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PROCEEDING INTERNATIONAL CONFERENCE ON LAW & SOCIETY 2017

PROCEEDING

INTERNATIONAL CONFERENCE ON

# LAW AND SOCIETY



YOGYAKARTA, 04 – 07 APRIL 2017

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



— P R O C E E D I N G —

INTERNATIONAL CONFERENCE ON  
**LAW AND  
SOCIETY**

Yogyakarta, 04 – 07 April 2017

LP3M & Faculty of Law Universitas Muhammadiyah Yogyakarta  
2017

## **PROCEEDING**

### **International Conference on Law and Society**

Yogyakarta, 04 – 07 April 2017

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# Message from Chairman

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## **Yordan Gunawan**

Chairman, International Conference on Law and Society 6,  
Universitas Muhammadiyah Yogyakarta

Assalaamu'alaikumWarahmatullahiWabarakatuh,

In the Name of Allah, the most Gracious and the most Merciful. Peace and blessings be upon our Prophet Muhammad (S.A.W).

First and foremost, I felt honoured, on behalf of the university to be warmly welcomed and to be given the opportunity to work hand in hand, organizing a respectable conference. Indeed, this is a great achievement towards a warmers multilateral tie among Universitas Muhammadiyah Yogyakarta (UMY), International Islamic University Malaysia (IIUM), Universiti Islam Sultan Sharif Ali (UNISSA), Universiti Sultan Zainal Abidin Malaysia (UNISZA), Fatoni University, Istanbul University, Fatih Sultan Mehmet Vakif University and Istanbul Medeniyet University.

I believe that this is a great step to give more contribution the knowledge development and sharing not only for eight universities but also to the Muslim world. Improving academic quality and strengthening our position as the procedures of knowledge and wisdom will offer a meaningful contribution to the development of Islamic Civilization. This responsibility is particularly significant especially with the emergence of the information and knowledge society where value adding is mainly generated by the production and the dissemination of knowledge.

Today's joint seminar signifies our attempts to shoulder this responsibility. I am confident to say that this program will be a giant leap for all of us to open other pathways of cooperation. I am also convinced that through strengthening our collaboration we can learn from each other and continue learning, as far as I am concerned, is a valuable ingredient to develop our universities. I sincerely wish you good luck and success in joining this program

I would also like to express my heartfelt thanks to the keynote speakers, committee, contributors, papers presenters and participants in this prestigious event.

This educational and cultural visit is not only an avenue to foster good relationship between organizations and individuals but also to learn as much from one another. The Islamic platform inculcated throughout the educational system namely the Islamization of knowledge, both theoretical and practical, will add value to us. Those comprehensive excellent we strived for must always be encouraged through conferences, seminars and intellectual-based activities in line with our lullaby: The journey of a thousand miles begin by a single step, the vision of centuries ahead must start from now.

Looking forward to a fruitful meeting.

Wassalamu'alaikumWarahmatullahiWabarakatuh

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# Foreword

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## **Trisno Raharjo**

Dean, Faculty of Law, Universitas Muhammadiyah Yogyakarta

Alhamdulillah all praise be to Allah SWT for his mercy and blessings that has enabled the Fakultas Hukum, Universitas Muhammadiyah Yogyakarta in organizing this Inaugural International Conference on Law and Society 6 (ICLAS 6).

This Conference will be providing us with the much needed academic platform to discuss the role of law in the society, and in the context of our two universities, the need to identify the role of law in furthering the progress and development of the Muslims. Muslim in Indonesia and all over the world have to deal with the ubiquity of internet in our daily lives life which bring with it the advantages of easy access of global communication that brings us closer. However, internet also brings with it the depraved and corrupted contents posing serious challenges to the moral fabric of our society. Nevertheless, we should be encouraged to exploit the technology for the benefit of the academics in the Asia region to crat a platform to collaborate for propelling the renaissance of scholarship amongst the Muslims.

This Conference marks the beginning of a strategically planned collaboration that must not be a one off event but the beginning of a series of events to provide the much needed platform for networking for the young Muslim scholars to nurture the development of the Muslim society.

UMY aims to be a World Class Islamic University and intend to assume an important role in reaching out to the Muslim ummah by organising conferences hosting prominent scholars to enrich the developmment of knowledge. This plan will only materialise with the continous support and active participation of all of us. I would like to express sincere appreciation to the committee in organising and hosting this Conference.

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# Adequacy of the Law in Protecting the Rights of Adopted Children in Malaysia

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## **Abstract**

Adoption is one of the means to protect children who have been deprived of parental care. The United Nation Convention on Rights of Child guaranteed such protection and as in other action concerning children, the principle of the best interest of the child must be primarily considered by the State parties when dealing with the process of adoption. In Malaysia, adoption process is governed under two main legislations, i.e. Adoption Act 1952 and Registration of Adoption Act 1952. This paper addresses the extent of these legislations and practices of the Court in Malaysia in ensuring the best interest of the child is guaranteed when dealing with adoption procedures and the protection provided after the adoption. One of the main issues to be highlighted is concerning the citizenship of the adopted child, particularly in a case where the child is not from Malaysia. Does the law give equal protection as provided to the adopted child born in Malaysia? This paper uses a qualitative data collection method where in-depth document analysis is carried out. Primary sources such as the Acts, Regulations, court orders and decision are scrutinised. On the other hand, secondary sources that are studied include law reports, law reviews and legal periodical articles. The study is significant as it addressed crucial concerns raised in reference to the current laws relating to the protection of adopted children in Malaysia. The paper ends with some possible recommendations that may spur improvement to the present legislations in ensuring that the rights of adopted children in Malaysia are duly protected.

Keywords: *adoption, best interest of the child, protection, Malaysian*

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## **I. Introduction**

Adoption is a lifelong experience that affects adopted children and adults, and birth and adoptive families. It is both a legal and a social process. The purpose of adoption is to provide every child legally available for adoption with the stability and security of new and permanent family ties, giving paramount consideration in every respect to the child's best interests. Adoption is also one of the means to protect children who have been deprived of parental care. It is a common practice in many countries in providing children in need with permanent family care.

Alternatively, it is also one of the means for childless couples to have children. The practice of adoption allows a child to be transferred from his or her birth parent to adoptive parent legally. The United Nation Convention on the Rights of the Child 1989 (hereinafter referred to as the UNCRC) provides adoption as substitute or alternative care for children who have been deprived of family environment other than foster care, *kafala*<sup>1</sup> and residential care.<sup>2</sup> Substitute care basically refers to a service that is designed for substitution of natural parental care, either partially or wholly and it is still the major child welfare service.<sup>3</sup> Thus, vulnerable children like orphans as well as those who have been abused, neglected or abandoned by their birth parents require substitute care in ensuring that their wellbeing is upheld.

## II. Discussion

### Application of Best Interest of the Child Principle in Adoption in the International Legal Framework

International adoption legislation and practice has purported to take into account the principle of “best interest of the child.” As discussed above, the United Nations Convention on the Rights of the Child (UNCRC) specifies adoption as one of the avenues for deprived children of family environment and the process for adoption must paramountly be in the best interest of the child.

Article 20 of the UNCRC states that;

“any child who is temporarily or permanently deprived of his or her family environment is entitled to special protection and assistance from the State, which could be in the form of adoption, a foster family, *kafala* in Islamic States, or, if necessary, placement in suitable institution for the care of children. When choosing among these various solutions, one has to take into account the need for continuity in the education of the child, as well as ethnic origin, religion, language and culture.”

While Article 21, requires;

“The States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) ensure that the adoption of a child is authorized only by competent authorities
- (b) recognize that inter-country adoption may be considered as an alternative means of the child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;
- (c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.

It is important to note that for certain specific actions, including adoption and separation from parents against their will, the UNCRC requires that the best interests be the determining factor, whereas for other actions it has to be a primary consideration, which does not exclude other considerations to be taken into account.<sup>4</sup> The ratified countries of the UNCRC are under the duty to provide adoption processes that uphold the best interest of the child as in other action concerning children.

### Adoption in Malaysia

Malaysia as one of the ratified countries has enacted legislations that provide comprehensive processes of adoption. There are two legislations that govern adoption of children in Malaysia, namely Adoption Act 1952 (hereinafter referred to as AA 1952) and Registration of Adoption Act 1952 (hereinafter referred to as RAA 1952). Adoption under the AA 1952 is made through the court’s order and it is only applicable to the non-Muslim.<sup>5</sup> Adoption under this Act will confer the adopted child a legal status of being the legitimate child of the adoptees and as such will be entitled to all rights as the biological child born in wedlock of the adopted parents.<sup>6</sup> RAA 1952 on the other hand is applicable to both Muslims and non-Muslims. Unlike AA 1952, the Act only provides for registrations of adoptions without affecting the legal and biological status of the adopted child. The Act seems to be in line with the principle of Islamic law. Adoption through this

act is also known as de facto adoption, which means “existing in fact, whether legally recognized or not”. Under De facto adoption the child is being raised, supported and educated by any person or husband and wife as their child without affecting his legal and biological status as mentioned above.<sup>7</sup>

## **Process of Adoption**

### **1. Adoption Act 1952**

The application of adoption under AA 1952 is made to the court and the applicant/s must fulfil certain requirements as provided in the Act. There is a provision which stipulates a minimum age of the adopter to be at least twenty five years old and at least twenty one years older than the child or over twenty one years if he or she is a relative of the child. The Act also prohibits the adoption of female children by a sole male applicant unless under special circumstances. The application is commenced by filing an adoption petition at the High Court of Malaya (or the Sessions Court). An adoption petition is supported by an affidavit affirmed by the adoptive parents. The adoptive parents are ordinarily required to obtain express consent from the child’s birth parents to the adoption. However, the court has the discretion, pursuant to Section 5(1) of the Adoption Act, to dispense with the birth parents’ consent if, for example, the child has been abandoned, ill-treated, or if consent is being unreasonably withheld.

Adoption hearings are conducted confidentially in the judge’s chambers. At the first hearing, the court will grant an interim order for the appointment of a social welfare officer as the guardian *ad litem* (court appointed guardian) to investigate the welfare of the child. The guardian *ad litem* will monitor the home environment and will interview the adoptive parents and the child. The welfare officer will then prepare a welfare report for the court either to support or oppose the adoption application. The court will usually fix the subsequent hearing about 3 months from the date of the first hearing to enable the welfare officer sufficient time to complete his investigations. At the second hearing, the court will consider the welfare report and decide the application in the best interests of the child. The court is also entitled to and may interview the adoptive parents to confirm their intentions and the child to ascertain his or her wishes.

If the adoption application is allowed, the order for adoption will be sealed and a copy will be sent to the National Registration Department for registration in the Adopted Children Register. The National Registration Department will then cancel the original birth certificate and re-issue birth certificate for the adopted child. The new birth certificate will carry the name of the adoptive parents and the child as if the child was born to the adoptive parents. Significantly, the new birth certificate will not have any reference to the adoption or to the child’s birth parents.

### **2. Registration of Adoption Act 1952**

RAA 1952 provides for the registration of adoption upon application made by the adoptive parents of a child under the age of eighteen years who has never been married and is in the custody of, and is being brought up, maintained and educated by the adoptive parents. The adopted child must be a permanent resident and have stayed with the adoptive parents for two years before an application for adoption can be made and the certificate of registration of adoption is issued by the National Registration Department. The provisions of RAA 1952 are to ensure the welfare and development of the adopted child, protection of the adopted child from exploitation and abuse and safeguards on adoption. The procedure under this Act is only by way of registration of the adoption at the National Registration Department.



### Effect of Adoption

A child adopted under the AA 1952 is legally considered a child born to the adoptive parents in lawful wedlock. According to section 9 of the Act, upon an adoption order being made, all rights, duties, obligations and liabilities of the birth parents, in relation to the future custody, maintenance and education of the adopted child, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adoptive parents as though the adopted child was a child born to the adoptive parents in lawful wedlock. The right to inheritance under the Wills Act 1959 and the Distribution Act 1958 is also transferred from the birth parents to the adoptive parents.<sup>8</sup>

In relation to adoption of Muslim child, the RAA 1952 does not confer any legal status and rights to the adopted Muslim child over the adopted parents. Registration is only a formality to document the adoption and to give recognition to the de-facto adoption. Failure to register shall not affect the validity of the adoption if all the necessary requirements are fulfilled.<sup>9</sup> As the Act only provides for registrations of adoptions without affecting the legal and biological status of the adopted children, accordingly, they cannot assume the name or inherit property of the adoptive parents. The non-conferment of legal status and rights to the adopted Muslim child by RAA 1952 is in fact in line with the precepts of Islam, in which it prohibits the severity of legal relationship between the child and the birth parents and every child should maintain his or her natural identity.<sup>10</sup> In the case of *Sean O'Casey Patterson v Chan Hoon Poh & Ors*,<sup>11</sup> the court held among others that the RAA 1952 was enacted to cater for Muslims whose personal laws are repugnant to adoption yet it is a common practice for Muslims in this country to "adopt" a child.

The interests and welfare of a Muslim child taken into custody by the adopted parents after the registration under this Act, nonetheless, will not be jeopardised as the adopted parents are morally bound to protect and care for the child as expound in the system of *kafala*. In matters like inheritance the fostered Muslim child may be entitled to benefit from the foster parents' property by way of gift (*hibah*) or the foster parents may devise not more than one third of their property by will (*wasiat*) to the child. The Islamic Family law Acts of the states in Malaysia (which govern the Muslims) also guaranteed the rights of the child accepted as a member of the family, particularly in the matter of financial support.<sup>12</sup>

### Whether The Laws Uphold The Best Interest Of The Child And Provide Adequate Protection

From the above discussion, it can be seen that the detailed requirements and processes of adoption under AA 1952 and RAA 1952 seem to reflect that the principle of the best interest of the child is highly emphasized, although the provisions did not clearly specify that the principle of best interest must be paramountly considered by the court as to what has been promulgated in the UNCRC.

There are several processes and requirements of adoption, which directly reflect the emphasis on the safeguarding of the best interest of the child in adoption order. Firstly, the requirement of fulfilling certain age differences between the adopter and adoptee. As being discussed, the proposed adopter/adopters must be at least 25 years old and being 20 or 18 years older than the adopted child under the AA 1952 and RAA 1952 respectively.<sup>13</sup> Indirectly, this requirement is to safeguard the interest of the child in which the child's wellbeing will be looked after by adult person/s with parental responsibilities. Additionally, the age gap requirement adequately establishes the usual parents and a child age gap in a family.

Secondly, the general requirement that a single male adopter is not allowed to adopt a female child in AA 1952<sup>14</sup> is also seen as a means to protect the interest of the female child. Such requirement is to prevent the child from being exposed to any possible mistreatment by the proposed male adopter, for instance being sexually abused or rape. Conversely, there is no similar requirement in the RAA 1952.

Consent of the natural parents to the adoption is the most fundamental requirement in the adoption process and is another important factor to safeguard the interest of the adopted child. As being discussed, an adoption order or registration of adoption order can only be made by the court with the consent of the natural parent/s except in some circumstances where the court is satisfied that the consent may be dispensed with based on several valid reasons.<sup>15</sup> For instance, in cases where the natural parent has abandoned, neglected or persistently ill-treated the child; has persistently neglected or refused so to contribute to the maintenance of the child and person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld. The need to obtain the consent of natural parents is to ensure that the adoption is truly in the best interest of the child and it may be dispensed with if it is contrary to the welfare of the child. This also indicates that the requirement of parental consent in an adoption case is not mandatory when it is in conflict with the welfare of the child.

Another requirement that directly reflects the consideration of best interest of the child is the need for the child to be in the continuous care of the proposed adopter before the adoption. Under the AA 1952, the requirement is for three months before an application for an adoption can be made whilst RAA 1952 requires the child to be cared and in the possession of the adopter for at least two years. Under the AA 1952, the purpose of this requirement among others, is to ensure the child's suitability and adaptability with the proposed adopted parents. The period of care and in possession of the adopted parents under the RAA 1952 is much longer compared to AA 1952, and within this period, the child must also be maintained by the proposed adopter. This is to ensure that child's well being is protected before the adoption can be legalized.

Appointment of Guardian *ad litem* before the court granted an adoption order under AA 1952 is also seen as one of the ways of safeguarding the best interest of the child in an adoption order. As discussed above, the purpose of appointment of guardian *ad litem* is mainly to monitor the adoption process and to determine the suitability of the applicant to the proposed adopted child by conducting an investigation. The investigation among others would determine that for the welfare of the child, the Court should be asked to make an interim order<sup>16</sup> on the applicant, or in the making of an adoption order, to impose terms or conditions requiring the adopter to make any particular provision for the child.<sup>17</sup>

The effect of adoption under the AA 1952 is also for the purpose of safeguarding the best interest of the child. After an adoption order has been granted by the court, the adopted parents will assume the parental responsibility as if they are the natural parents and the adopted child is considered to be the legal child as if he or she was born to the adopter in a lawful wedlock. The court will issue a certificate of adoption, which is similarly valid as the birth certificate. Conversely, the registration of adoption under the RAA 1952 does not have a similar effect. RAA 1952 only gives the right of custody to the adoptive parents over the adopted child. There is no ascription as to the paternity of the adopted father to the adopted child and thus, would not render parental status over the adopted children. Nevertheless, the registration is crucial as it will render benefits to the adopted children in education, application for an identity card and passport and more importantly, the nationality or citizenship. This is in line with the concept of *kafala* or

fostering in Islam, in which it would bring huge benefit to the Muslim adopted children and as such their best interest is duly protected.

### **Citizenship of Adopted Children**

Both the Adoption Act and the Registration of Adoptions Act are silent on the issue of citizenship for adopted children. Whether Malaysian citizenship is automatically acquired by adopted children whose original immigration status are unknown or are foreigners are not specifically addressed. Although Malaysia has acceded to UNCRC, it has done so with an express reservation to Article 7 which relates to the right of a child to acquire a nationality. The article stipulates:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents”.

The unfortunate result is that where the child's original immigration status is uncertain or unknown, the National Registration Department will declare the child as a “permanent resident” or “non-citizen” on the re-issued birth certificate or the certificate of adoption. The National Registration Department will disregard the fact that the adoptive parents may be Malaysian citizens. In such circumstances, a judicial review application may be filed to challenge the decision of the National Registration Department (NRD) for failing to recognise the adopted child's citizenship as Malaysian.<sup>18</sup>

A number of adoption cases have gone through judicial reviews in resolving this matter. For instance in an unreported case of *Lee Chin Pon & Anor v. Registrar General of Births and Deaths Malaysia* (2010), the High Court Judge allowed the Malaysian adoptive parents' application for judicial review which challenged the NRD's decision in registering their child (a stateless child who was born in Malaysia) as a “permanent resident” in his birth certificate. The court granted *inter alia*, the declaration for their child's Malaysian citizenship which was an automatic operation of law 1919 See Article 14(1)(b) of the Federal Constitution 1957: “PART II Citizenship By Operation Of Law Of Persons Born On Or After Malaysia Day [Article 14 (1) (b)],, as he was born in Malaysia to Malaysians who were lawfully married. In summary, the case is authority for the principle that a lawfully adopted child born in Malaysia on or after Malaysia Day (16.9.1963) has the constitutional right to be recognised as a citizen, provided either of the adoptive parents is a citizen or permanent resident of Malaysia; and a child who is born in Malaysia on or after Malaysia Day has the constitutional right to be recognised as a citizen of Malaysia, provided he or she is not born a citizen of any other country. The case also emphasizes the supremacy of the Federal Constitution and reminds of the necessity for the Court to protect the constitutional rights of all and sundry, including the most defenceless adopted children.<sup>20</sup>

The above case was referred in *Foo Toon Aik v Ketua Pendaftar Kelahiran & Kematian, Malaysia*.<sup>21</sup> However, the High Court in *Foo Toon Aik's* case refused to grant similar declaration that the child is automatically a citizen of Malaysia by operation of law because the biological parents in this case did not go through a valid marriage. The father is a Malaysian citizen while the mother is a Thai woman; had undergone a tea ceremony in Malaysia as a way of solemnizing their marriage. However, the so-called marriage was neither registered under the governing laws of Thailand (Civil & Commercial Code of 1935, 1976 and 1990) nor in Malaysia, under the Law Reform (Marriage & Divorce) Act 1976. Thus the marriage was invalid. As a result of the said relationship, a male child was born in Malaysia in March 2006. Due to his illegitimate status, he

took on the citizenship of his Thai mother and was listed as non-citizen on his original birth certificate. The relationship between the parties later broke down and the child's mother returned to Thailand, voluntarily relinquishing her parental rights to the father. The father's application for an adoption order to acquire guardianship rights over the child was granted by the High Court, but the NRD did not change the status of non-citizen of the child when it issued a new birth certificate. The court has considered the child as an illegitimate child since there is no valid marriage and thus is not entitled to be declared as a citizen of Malaysia by operation of law. It is submitted that the decision of the court will definitely affect the child's well being and interest as he will be deprived of many rights as enjoyed by a citizen such as the right to receive education in local schools and treated differently from any future children of his adopted father.

Similar decision was held in the case of *Yu Sheng Meng & Anor v Ketua Pengarah Pendaftaran Negara & Ors*,<sup>22</sup> since the adopted mother failed to produce any evidence about the whereabouts of the child's biological parents and thus, has not fulfilled the requirements of Article 14(1)(b), section 1(a) of Part II of the Second Schedule and section 17 Part III of the Second Schedule of the Federal Constitution which requires to be shown that those biological parents were not only legally married but at least one of them was a citizen of, or permanently resident in, the Federation at the time of the child's birth.

However, in an unreported case of *Leong Peng Keong & Anor v Registrar-General of Birth and Deaths Malaysia*<sup>23</sup> and a recent case *Pang Wee See & Anor v Registrar-General of Birth and Deaths Malaysia*,<sup>24</sup> the courts in both cases agreed with the decision of Lee Chin Poh's case in which the applications for judicial review to confer Malaysian citizenship by operation of law to the adopted child were granted even though the biological parents in both cases were untraceable. The basis of the decisions in both cases lies in the effect of section 9(1) of AA 1952 in which it recognises the adopted child as a child born to the adopter in lawful wedlock. Thus, when a new birth certificate was issued under section 25A of the same Act, by operation of law, the requirements of Article 14(1)(b), section 1(a) of Part II of the Second Schedule and section 17 Part III of the Second Schedule of the Federal Constitution have been fulfilled. Therefore the child is a Malaysian citizen by enforcement of law.

### III. Conclusion

The findings from the analysis of AA 1952 and RAA 1952 seems to suggest that generally, both Acts adequately protect the interest and well being of adopted child. The strict requirements of the procedural laws directly reflect the consideration of best interest of the child in adoption application processes. Although both Acts confer different legal effect to the adopted child, it does not mean that there is an unequal protection provided by both Acts which may jeopardise the adopted child's welfare. The RAA 1952 provides an option to the Muslims who may want to register the adoption, although no legal status and rights as a natural child is conferred to the adopted child. This is in line with the precepts of Islam, in which it prohibits the severity of legal relationship between the child and the birth parents and every child should maintain his or her natural identity. In regards to citizenship, the recognition of adopted children as citizens appears to be in the discretion of the NRD and the court. The AA 1952 is silent on this matter and citizenship is not automatically granted when the court made an order of adoption. The application for judicial review to the court in determining the citizenship of the child involves another court procedure which is time consuming and costly. Additionally, it is not guaranteed that the court will grant the application. Thus, this will undeniably deprive the adopted child of many

rights as enjoyed by a citizen and ultimately may affect the overall well being of the adopted child. It is hoped that the legislature amends the existing law or enacts specific legislation to provide for the inclusion of adopted children as citizens in ensuring that their interest and welfare are duly protected.

## ENDNOTES

- 1 *Kafala* is defined as “the commitment to voluntarily take care of the maintenance, of the education and of the protection of a minor, in the same way a parent would do for a child. It resembles foster-parenting and is seen as “primarily a gift of care and not a substitute for lineal descent.” See International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), “Specific Case: Kafalah,” Fact Sheet No51, (Geneva: ISS, 2007).
- 2 UNCRC, Article 20
- 3 Child Welfare. “Substitute care”. The Encyclopedia Americana (International Edition), Vol.6, 1982, at p 463.
- 4 UNHCR Guidelines on the Formal Determination of the Best Interests of the Child, p.6. assessed on 27 February 2017 at <http://www.unicef.org/violencestudy/pdf/BID%20Guidelines%20%20provisional%20release%20May%2006.pdf>
- 5 Section 31 of Adoption Act 1952
- 6 See section 9 of Adoption Act 1952
- 7 Norliah Ibrahim, et.al., Family Law for the Non-Muslim in Malaysia, 2014 IIUM Press, IIUM Kuala Lumpur, at 366
- 8 <http://www.mahwengkwai.com/adoption-malaysia/>, assessed on 9 March 2017.
- 9 Section 11 of Registration of Adoption Act 1952
- 10 Dejo Olowu, Children’s Rights, International Human Rights and the Promise of Islamic Legal Theory, available at <http://www.ajol.info/index.php/Idid/article/viewFile/52894/41495>
- 11 [2011] 3 CLJ 722.
- 12 For instance, Section 78 of the Islamic Family Law (Federal Territory) Act 1984 provides that that where a man has accepted a child who is not his child as a member of his family, he is duty bound to maintain the child.
- 13 See section 4(1)(a) of AA 1952 and 19(2)(a) of RAA 1952
- 14 See section 4(2) of AA 1952
- 15 See section 5 of AA & 6(1)(b) of RA
- 16 See AA, s. 17(1). The interim order shall be in accordance with Form No 6 of the first schedule. See Adoption Rules 1955, rule 17.
- 17 Adoption Act 1952, s. 13(1e). For the condition during interim order see *Re Baby M (an infant)* [1994] 2 MLJ 635.
- 18 <http://www.mahwengkwai.com/adoption-malaysia/>, assessed on 9 March 2017.
- 19 See **Article 14(1)(b) of the Federal Constitution 1957: “PART II Citizenship By Operation Of Law Of Persons Born On Or After Malaysia Day [Article 14 (1) (b)],**
- See **Section 1(a), Part II Second Schedule of the Federal Constitution 1957: 1. Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say: (a) every person born within the Federation of whose parents one at least is at time of the birth either a citizen or permanently resident in the Federation.”**
- 20 <http://www.mahwengkwai.com/citizenship-for-adopted-children-a-malaysian-perspective/>
- 21 [2012] MLJU 205
- 22 [2015] MLJU 637
- 23 Application for Judicial Review No. 25-103-05 of 2014
- 24 [2016] 6 MLJ 396

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