



# JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816  
P-ISSN: 2747-1985<https://dinastires.org/JLPH>    [dinasti.info@gmail.com](mailto:dinasti.info@gmail.com)    +62 811 7404 455DOI: <https://doi.org/10.38035/jlph>  
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## Disparity in Court Determinations on Interfaith Adoption: A Study on Legal Certainty in Judicial Practice

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**Abstract:** The adoption of children of different religions in Indonesia has been normatively regulated under positive law; however, in judicial practice, discrepancies in court determinations are still found in cases involving similar legal facts. This is evident in the Determination of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin and the Determination of the Banyumas District Court Number 9/Pdt.P/2018/PN Bms, where judges rendered differing decisions regarding applications for interfaith adoption. In one determination, the application was granted by taking into account customary law and the best interests of the child, whereas in the other determination, the application was rejected by emphasizing the requirement of religious conformity under positive law. This study aims to analyze the judges' legal reasoning as well as the factors contributing to the disparity in determinations of interfaith adoption from the perspective of legal certainty theory. The research employs a normative legal method with statutory, case, and conceptual approaches. Legal materials are collected through library research and analyzed qualitatively. The results indicate that the disparity in determinations is caused by differences in judicial interpretation of the requirement of religious conformity, the application of the principle of the best interests of the child, and the influence of legal pluralism in judicial practice.

**Keyword:** Disparity, Adoption, Legal Certainty..

### INTRODUCTION

The family is the smallest social unit in society that serves as the foundation for the formation of a harmonious social order (Hidayatunnajah, A., 2023, p. 200). A family is established through a lawful marriage with the expectation of producing future generations. However, in reality, not all married couples are able to have children, and this condition may be addressed through the institution of adoption. Quoting the opinion of Muderis Zaini as cited by Andi Syamsu Alam and M. Fauzan, adoption, or what is known as adoptie, is a legal act that transfers a child from the authority of their biological parents, legal guardian, or other parties responsible for the child's care, education, and upbringing, into the family environment of the adoptive parents (Alam, A. S., & Fauzan, M., 2008, p. 23).

The regulation of adoption in Indonesia has undergone a long historical development. Since the post-independence period until the early reform era, the regulation of adoption remained very limited. The diversity of legal systems, encompassing customary law, Islamic law, and colonial law, posed challenges in formulating adoption regulations within statutory legislation (Musthofa, Sy, 2024). This condition is rooted in the diversity of Indonesian society, which consists of various ethnic groups and distinct customs and traditions. Customary law itself is a body of law that lives and develops within society as a living law (Anggraeni, R. D., 2023, p. 5). Customary law applicable in many regions of Indonesia had even been recognized long before Dutch colonization as part of unwritten law (Karwiyah, K., Judiasih, S. D., et al. 2025, p. 28), wherein the practice of adoption had long been known prior to the existence of statutory regulations governing it.

Along with the development of national law, the state subsequently established regulations concerning adoption through Law Number 35 of 2014 concerning Child Protection (hereinafter referred to as UU No. 35/2014) and its implementing regulation, Government Regulation Number 54 of 2007 concerning the Implementation of Adoption (hereinafter referred to as PP No. 54/2007). The purpose is to provide legal protection and to ensure the best interests of the child, as stipulated in Article 39 paragraph (1) of UU No. 35/2014 and Article 2 of PP No. 54/2007. Although adoption based on customary practices has been recognized, pursuant to Article 20 of PP No. 54/2007, adoption carried out based on local customs or within a community that demonstrably continues to practice its customs and traditions in social life must be submitted for a court determination in order to obtain binding legal force and formal legal validity.

The aforementioned national legal provisions position the child as the primary subject in every legal action concerning them, including adoption, which encompasses not only the fulfillment of material needs but also the protection of fundamental rights such as the right to religion (Sirait, R. D. E., 2024, p. 45). In relation to the protection of religious rights, Indonesian positive law explicitly requires religious conformity between prospective adoptive parents and prospective adopted children, as stipulated in Article 39 paragraph (3) of UU No. 35/2014 and reaffirmed in Article 3 paragraph (1) of Government Regulation No. 54 of 2007. In line with this, the Constitutional Court, in Decision Number 83/PUU-XX/2022, emphasized that the requirement for prospective adoptive parents to adhere to the same religion as that of the prospective adopted child is not intended to restrict the religious freedom of prospective adoptive parents, but rather to protect the religious interests of both the prospective adopted child and the prospective adoptive parents, as a manifestation of the principle of a state founded upon belief in the Almighty God.

From the perspective of Islamic law, the 1984 Fatwa of the Indonesian Ulema Council (MUI) also stipulates that adoption must not alter the child's lineage (*nasab*) and religion, as a form of social responsibility to care for children with compassion. This strict regulation aims to ensure that the implementation of adoption complies with legal provisions, thereby preventing various deviations that occur in society, such as adoption carried out without proper procedures, falsification of data, and others (Hidayatunnajah, A., 2023, p. 202). Nevertheless, in practice, many adoption cases do not conform to the applicable provisions, one of which is interfaith adoption. This phenomenon arises from the urgent needs of children who require adoptive families, while prospective adoptive parents who are capable and willing to adopt them adhere to different religious beliefs (Rachmadi Usman., 2006, p. 389).

Applications for interfaith adoption in judicial practice do not always result in uniform determinations; some judges grant such applications while others reject them. These differing determinations indicate the potential for disparity. Disparity refers to inconsistencies in judicial decisions in cases involving similar legal issues (Yesica Novitasari, Y., & Perwitasari, D., 2023, p. 256). An example of such disparity can be seen in two different court determinations,

namely the Decision of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin and the Decision of the Banyumas District Court Number 9/Pdt.P/2018/PN Bms. In the Gianyar District Court Decision, the judge granted an interfaith adoption application, in which a Hindu married couple applied to adopt a child from a biological mother who is Muslim. Conversely, the Banyumas District Court Decision Number 9/Pdt.P/2018/PN Bms rejected an adoption application under similar circumstances, where a Catholic married couple applied to adopt a female child from a biological mother who is Muslim.

The disparity in court determinations in the two interfaith adoption cases demonstrates differences in the legal approaches employed by judges in judicial practice and directly gives rise to issues of legal certainty. On that basis, further study is required to examine the extent to which the principle of legal certainty has been realized, as well as how the legal system should respond to situations in which the fulfillment of the best interests of the child potentially conflicts with formal provisions regarding religious conformity.

The first prior study, entitled *Interfaith Child Adoption Based on Decision Number 9/Pdt.P/2018/PN.Bms: A Human Rights Perspective*, was conducted by Naufal Irsyaad Imaduddin, Khoirul Hidayah, and Burhanuddin Susanto (2025) and published in *As-Salam: Jurnal Studi Hukum Islam dan Pendidikan*. The study analyzes the phenomenon of interfaith child adoption through Decision Number 9/Pdt.P/2018/PN.Bms in relation to the fulfillment of human rights principles and the Universal Declaration of Human Rights, concluding that a review of adoption regulations is necessary to make them more humane and non-discriminatory.

A similar study was conducted by Atika Hidayatunnajah (2023) in her article entitled *Penerimaan Anak Adopsi dengan Agama yang Berbeda dalam Perspektif Jaminan Kebebasan Beragama Menurut Konstitusi Republik Indonesia 1945 dan Hukum Islam*, published in *Jurnal Hukum Indonesia*. This study examines the regulation of child adoption in Indonesia by referring to the 1945 Constitution and Islamic law, particularly highlighting the provisions of Article 39 paragraph (3) of Law Number 35 of 2014, which require religious conformity between adoptive parents and adopted children. The study emphasizes that the requirement of religious conformity is intended to protect the child's right to freedom of religion and to prevent unilateral religious influence from adoptive parents.

Meanwhile, Fransiska Maryl Agatha, I Ketut Widia, and I Ketut Sukadana (2020), in their article entitled *Pengangkatan Anak oleh Orang Tua yang Berbeda Keyakinan dengan Calon Anak Angkatnya*, published in *Jurnal Preferensi Hukum*, examine the requirements for child adoption based on Government Regulation Number 54 of 2007. The study finds that, in practice, differences in belief between prospective adoptive parents and the child are not always the primary factor in rejecting adoption applications. Economic factors and the behavior of prospective adoptive parents are, in fact, more dominant considerations in the determination of adoption by institutions and courts.

Based on the majority of previous studies, research on interfaith adoption has primarily examined the issue from the perspectives of human rights, constitutionality, or general field practices. However, these studies have not comprehensively analyzed the disparity in court determinations in interfaith adoption cases where similar legal facts result in differing rulings. Therefore, this research is important to be examined more deeply.

The distinction between this study and the three aforementioned studies lies in its focus on analyzing disparities in court determinations in interfaith adoption cases by applying Sudikno Mertokusumo's theory of legal certainty to assess the consistency of judges in applying the law. The novelty of this research lies in its effort to examine the factors contributing to such disparities, including the role of customary law in a pluralistic state context, as well as judicial interpretations of the best interests of the child in interfaith adoption cases (Muhammad, B., 2006, p. 78).

Accordingly, the researcher is interested in conducting an in-depth study, the results of which are presented in the form of an undergraduate thesis entitled: “Disparity In Court Determinations of The District Courts of Bali and Banyumas Regarding Interfaith Adoption as Reviewed Based on The Theory of Legal Certainty.”

## **METHOD**

This study employs a normative legal research method, namely research that examines law as norms or rules embodied in legislation, court decisions, and legal doctrines. The approaches used include three types: the statutory approach, the case approach, and the conceptual approach. The statutory approach is conducted by examining all regulations related to adoption, particularly Law No. 35 of 2014 and Government Regulation No. 54 of 2007. The case approach is used to analyze the Decision of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin and the Decision of the Banyumas District Court Number 9/Pdt.P/2018/PN Bms. The conceptual approach is employed to analyze the theory of legal certainty according to Sudikno Mertokusumo and the principle of the best interests of the child.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions that constitute the object of the study. Secondary legal materials consist of legal literature, academic journals, and relevant prior research findings. Tertiary legal materials include legal dictionaries and encyclopedias. The technique for collecting legal materials is carried out through library research, and all legal materials are analyzed qualitatively using methods of legal interpretation to address the formulated research questions.

## **RESULTS AND DISCUSSION**

### **Judicial Considerations in the Determination of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin**

In the introduction section, it has been discussed that within Indonesia’s plural society, adoption has long been recognized and practiced in customary law as part of a social mechanism to ensure the continuity of a child’s life. In customary law, this practice is carried out through traditional ceremonies (rites de passage) in the presence of village members, with the assistance of a penghulu or community leader, and is conducted in a manner that is “terang dan tunai” (Hadikusuma, H., 2014, p. 35). The term “terang” means that the adoption is carried out before the customary authority so that it is publicly known, while “tunai” implies that the adoption must be accompanied by the giving or payment of customary obligations to sever the legal relationship with the biological parents (Law-Justice.co., 2024).

Customary law itself can give rise to legal obligations for indigenous communities because it contains elements of reality, namely practices that are adhered to by the community, as well as psychological elements, namely a strong collective belief that such norms possess binding legal force (Judiasih, S. D., & Fakhriah, E. L., 2018, p. 316). One example of customary law that has developed in Indonesia can be found within Balinese society (Karwiyah, K., Judiasih, S. D., et al. 2025, p. 28). The customary law that develops within Balinese society is Balinese customary law. This system is derived from Hindu religious teachings, encompassing cultural and legal values, including the relationship with Hyang Widhi Wasa (God), the environment, and fellow human beings (Karwiyah, K., Judiasih, S. D., et al. 2025, p. 28).

However, in the development of national law, adoption is no longer assessed solely from social and customary perspectives, but must also comply with positive legal provisions governing its requirements and procedures. National legal provisions are regulated under UU No. 35/2014 and Government Regulation No. 54/2007, which emphasize that adoption is not

merely intended to fulfill the interests of adoptive parents, but rather to provide opportunities for children whose growth and development are limited by their biological parents to obtain assurance for their future (Aldi Prajasa, A., & Hayatudin, A., 2024, p. 82). Article 3, as reaffirmed in Article 13 of Government Regulation No. 54/2007, contains a crucial provision regarding the requirement of religious similarity between prospective adoptive parents and the prospective adopted child (Agatha, F., et al., 2020, p. 17), which is often considered an obstacle to fulfilling the principle of the best interests of the child.

The petition for a court determination was submitted to the Gianyar District Court by a married Hindu couple, Yudhisthira Krisna Dasa, S.T. and Kadek Ayu Dwi Cahyani (hereinafter referred to as the Petitioners). The Petitioners were legally married according to Hindu law on January 6, 2014; however, after more than ten years of marriage, they have not been blessed with a biological child. The Petitioners accepted the handover of a male child born on May 17, 2024, from a biological mother of Islamic faith originating from East Lombok, West Nusa Tenggara. The biological mother relinquished the child because she was unaware of her pregnancy at the time of her divorce from her husband, and her former husband did not wish to assume responsibility for the child, compounded by the biological mother's severely limited economic circumstances.

The Petitioners have carried out a Balinese customary adoption ceremony (*Meperas*) in conjunction with the *Tigang Sasih* (three-month) ceremony on 30 August 2024, led by Ida Bhawati Yudistira and witnessed by the Bendesa Adat of Gianyar, the Head of the Sangging Neighborhood, the *Kelian Adat* of Sangging Kelod, and a representative of the *kapurusa* family. The Petitioners have also obtained a recommendation from the Bali Provincial Office of Social Affairs, Women's Empowerment, and Child Protection. However, when the Petitioners submitted their application to the Gianyar District Court, there was a difference in religion between the Petitioners (Hindu) and the child's biological mother, who is Muslim.

a. Adoption Based on Local Customary Practices

The primary consideration of the Panel of Judges in this determination is the emphasis on the implementation of adoption based on Balinese customary practices that had already been carried out by the Petitioners prior to the submission of the application to the court. Based on documentary evidence and witness testimonies presented during the hearing, it was established that the adoption had been conducted through a Balinese customary adoption ceremony known as *Meperas*, together with the *Tigang Sasih* (three-month) ceremony on 30 August 2024. This customary ceremony was led by Ida Bhawati Yudisthira as a Hindu religious officiant and witnessed by local customary leaders, namely the Bendesa Adat of Gianyar, the Head of the Sangging Neighborhood, the *Kelian Adat* of Sangging Kelod, and a representative of the *kapurusa* family (the patrilineal family line). The Panel of Judges held that adoption based on customary practices, as regulated under Article 8 letter (a) of Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, constitutes one of the legally recognized forms of adoption in Indonesia (Aldi Prajasa, A., & Hayatudin, A., 2024, p. 82).

The judges provided an interpretation of Article 39 paragraph (1) of UU No. 35/2014 by construing the phrase "based on local customary practices and statutory regulations" as alternative rather than cumulative. This means that adoption may be carried out either based on local customary practices or in accordance with statutory regulations, thereby allowing room for adoptions conducted under customary law even where there appear to be conflicting statutory provisions. This interpretative approach is consistent with the view that Indonesia adheres to a system of legal pluralism, in which customary law holds an important position within the national legal system, as

recognized under Article 18B paragraph (2) of the 1945 Constitution (Agatha, F., et al., 2020, p. 17).

Balinese customary law legitimizes adoption, known as *sentana rajeg*, which serves highly specific functions and purposes, namely as the primary means of continuing the lineage (*purusa*) while simultaneously ensuring the continuity of Hindu religious ritual obligations within the family (Putra, I. M. N. K., Isnaini, A. M., & Rifai, A., 2022, p. 442). The kinship system of Balinese society adheres to a patrilineal principle, in which lineage is traced through the male line; therefore, the presence of a male child within the family becomes crucial to continue ritual responsibilities and the maintenance of the *sangguh* or ancestral shrine (Putra, I. M. N. K., Isnaini, A. M., & Rifai, A., 2022, p. 443). Social legitimacy from the customary community and local traditional leaders constitutes an important factor in assessing the validity of adoption under customary law and represents an essential element that provides binding force to a legal act (Jayus, J. A., 2019, p. 239). With the implementation of the *Meperas* customary ceremony, witnessed by traditional leaders and approved by the *kapurusa* family as well as the customary village community, the adoption has fulfilled both formal and material requirements under Balinese customary law.

b. The Principle of the Best Interest of the Child

The second consideration forming the basis of the judge's decision is the principle of the best interest of the child as stipulated in Article 2 letter a and Article 39 paragraph (1) of UU No. 35/2014 (Aldi Prajasa, A., & Hayatudin, A., 2024, p. 84). The judge considered the factual condition faced by the child, in which the biological mother was in a severely limited economic situation, was unaware of her pregnancy at the time of her divorce, and the former husband did not desire the presence of the child. These conditions placed the child in a highly vulnerable situation, where the child risked not receiving proper care, nurturing, and education if remaining under the care of the biological mother.

The principle of the best interest of the child is a fundamental principle in child protection law, universally recognized in the Convention on the Rights of the Child of 1989, which has been ratified by Indonesia through Presidential Decree Number 36 of 1990. Article 3 paragraph (1) of the Convention on the Rights of the Child states that in all actions concerning children, the best interests of the child shall be a primary consideration (UN Committee on the Rights of the Child, 2013). The UN Committee on the Rights of the Child, in General Comment No. 14 of 2013, explains that the best interests of the child must be assessed individually by considering various factors, including: the views of the child, the child's identity including religion and culture, preservation of the family environment, care and protection of the child, the child's vulnerability, as well as the child's rights to health and education (UN Committee on the Rights of the Child, 2013). In this context, the Panel of Judges considered that the best interest of the child is to obtain a family capable of providing a decent standard of living and optimal protection, despite the difference in religion between the prospective adoptive parents and the child's biological mother (Putra, I. M. N. K., Isnaini, A. M., & Rifai, A., 2022, p. 442).

c. Consent of the Biological Mother and Recommendation from the Social Service Agency

The third consideration used by the Panel of Judges is the existence of consent from the biological mother as the legal parent entitled to the child, as well as a recommendation from the Social Service, Women's Empowerment, and Child Protection Office of Bali Province. Based on documentary evidence presented during the trial, the biological mother had provided written consent to transfer the child to the

Petitioners and agreed to the adoption. The judge considered that the consent of the biological mother constitutes a manifestation of the biological parent's right to determine the future of the child, particularly in circumstances where the biological parent is unable to provide proper care, as required under Article 13 paragraph (1) letter c of Government Regulation No. 54/2007. Furthermore, the recommendation from the Social Service stating that the Petitioners meet the requirements to become adoptive parents also constitutes an important consideration, given that Article 12 of Government Regulation No. 54/2007 requires prospective adoptive parents to obtain written approval from the competent social authority (Immaduddien, N. I., et al., 2025, p. 5).

### **Judicial Legal Reasoning in the Banyumas District Court Determination Number 9/Pdt.P/2018/PN Bms in Relation to Positive Law**

In contrast to the determination of the Gianyar District Court, the Banyumas District Court Determination Number 9/Pdt.P/2018/PN Bms rejected an interfaith adoption petition. The petition was filed by a married Catholic couple before the Banyumas District Court. The Applicants had legally married in June 2009, and throughout nine years of marriage had not been blessed with a biological child. In June 2017, the Applicants received custody of a baby girl from her biological mother, who is Muslim. The child was born out of a lawful marriage, and the biological mother was in an economically disadvantaged condition. The Applicants had cared for the child since birth and were willing to provide for her as their own biological child, and had obtained a recommendation from the Banyumas Regency Social Services Office. However, it was established that the child had been baptized into the Catholic faith prior to the filing of the adoption petition before the court.

#### **a. Imperative Interpretation of the Requirement of Religious Similarity**

The primary consideration of the Panel of Judges in rejecting the petition was the difference in religion between the prospective adoptive parents and the prospective adopted child, which was deemed contrary to the provisions of Article 39 paragraph (3) of Law No. 35 of 2014 in conjunction with Article 13 paragraph (1) letter d of Government Regulation No. 54 of 2007. The Panel of Judges emphasized that Article 39 paragraph (3) of Law No. 35 of 2014 explicitly states: "Prospective adoptive parents must share the same religion as that adhered to by the prospective adopted child." The use of the word "must" in the formulation of the article indicates the imperative nature of the provision, meaning that it is mandatory and cannot be deviated from (Immaduddien, N. I., et al., 2025, p. 6). In legal doctrine, norms employing the terms "must" or "shall" are categorized as mandatory norms, which differ from supplementary norms that allow parties the freedom to deviate (Mertokusumo, S., 2010, p. 23).

The Panel of Judges, in its reasoning, stated that a child's religion follows that of their biological parents. Since the biological mother is Muslim, the prospective adopted child is considered to be Muslim (Immaduddien, N. I., et al., 2025, p. 9), whereas the Applicants are Catholic. Therefore, a difference in religion exists, which is explicitly prohibited under positive law.

#### **b. Disregarding the Consent of the Biological Mother**

The Panel of Judges also set aside the consent of the biological mother, who had expressed no objection to the prospective adopted child embracing the Catholic faith. The Judges held that such consent could not override statutory provisions of an imperative nature. This judicial reasoning is based on the view that a child's right to religion is a fundamental right protected by the constitution and cannot be entirely subordinated to the will of the biological parents. Article 28E paragraph (1) of the 1945 Constitution guarantees that every person is free to embrace a religion and to worship

according to their religion, and Article 43 paragraph (1) of Law No. 35 of 2014 further affirms that the state guarantees the protection of children in practicing their religion. Therefore, parental consent cannot override legal provisions intended to protect the child's right to religion (Hidayatunnajah, A., 2023, p. 202).

c. Baptism as a Form of Forced Religious

A highly crucial consideration in the Panel of Judges' rejection was the fact that the prospective adopted child had been baptized into the Catholic faith prior to the submission of the adoption petition to the court. Based on documentary evidence (Exhibit P-17), namely a Baptism Certificate issued by a Catholic Church, it was established that the child had undergone a baptismal ceremony while still an infant. The judges considered this baptism to constitute a concrete form of forced religious conversion imposed on the prospective adopted child, which is contrary to the principle of freedom of religion and the objective underlying the requirement of religious conformity in adoption (Immaduddin, N. I., et al., 2025, p. 9-10).

The baptism performed on the child prior to the filing of the adoption petition indicates that the Petitioners had already undertaken efforts to alter the child's religion, which, in the judges' view, constitutes a violation of the child's right to freedom of religion. A child born to a biological mother who is Muslim automatically follows the religion of the mother in accordance with Islamic legal provisions; therefore, the baptism carried out without adherence to lawful procedures constitutes an unlawful act and is inconsistent with the principle of protecting the child's right to freedom of religion. This judicial consideration is also in line with Fatwa MUI Number U-335/MUI/VI/1984, which affirms that adoption is permissible insofar as it does not alter the child's lineage (*nasab*) and does not change the child's religion.

### **Analysis of Disparities in Court Determinations from the Perspective of the Best Interests of the Child**

The determination of the Gianyar District Court and that of the Banyumas District Court reflect differing interpretations of the principle of the best interests of the child. The judges of the Gianyar District Court interpret the best interests of the child more broadly, encompassing not only the protection of the child's right to religion but also the fulfillment of the child's basic needs for family, affection, care, education, and a decent future. In situations where the child is at risk of not receiving proper care from their biological parents, the fulfillment of these basic needs becomes more urgent than strict adherence to the formal requirement of religious similarity. The judges are of the view that an adoption carried out in accordance with Balinese customary law and legitimized by local customary institutions must be recognized as legally valid. This approach is consistent with the theory of legal pluralism, which posits that in plural societies such as Indonesia, more than one legal system operates simultaneously and must be accommodated within the national legal system (Rahayu, D. P., & Bagijo, H. E., 2024, p. 5).

Conversely, the judges of the Banyumas District Court interpret the best interests of the child more narrowly, primarily emphasizing the protection of the child's right to religion as a constitutional right that cannot be diminished. From this perspective, safeguarding the child's religious identity constitutes an integral part of the best interests of the child; therefore, an adoption that results in a change of religion cannot be justified, even in light of economic or social considerations. The judges emphasize the supremacy of written national law, asserting that the provisions of Article 39 paragraph (3) of Law No. 35 of 2014 apply uniformly throughout Indonesia without distinction based on the operation of customary legal systems in particular regions.

The researcher observes that the differing interpretations of the principle of the best interests of the child in these two determinations demonstrate a tension between a formalistic

approach and a more substantive one. In fact, the principle of the best interests of the child should be understood comprehensively, taking into account the various aspects of a child's life as a whole. In situations where the child is in a vulnerable condition and requires immediate protection, the fulfillment of basic needs such as the presence of a family and affection should not automatically be overridden by formal considerations, such as religious similarity, without regard to the child's actual circumstances. On the other hand, the child's right to religion remains an essential component of their best interests and therefore cannot be disregarded solely for economic reasons or the preferences of particular parties.

### **The Application of Legal Certainty Theory to the Disparity between the Determination of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin and the Determination of the Banyumas District Court Number 9/Pdt.P/2018/PN Bms**

Adoption constitutes a voluntary civil matter falling under the absolute jurisdiction of the District Court. In voluntary proceedings, judges do not resolve disputes between parties; rather, they issue a determination upon a petition in order to establish legal certainty regarding a particular legal situation. Although voluntary in nature, judges remain bound by the applicable statutory regulations, including Article 39 paragraph (3) of UU No. 35/2014, which explicitly requires the same religion between prospective adoptive parents and the prospective adopted child.

From the perspective of legal certainty theory as articulated by Sudikno Mertokusumo, legal certainty is not merely understood as the existence of written rules, but also as a guarantee that such law is applied consistently, predictably, and protects individuals from arbitrary actions (Mertokusumo, S., 2010, p. 95). Legal certainty requires that the same legal norms be applied uniformly to legal events with similar characteristics (Mufarrichah, B. N., 2024, p. 69). If the application of norms differs without a clear basis, then the purpose of law as a guideline for behavior and a means of social control cannot be achieved.

Nevertheless, in the practice of law enforcement, tensions often arise between legal certainty and justice. Judges are required to uphold the law in order to ensure public order and security, as the law is binding and coercive upon all citizens. However, a rigid application of legal certainty may potentially set aside substantive justice, while efforts to realize justice in concrete cases are sometimes carried out at the expense of legal certainty (Astuti, B., & Daud, M. R., 2023, p. 218). This tension frequently emerges in interfaith adoption cases and becomes one of the factors contributing to disparities in court determinations.

According to Sudikno Mertokusumo's theory, legal certainty contains at least three main elements: (1) the guarantee of the implementation of certain laws, (2) the entitlement of rightful parties under the law to obtain their rights, and (3) the enforceability of decisions. First, the guarantee of the implementation of certain laws. Legal certainty is closely related to the existence of law itself, particularly in the context of enforcing written legal norms (Supriono., 2016, p. 1572). Without legal certainty, the law loses its essence as it can no longer function as a guideline for individuals (Mufarrichah, B. N., 2024, p. 74). Order plays an important role in supporting law enforcement to prevent arbitrary actions, ensuring that every individual can obtain their rights in accordance with the conditions regulated by law (Halilah, S., & Arif, M. F., 2021, p. 65). In relation to interfaith adoption, this guarantee requires that Article 39 paragraph (3) of Law No. 35 of 2014 be applied consistently by the courts. The disparity between the determinations of the Gianyar District Court and the Banyumas District Court indicates that the application of this norm has not been uniform. This creates uncertainty as to whether the requirement of religious conformity is absolute or may be set aside based on the best interests of the child.

Second, the entitlement of rightful parties under the law to obtain their rights. Furthermore, Sudikno Mertokusumo explains that civil law essentially governs relationships

between individuals, particularly concerning personal rights and obligations, both within the family sphere and in social life (Mufarrichah, B. N., 2024, p. 74). There are two main interests that must be protected in adoption, namely the interests of prospective adoptive parents and the interests of the child. In the determination of the Gianyar District Court, the judge considered that the petitioners were entitled to obtain the legalization of the adoption in the best interests of the child. In contrast, in the determination of the Banyumas District Court, the judge held that such entitlement could not be granted as it conflicted with positive law. This difference in assessment indicates the absence of clear standards regarding who is considered legally entitled in cases of interfaith adoption.

Third, a decision must be enforceable. The judicial process positions a decision as the final stage in the resolution of a case. Such a decision is rendered by a judge as an authorized official to adjudicate the matter. Once the decision has been pronounced and has obtained permanent legal force, and the applicants no longer pursue further legal remedies, the decision may be enforced. Both determinations are formally enforceable. The determination of the Gianyar District Court may be followed up by recording the adoption at the relevant administrative authority, whereas the determination of the Banyumas District Court is implemented by not recording the adoption. Nevertheless, the enforceability of decisions does not automatically reflect the fulfillment of substantive legal certainty if such decisions contradict one another in similar cases.

In principle, judges have the authority to examine, adjudicate, and resolve a case. However, it cannot be disregarded that there are other factors inherent to judges, such as religious background, level of education, and social environment, which may influence judicial considerations in rendering decisions or determinations (Mufarrichah, B. N., 2024, 70). Judges are obligated to examine and decide cases based on the prevailing legal provisions. Accordingly, every decision rendered must be grounded in law and provide legal certainty, namely the assurance that the law is effectively upheld, that individuals are entitled to obtain their rights according to the law, and that decisions can be effectively enforced (Mertokusumo, S., 2010, p. 108).

The disparity in determinations in interfaith adoption cases has implications for the divergence between legal certainty and substantive justice. On the one hand, an approach emphasizing the best interests of the child reflects justice and utility. On the other hand, the disregard of imperative norms has the potential to weaken legal certainty and create uncertainty within society. Disparity in judicial decisions is a common phenomenon in the Indonesian judicial system, not only in interfaith adoption cases but also in various other family law issues such as interfaith marriage and child custody for divorced interfaith couples (Kurniawan, M. B., et al., 2023, p. 342).

Disparity may occur due to several factors, including: (1) differences in judges' interpretation of existing legal norms; (2) differences in the methods of legal reasoning employed by judges; (3) ambiguity of norms that do not explicitly prohibit or permit a legal act; (4) judicial independence based on the autonomy of judicial power; and (5) considerations of substantive justice developed by judges based on varying facts presented in court (Kurniawan, M. B., et al., 2023, p. 343).

From the perspective of legal certainty theory, differences in determinations can only be justified if there are significant differences in legal facts or if legal norms provide clear discretionary space for judges. However, in these two determinations, the primary legal facts are relatively similar, namely the existence of religious differences between prospective adoptive parents and the prospective adopted child. Therefore, such disparity indicates that the application of legal certainty theory has not been fully realized in judicial practice concerning interfaith adoption.

Thus, it can be concluded that the application of legal certainty theory to the disparity between the Determination of the Gianyar District Court Number 76/Pdt.P/2025/PN Gin and the Determination of the Banyumas District Court Number 9/Pdt.P/2018/PN Bms demonstrates that inconsistencies in the application of legal norms still persist. This condition has the potential to weaken legal certainty and create uncertainty for individuals seeking interfaith adoption, thereby necessitating clearer guidelines or more uniform interpretation to ensure legal protection for children and the parties involved.

## CONCLUSION

First, concerning the legal reasoning of the panel of judges in the Decision of the District Court of Gianyar Number 76/Pdt.P/2025/PN Gin and the Decision of the District Court of Banyumas Number 9/Pdt.P/2018/PN Bms, this study concludes that the disparity in outcomes is attributable to differences in how judges interpret and prioritize the applicable legal norms. The judges of the District Court of Gianyar place greater emphasis on the recognition of Balinese customary law as well as the broad application of the principle of the best interests of the child, thereby interpreting the requirement of religious similarity in a flexible and alternative manner. In contrast, the judges of the District Court of Banyumas interpret the provisions of Article 39 paragraph (3) of Law Number 35 of 2014 in conjunction with Government Regulation Number 54 of 2007 in an imperative and strict manner, prioritizing the protection of the child's right to religion as the primary consideration, thus rejecting the application for interfaith adoption.

Second, when examined through the lens of Sudikno Mertokusumo's theory of legal certainty, this study concludes that such disparity in judicial determinations reflects the عدم fulfillment of legal certainty in the practice of interfaith adoption adjudication. Although both judges rely on legally accountable juridical grounds, differing interpretations of the same legal norms result in decisions on cases with similar characteristics becoming unpredictable for justice seekers. This condition contradicts the elements of legal certainty as articulated by Sudikno Mertokusumo, which require that the law be applied consistently, be foreseeable, and protect citizens from unequal treatment without clear justification.

Based on the foregoing, this study affirms that disparities in court determinations in interfaith adoption cases indicate inconsistency in the application of positive law, particularly concerning the requirement of religious similarity. Within the framework of a state governed by the rule of law, judges should base their decisions on prevailing positive legal norms, thereby avoiding deviations that may lead to legal uncertainty. Therefore, regulatory clarification and harmonization are necessary to ensure that judicial practices operate consistently, without neglecting the protection of the rights and the best interests of the child.

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