

International Child Abduction Dalam Pengasuhan Anak Pasca Perceraian Perkawinan Campuran Beda Kewarganegaraan di Indonesia = International Child Abduction in Child Custody After Divorce in Mixed Marriages of Different Nationalities in Indonesia

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Abstrak

Penelitian ini menganalisis tentang bagaimana penanganan sengketa international child abduction yang terjadi setelah adanya perceraian dari sepasang suami istri yang telah melangsungkan perkawinan campuran beda kewarganegaraan. Perbedaan hukum yang berlaku antara suami dan istri, mempengaruhi status personal anak tersebut dalam berhadapan dengan hukum. International child abduction diatur dalam the Hague Convention on the Civil Aspects of International Child Abduction 1980. Indonesia belum menandatangani konvensi tersebut sehingga penanganannya mengacu pada undang-undang nasional seperti Undang-Undang Perlindungan Anak, Undang-Undang Perkawinan, Undang-Undang Kewarganegaraan RI, dan Undang-Undang Kesejahteraan Anak. Penanganan kasus ini di Indonesia melibatkan instansi seperti KPAI, Kementerian Luar Negeri, dan Kedutaan Besar. Selain melibatkan instansi, pada umumnya proses pengembalian anak dalam penanganan international child abduction dapat mengikuti perjanjian bilateral antara kedua negara, tetapi Indonesia belum memiliki perjanjian bilateral terkait international child abduction dengan negara-negara seperti Amerika Serikat, Singapura, Belanda, dan Prancis. Salah satu yang menjadi permasalahan besar dalam menangani international child abduction di Indonesia adalah Indonesia belum menjadi negara anggota the Hague Convention on the Civil Aspects of International Child Abduction dan belum meratifikasi konvensi tersebut. Penyelesaian international child abduction di pengadilan bisa menghasilkan putusan pengembalian anak atau penetapan hak asuh anak berdasarkan prinsip the best interest of the child dan prinsip habitual residence. Namun, sebagai negara yang belum meratifikasi konvensi, Indonesia masih menghadapi kesulitan dalam menangani kasus international child abduction secara efektif. Indonesia tentu membutuhkan regulasi berupa undang-undang yang jelas untuk menangani kasus international child abduction, yang mencakup Central Authority yang sesuai dengan konvensi untuk menjadi perantara antar negara, serta prosedur pengembalian anak tersebut ke negara asal atau negara habitual residence-nya.

.....This research analyses how to handle disputes of international child abduction that occur after the divorce of a couple who have conducted an intermarriage with different nationalities. The differences in the applicable laws between the husband and wife affect the personal status of the child when dealing with the law. International child abduction is regulated by the Hague Convention on the Civil Aspects of International Child Abduction 1980. Indonesia has not signed this convention, so the handling in Indonesia refers to national laws such as the Child Protection Act, the Marriage Act, the Indonesian Citizenship Act, and the Child Welfare Act. The handling of this case in Indonesia involves institutions such as KPAI, the Ministry of Foreign Affairs, and the Embassy. Besides involving institutions, generally, the process of returning the child in the handling of international child abduction can follow bilateral agreements between the two countries, but Indonesia does not yet have bilateral agreements related to international child abduction with countries such as the United States, Singapore, the Netherlands, and France. One of the

major issues in handling international child abduction in Indonesia is that Indonesia has not become a member state of the Hague Convention on the Civil Aspects of International Child Abduction and has not ratified the convention. The resolution of international child abduction in court can result in a decision to return the child or the determination of child custody based on the principle of the best interest of the child and the principle of habitual residence. However, as a country that has not ratified the convention, Indonesia still faces difficulties in handling cases of international child abduction effectively. Indonesia certainly needs clear regulations in the form of laws to handle cases of international child abduction, which include a Central Authority in accordance with the convention to act as an intermediary between countries, as well as procedures for returning the child to the country of origin or their habitual residence country.