thus, the child's economic protection is conditional, not automatic.

The situation becomes more precarious in informal adoptions conducted without court approval. Such practices remain common due to cultural and economic factors. Without a court decision, the child lacks legal recognition in civil registry systems, may encounter difficulties obtaining official identity documents, and faces substantial barriers in inheritance claims. Even access to *wasiat wajibah* may be jeopardized due to the absence of formal adoption status. In this context, the child becomes legally invisible, demonstrating how weak enforcement undermines legal certainty.

Therefore, Indonesia's adoption construction can be characterized as procedurally formal but substantively segmented. Legal certainty exists at the level of administrative legality but does not fully extend to uniform civil consequences. The pluralistic legal environment transforms adoption into a multi-layered legal event, where the final status of the child depends on the interaction between statutory law, religious norms, and judicial interpretation.

b. Legal Construction of Child Adoption in Thailand

In contrast, Thailand adopts a legal assimilation paradigm in regulating adoption. Adoption is governed primarily by the Civil and Commercial Code (CCC) Sections 1598/19–1598/37, which position adoption as a mechanism that fully integrates the child into the adoptive family's legal structure. Section 1598/28 affirms that adoption establishes a parent child relationship equivalent to biological lineage, thereby ensuring full civil equality.²⁴

Thailand's adoption regime strengthens legal certainty through three structural characteristics. First, Thailand operates under a unified legal system, minimizing normative conflicts between religious, customary, and state law. Adoption is treated exclusively as a civil law institution, ensuring consistency in interpretation.

Second, Thailand applies rigorous procedural safeguards. Prospective adoptive parents undergo a home study, psychosocial assessment, and probationary placement period of at least six months. These stages function as preventative child-protection

²⁴ Rasada Aekaputra, "Qualifications of a Potential Adopted Child under the Civil and Commercial Code," *Journal of Community Development* 12, no. 1 (2019): 121–34.

mechanisms, ensuring that adoption genuinely serves the child’s best interests. Judicial approval is granted only after welfare authorities confirm suitability.

Third, the Thai system provides explicit post-adoption civil consequences. Once adoption is finalized, the child acquires the adoptive parents’ surname, full inheritance rights, and permanent family status identical to biological children. These consequences are rule-based and do not depend on discretionary interpretation. Thus, legal certainty in Thailand is not merely procedural but substantively guaranteed.

c. Comparative Analysis

The comparison reveals a fundamental divergence in legal paradigms. Indonesia conceptualizes adoption within an administrative child-protection framework influenced by legal pluralism. Thailand conceptualizes adoption as full civil assimilation.

In Indonesia, legal certainty is moderated by normative fragmentation. Procedural legality is strong, yet the absence of explicit civil consequence norms in PP No. 54/2007, combined with KHI limitations, creates segmented legal outcomes. The child’s inheritance and lineage status remain conditional and dependent on judicial or religious interpretation.

In Thailand, legal certainty is structural and unified. The child’s civil status is predetermined by statute, ensuring predictability and consistency. Adoption creates a permanent legal identity integrated into the family system.

From the perspective of legal certainty theory, Thailand achieves rule-based certainty, while Indonesia operates within interpretation-based certainty. Consequently, Thailand provides more sustainable civil status protection for adopted children, whereas Indonesia maintains procedural order but leaves substantive civil integration incomplete.

Table 1. Comparison of the Legal Construction of Child Adoption in Indonesia and Thailand from the Perspective of Legal Certainty

Aspect of Legal Certainty		Indonesia	Thailand
Legal Character	System	Pluralistic legal system (state law, Islamic law, customary law coexist)	Unified civil law system
Primary Sources Adoption	Legal on	Law No. 35/2014 on Child Protection (Arts. 1(9), 39, 40); Government Regulation No. 54/2007 (Arts. 12-13); Compilation of Islamic Law (KHI)	Civil and Commercial Code (CCC) Sections 1598/19-1598/37

Legal Nature of Adoption	Social protection mechanism; adoption does not automatically change lineage (nasab)	Legal assimilation; adoption creates full parent-child legal relationship
Requirement of Court Authorization	Mandatory court decision as basis of legality (PP 54/2007 Arts. 12-13)	Court approval required after welfare evaluation (CCC procedural framework)
Position of Adopted Child in Family Structure	Socially integrated but legally semi-integrated; lineage remains with biological parents (KHI Art. 171(h))	Fully integrated into adoptive family as legal child equivalent to biological child (CCC §1598/28)
Inheritance Status	Not statutory heir under Islamic inheritance law; entitled only to <i>wasiat wajibah</i> up to 1/3 of estate (KHI Art. 209)	Full inheritance rights equal to biological children (CCC §§1598/28, 1627)
Transformation of Parental Authority	Care and guardianship transferred, but civil consequences not explicitly regulated in PP 54/2007	Parental authority fully transferred; adoptive parents assume full legal status
Civil Identity Consequences	Identity preservation emphasized (Child Protection Law Art. 40); administrative identity depends on formal registration	Child automatically acquires adoptive parents' surname and full civil identity
Normative Clarity on Post-Adoption Civil Effects	Limited; PP 54/2007 silent on inheritance and lineage integration → interpretative space for judges	Explicit statutory determination of civil status and legal effects
Legal Certainty Model	Interpretation-based and segmented due to plural legal interaction	Rule-based and unified
Risk from Informal Adoption	High; absence of court ruling leads to loss of legal identity, inheritance claim, and civil recognition	Low; strict procedural control minimizes unregistered adoption
Level of Substantive Legal Certainty	Moderate strong procedural legality but weak uniformity of civil consequences	High predictable, consistent, and

comprehensive civil status
protection

Source: Law Number 35 of 2014, Government Regulation Number 54 of 2007 and Civil and Commercial Code Sections 1598/19–1598/37

This comparative analysis shows that Thailand is superior in guaranteeing substantive and long-term legal certainty for adopted children, while Indonesia still faces normative and structural problems that have the potential to cause uncertainty regarding the civil status of children.

2. Implementation of the "Best Interest of the Child" Principle in the Regulation and Practice of Child Adoption in Indonesia and Thailand as an Effort to Legally Protect Children's Rights

The principle of the *best interest of the child* constitutes the central normative foundation of modern child protection law and serves as a legal standard in adoption systems worldwide. Adoption, as a legal institution, does not merely transfer care responsibilities but reshapes a child's civil identity, family affiliation, and long-term socio-legal security. Consequently, the degree to which this principle is translated into operative legal norms determines the quality of legal protection afforded to adopted children. A comparative examination of Indonesia and Thailand reveals two distinct paradigms: Indonesia emphasizes socio-administrative child protection, whereas Thailand adopts a legal assimilation model that integrates the child fully into the adoptive family structure. These differences significantly influence how the *best interest* principle operates as a legal safeguard.

a. Implementation of the Best Interest Principle in Indonesia

Indonesian adoption law formally recognizes the *best interest of the child* as a guiding principle. Law No. 35 of 2014 on Child Protection affirms that all actions concerning children must prioritize their best interests, while Government Regulation No. 54 of 2007 places child welfare as the purpose of adoption. Adoption requires judicial authorization, social assessment, and administrative screening, reflecting the state's intention to prevent trafficking and ensure procedural legality.²⁵

However, closer analysis indicates that the operationalization of this principle remains predominantly procedural-administrative rather than substantive. The evaluation of a child's best interest largely focuses on formal requirements: documentation, parental consent, economic capacity of adoptive parents, and recommendations from social institutions. Once a court decree is issued, the legal system

²⁵ A Nuzul, "Upaya Kodifikasi Hukum Kewarisan Secara Bilateral Dengan Pola Diferensiasi Dalam Masyarakat Pluralis," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 465–81.

provides limited structural mechanisms to secure the child's long-term civil status. Protection tends to end at legalization rather than continuing as a sustained legal guarantee.

Several structural issues illustrate this limitation:²⁶

1) Fragmented Civil Status Protection

Indonesian adoption does not automatically equalize the legal status of adopted and biological children. The plural legal system state civil law, Islamic law, and customary norms produces divergent interpretations regarding lineage (*nasab*), guardianship, and inheritance. Under Islamic legal doctrine reflected in the Compilation of Islamic Law, adoption does not sever biological lineage nor grant automatic inheritance rights; protection is often provided through wills or grants. Consequently, the child's legal future depends on private arrangements rather than systemic guarantees.

2) Absence of Explicit Norms on Post-Adoption Civil Consequences

Government Regulation No. 54 of 2007 emphasizes procedural safeguards but is silent regarding permanent inheritance status, automatic guardianship, and full integration into the adoptive family lineage. Courts therefore determine consequences case by case, leading to variability and reduced predictability – conditions that weaken legal certainty.

3) Limited Continuity of State Oversight

Although pre-adoption assessments exist, post-adoption monitoring is minimal. The best interest principle thus functions more as a justification for procedural approval than as an ongoing legal standard ensuring the child's stability of identity and economic security.

This situation reflects what child-rights scholars term formal protection without substantive security: the child is legally adopted, yet the law does not fully institutionalize guarantees for their civil identity, inheritance position, or long-term familial integration. Thus, while Indonesia acknowledges the *best interest* principle normatively, its legal design restricts the principle's transformative capacity.

b. Implementation of the Best Interest Principle in Thailand

Thailand presents a contrasting approach. Adoption is governed by the Civil and Commercial Code (CCC), Sections 1598/19–1598/37, which structure adoption as a form of legal assimilation. Section 1598/28 CCC affirms that a legally adopted child acquires the status of a legitimate child of the adopter, while Section 1598/32 recognizes reciprocal

²⁶ Yusril Bariki, "Mekanisme Pengangkatan Anak Kontemporer: Analisis Horizontal Dan Vertikal Di Negara Muslim Dunia," *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 15, no. 2 (2024): 148–62.

rights and duties between adopter and adoptee comparable to biological parent-child relations. These provisions create a clear normative foundation for civil integration.²⁷

The implementation of the *best interest of the child* principle in Thailand operates at three interrelated levels:²⁸

1) Preventive Institutional Assessment

Thai adoption procedures require a home study evaluating the psychosocial, economic, and moral suitability of prospective adoptive parents. This is followed by a probationary placement period, commonly at least six months, during which authorities observe the child's adjustment and family dynamics. This stage transforms the best interest principle into a factual, evidence-based assessment rather than a purely documentary review.

2) Substantive Civil Assimilation

Once adoption is finalized, the child is fully integrated into the adopter's family for civil purposes, including surname use, maintenance rights, and inheritance. The CCC's formulation that adoption creates a relationship akin to legitimate filiation ensures long-term stability of legal identity. The child's rights do not rely on discretionary wills or grants but arise automatically from statutory status.

3) Systemic Legal Consistency

Thailand's family law concerning adoption operates within a more unified civil framework, reducing normative conflicts in determining the child's status. Although Thai society is culturally diverse, adoption law itself is governed by a single codified system, enabling consistent interpretation of civil consequences..

Through these mechanisms, Thailand translates the *best interest* principle into a structural legal architecture: pre-adoption evaluation protects against risk, while post-adoption assimilation guarantees enduring civil security. Protection therefore extends beyond procedural approval into the child's lifelong legal trajectory.

3. Comparative Implications for Children's Rights Protection

The contrast between the two systems reveals differing legal philosophies regarding child protection:²⁹

²⁷ Rizqi Arfan Rizqiyah Aini Rahmawati, Elvara Alifia, Amanda Fitria Najwa and Muhammad Rizky Irawan Fanrisa, "Pengangkatan Anak Beda Negara Dikaji Dari Perspektif Hukum Perdata Internasional," *Jurnal Dimensi Hukum* 8, no. 11 (2024): 198-204.

²⁸ Bariki, "Mekanisme Pengangkatan Anak Kontemporer: Analisis Horizontal Dan Vertikal Di Negara Muslim Dunia."

²⁹ Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum," *LAW REFORM* 8, no. 1 (2004): 134, <https://doi.org/10.20961/hpe.v6i2.1769>.

Table 2. Comparative Analysis of the Implementation of the Best Interest of the Child Principle and Its Implications for the Legal Status of Adopted Children in Indonesia and Thailand

Dimension	Indonesia	Thailand
Nature of Best Interest Application	Procedural-administrative	Substantive-operational
Civil Status After Adoption	Partially recognized, influenced by plural norms	Fully assimilated under CCC
Inheritance Guarantee	Often indirect (wills/grants)	Statutory equality with biological children
Legal Certainty	Case-dependent	Normatively predetermined
Long-Term Identity Security	Vulnerable to legal fragmentation	Structurally secured

Source: research data

Indonesia’s model prioritizes preventing abuse through procedure, yet leaves gaps in long-term civil integration. Thailand’s model combines preventive evaluation with post-adoption legal assimilation, aligning with the concept of substantive child protection under the Convention on the Rights of the Child (CRC), which requires not only immediate welfare but sustained legal security.

From the perspective of legal certainty theory (Radbruch), a just legal system must provide predictability and stability of legal status.³⁰ Thailand’s codified assimilation model fulfills these criteria by predetermining the child’s civil consequences. Indonesia’s pluralistic framework, while socially contextual, introduces interpretative variability that weakens predictability.³¹

From a child-rights perspective, the difference illustrates the distinction between *best interests as principle* and *best interests as operational standard*. Indonesia treats the principle as normative guidance for decision-making, whereas Thailand embeds it in enforceable civil status rules.³² The latter approach better fulfills the doctrine of substantive

³⁰ Syifaturrahmah, Zulianti, and Aisyah, “Efektivitas Konvensi Hak Anak (ICRC) Dalam Kasus Eksploitasi Anak Di Thailand (Studi Kasus Tahun 2019-2022).”

³¹ Gustav Radbruch, *Legal Philosophy* (United Kingdom: Oxford University Press, 1950).

³² Leonora Bakarbesy & Dian Purnama Anugerah, “Implementation Of The Best Interests Of The Child Principles In Intercountry Adoption In Indonesia,” *Yuridika* 33, no. 1 (2018): 73–92, <https://doi.org/10.20473/ydk.v33i1.7202>.

protection, which demands legal structures that secure identity, family belonging, and economic continuity.³³

The comparative findings indicate that strengthening the *best interest of the child* principle in Indonesia requires moving beyond procedural safeguards toward:³⁴

- 1) Explicit statutory provisions on post-adoption civil status and inheritance;
- 2) Harmonization between state, religious, and customary norms to reduce fragmentation;
- 3) Institutional mechanisms ensuring long-term identity and guardianship stability.

Thailand's framework demonstrates how adoption law can function as a permanent child-protection instrument, not merely an administrative authorization process.

CONCLUSION

The comparative analysis shows that the adoption systems of Indonesia and Thailand are built upon fundamentally different legal constructions, resulting in different levels of legal certainty for adopted children. Indonesia places adoption within a socio-administrative child-protection framework that emphasizes procedural legality through court authorization. However, Government Regulation No. 54 of 2007 does not explicitly regulate post-adoption civil consequences, particularly concerning inheritance status, transformation of parental authority, and the permanent civil integration of the child into the adoptive family. Combined with legal pluralism involving state law, Islamic law, and customary norms, this creates segmented and interpretation-based legal certainty, where the civil status of adopted children often depends on judicial discretion. In contrast, Thailand adopts a legal assimilation model under the Civil and Commercial Code that explicitly equates adopted children with biological children in terms of family status, legal identity, and inheritance rights. This rule-based construction produces higher predictability, consistency, and long-term civil status stability for adopted children.

Regarding the implementation of the *best interest of the child* principle, Indonesia and Thailand also demonstrate differing degrees of substantive protection. In Indonesia, the principle is normatively recognized but operates primarily at the procedural-administrative level, focusing on pre-adoption legality rather than long-term civil security. The absence of explicit regulation on post-adoption legal effects and the lack of structured post-adoption supervision limit the principle's function as a sustained legal

³³ Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (United Kingdom: Oxford University Press, 2001).

³⁴ J. Eekelaar, "The Child's Right to Identity," *International Journal of Law, Policy and the Family* 11, no. 1 (1997): 1-29.

safeguard. Conversely, Thailand institutionalizes the best interest principle through preventive assessment mechanisms (home study, probationary placement, psychosocial evaluation) and through full civil assimilation after adoption. This ensures that the child's welfare, identity stability, and economic rights are structurally protected beyond the moment of legalization.

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