

## Judicial Rechtsvinding in the Absence of Legal Norms: A Case Study on the Revocation of Child Adoption in Indonesia

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**Abstract:** In Indonesia, the legal framework provides a regulatory basis for the adoption of children, but remains silent on the possibility and procedure for revoking such adoption. Using a normative juridical method and a case study approach, this article examines the role of judicial rechtsvinding (legal discovery) in resolving legal disputes in the absence of explicit statutory norms, with a focus on the revocation of child adoption. Drawing on a case study of Decision No. 410/Pdt.G/2020/PN.Bdg issued by the Bandung District Court, the study analyzes how the judge employed the method of *argumentum a contrario* to construct legal reasoning that justified the cancellation of a legally recognized adoption. The analysis reveals that the court integrated both juridical and sociological considerations, placing the child's best interests at the center of its decision. This case illustrates how judicial discretion can function as a form of normative governance, especially in areas of law where legislative silence prevails. It also underscores the evolving role of the judiciary in shaping family law jurisprudence and filling legal gaps with ethically grounded reasoning. The findings contribute to the discourse on judicial activism, progressive legal interpretation, and child protection in civil law systems.

**Keywords:** Adoption Revocation; *Argumentum a Contrario*; Judicial Interpretation; Legal Vacuum; Rechtsvinding.

### Introduction

In Indonesia's civil law system, written legislation serves as the primary and authoritative source of legal norms. Judicial actors are expected to apply existing laws strictly and systematically, which in theory ensures legal certainty<sup>1</sup>. However, in practice, social dynamics and emerging legal needs often move faster than the pace of legislative reform. As society evolves, new types of disputes and legal questions arise—many of which are not yet accommodated within existing regulatory frameworks. In these contexts, judges are increasingly required to go beyond mechanical

<sup>1</sup> Ayu Putriyanti, "Synchronization Between Act of Governance Administration and Act of Administrative Court to Develop Good Governance," *Proceedings of the International Conference on Ethics in Governance (ICONEG 2016)*, Atlantis Press, December 2016, 85–88, <https://doi.org/10.2991/iconeg-16.2017.20>.

legal application and engage in judicial interpretation and construction, particularly through the process known as *rechtsvinding* or legal discovery<sup>2</sup>.

One area that illustrates this gap between law and reality is the issue of child adoption revocation. While child adoption procedures are well regulated in Indonesia through Government Regulation No. 54 of 2007 and related laws, no specific rules exist regarding the revocation of a legally recognized adoption. Such absence of regulation becomes problematic when the adopted child no longer wishes to remain under the guardianship of the adoptive parent, or when disputes arise between biological and adoptive parents. In such cases, judges are required to respond not only to legal ambiguity but also to the underlying social and ethical issues, particularly those concerning the best interests of the child.

A striking case that demonstrates this phenomenon is Decision No. 410/Pdt.G/2020/PN.Bdg, in which the District Court of Bandung granted a petition to revoke a previously approved child adoption. The court's reasoning did not rely on any explicit legal provisions, as no regulation governing adoption revocation exists in Indonesian law. Instead, the judge employed the method of *argumentum a contrario* to justify that, if the law provides for adoption to ensure the best interest of the child, then logically, when such interest is no longer served, the adoption may be annulled. This case raises important questions about the role of judges as legal norm creators and as agents of legal governance in the face of normative absence.

Judicial *rechtsvinding* and judicial activism have been the focus of recent legal scholarship, demonstrating that judges are no longer positioned merely as "mouthpieces of the law," but rather as active agents in discovering and shaping law when confronted with normative gaps. Augustine et al.<sup>3</sup>, Fernando<sup>4</sup>, and Purwendah<sup>5</sup> emphasize the importance of judicial activism in correcting weaknesses in criminal norms through constitutional review, while Lestari and Bustanuddin<sup>6</sup> highlight the role of *ultra petita* decisions as a form of progressive *rechtsvinding*. Other studies explore the interpretative methods employed by judges, such as *argumentum a contrario* or originalist approaches in criminal cases<sup>7</sup>. Collectively, these works reveal a growing trend in which

<sup>2</sup> Mashal Mufleh Jarrah, Safa Hakem Mestarih, and Ghazi Ayed Alghathian, "Judicial Interpretation of Legal Texts: A Study in Jordanian Legislation," *Cogent Social Sciences* 10, no. 1 (December 2024), <https://doi.org/10.1080/23311886.2024.2354359>.

<sup>3</sup> Oly Viana Augustine et al., "Constitutional Review of Criminal Norms: Does Indonesia Need Judicial Activism?," *The International Journal of Human Rights* 27, no. 4 (April 2023): 772–88, <https://doi.org/10.1080/13642987.2023.2185608>.

<sup>4</sup> Youngky Fernando, "Acts against Civil Law versus Acts Against Criminal Law Versus *Rechtsvinding* HogeRaad/Supreme Court Judge," *Journal Equity of Law and Governance* 3, no. 1 (March 2023): 72–82, <https://doi.org/10.55637/elg.3.1.6608.58-71>.

<sup>5</sup> Elly Kristiani Purwendah et al., "Civil Justice as An Option for Fulfilling Environmental Justice Through The Principles of *Ius Curia Novit* and *Rechtsvinding*," *Justitia Jurnal Hukum* 6, no. 1 (April 2022): 35–42, <https://doi.org/10.30651/justitia.v7i1.12808>.

<sup>6</sup> Amanda Dea Lestari and Bustanuddin, "Putusan *Ultra Petita* Mahkamah Konstitusi: Memahami Fenomena Holistik Penemuan Hukum (*Rechtsvinding*) Yang Progresif," *Limbago: Journal of Constitutional Law* 1, no. 1 (March 2021): 1–20, <https://doi.org/10.22437/limbago.v1i1.8635>.

<sup>7</sup> Peter Jeremiah Setiawan et al., "Originalist Interpretation: A Method of Discovery in Criminal Law (*Rechtsvinding* in Het Strafrecht)," *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 3 (August 2021): 5632–43, <https://doi.org/10.33258/birci.v4i3.2360>; Septriono Situmorang, Nurini Aprilianda, and Lucky Endrawati, "Legal Discovery Through Judicial Activism By Judges In Criminal Cases," *Mahadi: Indonesia Journal of Law* 4, no. 01 (February 2025): 38–46, <https://talenta.usu.ac.id/Mahadi/article/view/19724>; Gatot Sugiharto et al.,

rechtsvinding is understood as a judicial instrument to achieve substantive justice when written norms prove inadequate.

In the realm of constitutional law and the rule of law, various studies underline the urgency of addressing legal vacuums to safeguard legitimacy and legal certainty. Bigge<sup>8</sup> and Longo<sup>9</sup> discusses challenges to the rule of law in contexts lacking international judicial oversight, while Nggilu et al.<sup>10</sup> highlight the absence of judicial review of constitutional amendments in Indonesia as a pressing normative gap requiring reform. Maria<sup>11</sup> and Peirone<sup>12</sup> further illustrates how the concept of “living law” often serves as a judicial reference point in civil disputes where written norms fail to resonate with social realities. These studies collectively suggest that legal vacuums should not be seen as grounds for judicial passivity, but rather as opportunities for constructive legal development that is adaptive and responsive to evolving societal needs.

Research on child adoption, meanwhile, has highlighted the complexity of legal relationships between statutory norms and child protection. Hafidz<sup>13</sup> examines the position of adopted children as sole heirs in judicial decisions, showing the diversity of interpretation regarding their legal status. Ridwan<sup>14</sup> identifies practices of adoption without court approval, which create legal vulnerabilities for both children and adoptive parents. While these studies address important questions concerning the legal standing of adopted children, they do not engage with the possibility of revoking adoptions, leaving unexplored the question of how courts may annul adoption decisions when such arrangements contradict the best interests of the child.

Against this background, the present study offers novelty by analyzing judicial rechtsvinding in the context of child adoption revocation in Indonesia—an issue absent from positive law and largely neglected in academic literature. Unlike prior studies, which focus primarily on judicial activism in criminal or constitutional law, or on the legal position of adopted children, this article investigates how judges fill normative gaps through legal interpretation and sociological considerations in annulment cases. In doing so, it contributes a unique perspective to the discourse

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“Analysis Of Legal Discovery Methods By Judges In Rechterlijk Pardon’s Perspective to Solve Criminal Cases,” *Jurnal Jurisprudence* 14, no. 1 (June 2024): 1–22, <https://doi.org/10.23917/jurisprudence.v14i1.4397>.

<sup>8</sup> David Bigge, “Rule of Law Without International Courts,” *The Law & Practice of International Courts and Tribunals* 21, no. 3 (November 2022): 483–97, <https://doi.org/10.1163/15718034-12341487>.

<sup>9</sup> Erik Longo, “Time and Law in the Post-COVID-19 Era: The Usefulness of Experimental Law,” *Erik Longo*, ahead of print, September 1, 2021, <https://doi.org/10.5553/REM/.000062>.

<sup>10</sup> Novendri M. Nggilu et al., “The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards,” *Journal of Law and Legal Reform* 6, no. 2 (April 2025): 659–92, <https://doi.org/10.15294/jllr.v6i2.20888>.

<sup>11</sup> Burhan Sidabariba Maria, “Impacts of Living Law on Judges’ Decisions in Civil Disputes in North Sumatera,” *Russian Law Journal* 11, no. 4 (June 2023): 536–44, <https://www.russianlawjournal.org/index.php/journal/article/view/2496>.

<sup>12</sup> Franco Peirone, “The Rule of the Present, Not the Past,” *Jus Cogens* 3, no. 3 (October 2021): 229–56, <https://doi.org/10.1007/s42439-021-00045-2>.

<sup>13</sup> Jawade Hafidz, “The Juridical Analysis of Court Decisions Regarding Adopted Children in Their Position as Single Heirs,” *Jurnal Akta* 8, no. 4 (December 2021): 214–21, <https://doi.org/10.30659/akta.v8i4.18631>.

<sup>14</sup> Mahlil Ridwan, “The Practice of Child Adoption without Court Determination,” *Gender Equality: International Journal of Child and Gender Studies* 10, no. 1 (March 2024): 27–40, <https://doi.org/10.22373/equality.v10i1.20213>.

on judicial governance and child protection, while offering both academic and practical insights for the development of family law in Indonesia.

The central problem addressed in this article revolves around the role of the judiciary in exercising legal discovery in the face of normative absence—specifically, how a judge can revoke a legally established child adoption in the absence of any statutory regulation permitting such action. This raises questions about how judicial authority is constructed and justified in practice, particularly when balancing the principles of legal certainty, social justice, and child welfare. The problem also includes examining the methodologies used by judges in formulating legal reasoning and how extra-normative considerations—such as the child’s expressed wishes and the presence of bad faith by biological parents—are incorporated into legal decision-making.

This study aims to critically analyze how judges employ rechtsvinding in resolving legal conflicts that lack clear normative foundations. It examines the reasoning in Decision No. 410/Pdt.G/2020/PN.Bdg to identify the interpretive and constructive methods used, particularly the application of argumentum a contrario. Furthermore, the article seeks to uncover how judicial reasoning integrates both legal and sociological considerations, especially in matters involving vulnerable populations such as children. In doing so, the article intends to shed light on the broader implications of judicial governance in Indonesia’s legal system, where judges act not only as interpreters of law but also as creators of legal meaning in response to pressing social needs. Ultimately, this article contributes to the theoretical discourse on judicial discretion, legal development, and the evolving role of the judiciary in safeguarding justice and human rights in the absence of explicit legal norms.

## Research Method

This research employs a normative juridical (doctrinal) approach<sup>15</sup>, which is the predominant methodology in legal scholarship for analyzing the content, coherence, and application of legal norms within a given system. This approach focuses on the systematic analysis of primary legal sources (statutes, regulations, and binding court decisions), secondary sources (authoritative legal commentaries, scholarly journals, and textbooks), and legal principles to understand, interpret, and critique the law as it stands (the law in books)<sup>16</sup>. Given that the core problem of this study is a normative gap—the absence of explicit statutory regulation on adoption revocation—this approach is particularly suitable. It allows for a critical examination of how positive law interacts with broader jurisprudential doctrines and how judges, as central legal actors, navigate this void through interpretation and reasoning (rechtsvinding)<sup>17</sup>.

To concretely explore this issue, the study is designed as an intrinsic case study. The unit of analysis is a single, pivotal judicial decision: Decision No. 410/Pdt.G/2020/PN.Bdg issued by

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<sup>15</sup> Tunggul Ansari Setia Negara, “Normative Legal Research in Indonesia: Its Origins and Approaches,” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

<sup>16</sup> Amy McEwan-Strand and Marit Skivenes, “Children’s Capacities and Role in Matters of Great Significance for Them,” *The International Journal of Children’s Rights* 28 (August 2020): 632–65, <https://doi.org/10.1163/15718182-02803006>.

<sup>17</sup> Moh Mujibur Rohman et al., “Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach and Analysis of Legal Materials),” *MAQASIDI: Jurnal Syariah Dan Hukum*, December 27, 2024, 204–21, <https://doi.org/10.47498/maqasidi.v4i2.3379>.

the Bandung District Court. This case was selected purposively as a critical case that clearly exemplifies judicial law discovery in a context of legislative silence. The case study design enables a deep, contextualized, and holistic analysis of the judicial reasoning process, moving beyond a mere doctrinal summary to uncover the logic, methods, and extra-legal considerations that informed the ruling.

Data collection was conducted through documentary analysis. The primary legal material is the full text of Decision No. 410/Pdt.G/2020/PN.Bdg, including its factual findings, legal considerations, and dispositif. This was triangulated with relevant primary normative frameworks, specifically the Indonesian Civil Code (KUHPer), the Child Protection Law (Law No. 35 of 2014), and Government Regulation No. 54 of 2007 on Child Adoption. Secondary sources, such as academic articles, books on legal interpretation, and analyses of judicial activism, were systematically reviewed to construct the theoretical framework and contextualize the findings. Tertiary sources (legal dictionaries, encyclopedias) were used for conceptual clarity.

Data analysis proceeded through a qualitative-descriptive<sup>18</sup> and interpretative process, structured in three main phases:

- **Descriptive Reconstruction:** The factual matrix, legal claims, and the court's final decision were meticulously mapped out to establish a clear narrative of the case.
- **Doctrinal and Interpretative Analysis:** The core of the analysis involved deconstructing the judge's legal reasoning. This phase specifically focused on identifying and examining the use of the *argumentum a contrario* method. It assessed how the judge derived a legal basis for revocation from the inverse logic of existing adoption norms and principles.
- **Thematic Synthesis:** The reasoning was then analyzed for overarching themes and integrated considerations. This involved extracting how the court balanced juridical arguments (e.g., violation of custodial rights) with sociological and ethical considerations (e.g., the child's expressed will, psychological welfare, and the principle of the child's best interests). This synthesis highlights the interplay between formal legal sources and substantive justice in judicial governance.

Through this integrated methodological framework, the study does not only assess the internal legal logic of the decision but also elucidates its broader contribution to filling a legislative gap and shaping normative expectations within Indonesian family law jurisprudence.

## Discussion and Analysis

### *Case Description and Legal Standing*

Decision No. 410/Pdt.G/2020/PN.Bdg, issued by the Bandung District Court, serves as a significant case study in understanding how judges exercise the function of *rechtsvinding* (legal discovery) in situations where there is a legal vacuum, particularly in civil cases concerning the revocation of child adoption. The case revolves around the legal relationship between a child

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<sup>18</sup> Norman K Denzin and Yvonna S. Lincoln, *Handbook of Qualitative Research* (Yogyakarta: Pustaka Pelajar, 2009).



identified as F, her biological parents (Mr. R and Mrs. N, as Defendants), and her adoptive mother, Mrs. M, as the Plaintiff. Initially, F was legally adopted by Mrs. M through the court's decision No. 254/Pdt.P/2018/PN.Bdg dated April 9, 2018. Pursuant to this ruling, the adoption was formally recorded by the Civil Registration Office of Bandung City, granting it legal validity.

Following the adoption, F resided with Mrs. M, who provided for all her living and educational needs. Mrs. M also extended financial support to F's biological parents, even offering them accommodation in her apartment. However, over time, the relationship between the Plaintiff and the Defendants deteriorated—particularly after the Plaintiff withdrew her consent for the Defendants to remain in the apartment. This tension culminated in the Defendants reclaiming F on February 1, 2020, and prohibiting her from returning to Mrs. M's care.

The basis of the lawsuit lies in the fact that the adopted child was removed from the Plaintiff's custody and no longer lived with her, despite the continuing legal status of Mrs. M as the child's adoptive parent. Moreover, F expressed to her schoolteacher that she had never consented to the adoption and felt uncomfortable within the adoptive relationship. She admitted that the adoption was initiated under significant pressure from her biological parents and did not reflect her own will. This statement played a central role in constructing the argument that the adoption was inconsistent with the child's best interests—an essential principle underlying all adoption procedures.

In response, Mrs. M filed a lawsuit with the Bandung District Court, seeking the revocation of the adoption as established in Decision No. 254/Pdt.P/2018/PN.Bdg and requesting that the annulment be officially recorded by the civil registry authorities. Throughout the proceedings, Mrs. M submitted various pieces of evidence, including written statements, formal adoption documents, and communications indicating the child's discomfort and reluctance regarding the adoption arrangement.

Legally, Mrs. M's position as the adoptive parent was strongly supported by the original court decision and its registration with civil authorities. In contrast, the Defendants, while being the biological parents, no longer held full legal rights over the child following the finalized adoption. Nevertheless, the fact that F was returned to her biological parents' custody—and allegations that the adoption was financially motivated—added complexity to the legal structure of the case. Here lies a conflict between the formal legality of the adoption and the substantive justice surrounding the welfare of the child.

The uniqueness of this case lies in the absence of positive law explicitly regulating the revocation of child adoption. Existing laws, such as Government Regulation No. 54 of 2007 on the Implementation of Child Adoption, only detail the procedures and requirements for adoption, without addressing the possibility of revocation after a court decision has been issued and registered. This legal silence raises fundamental questions: Can a legally valid adoption be annulled? If so, who is entitled to request such annulment, and under what legal grounds can the court grant it?

Decision No. 410/Pdt.G/2020/PN.Bdg sets an important precedent by demonstrating that the court proceeded to hear and adjudicate the matter despite the absence of explicit statutory

regulation. The judge did not reject the case on the grounds of *rechtsvacuum* (legal void) but instead applied legal reasoning and principles of justice to construct new normative guidance through judicial interpretation. The facts revealed during the proceedings—including the child’s testimony, recorded communications, and the Defendants’ motives—formed the foundation of the court’s comprehensive legal consideration.

Consequently, the legal standing of the parties in this case is heavily dependent on how the judge interprets the purpose of adoption itself. If the primary aim of adoption is to ensure the child’s welfare and best interests, then any situation that contradicts this purpose may be justifiably used as a legal basis for revocation. This premise lays the groundwork for further discussion in the next section, which elaborates on the legal discovery methods employed by the judge in this case.

### ***Legal Vacuum and the Judge’s Duty to Discover Law***

One of the primary challenges in Indonesia’s civil law system arises when judges are confronted with legal issues that are not explicitly regulated in statutory provisions. In legal doctrine, such a situation is referred to as a legal vacuum (*rechtsvacuum*), where a real legal fact or dispute exists in society, yet no written norm is directly applicable<sup>19</sup>. In such cases, the role of the judge is not merely that of a “mouthpiece of the law,” but rather as an active legal subject responsible for discovering and establishing the applicable law to resolve the dispute. This duty is firmly emphasized in Article 10(1) of Law No. 48 of 2009 on Judicial Power, which states: “The court shall not refuse to examine, adjudicate, and decide upon a case brought before it on the grounds that the law is absent or unclear; instead, it must examine and adjudicate it.”

In the case concerning the revocation of child adoption, as reflected in Decision No. 410/Pdt.G/2020/PN.Bdg of the Bandung District Court, a significant legal vacuum was evident. Neither the Indonesian Civil Code (KUHPer), the Child Protection Law, nor Government Regulation No. 54 of 2007 provides any explicit legal basis for revoking a child adoption that has already been ratified through a court decision. The existing legal instruments only regulate the procedures for adoption, the administrative requirements, and the authorities competent to legalize the process. Consequently, when a petition or lawsuit seeking revocation is filed, there are no positive legal norms that the judge can directly refer to.

Nevertheless, the absence of written law does not equate to the absence of law itself. In modern legal theory, especially those acknowledging the role of jurisprudence and general principles of law, judges retain discretionary authority to construct legal norms through responsible legal reasoning<sup>20</sup>. This is in line with the principle of *ius curia novit*—the assumption that judges are deemed to know and understand the law, whether written or unwritten. Therefore, a judge is not permitted to dismiss a case solely due to the lack of an explicit rule, but is instead required to

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<sup>19</sup> Imam Sujono, “Urgency of Rechtsvinding and Jurisprudence in the Constitutional Court Authority,” *Journal of Constitutional Law Society* 1, no. 2 (September 2022): 161–78, <https://doi.org/10.36448/cls.v1i2.26>.

<sup>20</sup> Dhoni Yusra, “Politik Hukum Hakim Dibalik Penemuan Hukum (Rechtsvinding) dan Penciptaan Hukum (Rechtsschepping) pada Era Reformasi dan Transformasi,” *Lex Jurnalica* 10, no. 2 (2013): 63–71, <https://doi.org/10.47007/lj.v10i2.354>.

interpret and uncover legal and moral values that live within the society in order to achieve a fair resolution.

In this case, the Bandung District Court judge did not merely evaluate the legal facts presented in the courtroom, but also engaged in legal interpretation and normative construction to address a legal situation not covered by positive law. The judge assumed the role of a lawmaker by necessity—a creator of legal norms in the face of legislative silence—to ensure legal certainty and protection, particularly for the child as a vulnerable legal subject. Herein lies the importance of the *rechtsvinding* method: legal discovery carried out by judges through a series of logical, ethical, and sociological interpretive techniques.

Moreover, the legal vacuum in the context of child adoption revocation is not merely a procedural concern; it raises a deeper, more fundamental issue: how the law should protect the best interests of the child. According to Article 2 of Government Regulation No. 54 of 2007, the primary goal of child adoption is to serve the child's best interests. Therefore, when this objective is not fulfilled—or even contradicts the child's emotional well-being and psychological safety—judges must be afforded the space to re-evaluate the validity of the previously established legal status. In this way, the absence of legal norms places an ethical obligation upon the judge to act, rather than serving as an excuse for passivity.

In this case, the judge effectively positioned themselves not merely as an executor of statutory law, but as a guardian of justice, responding to the actual social and legal realities at hand. By annulling a previously final and binding adoption decision, the court demonstrated that legal norms are not static and closed entities, but must remain open to the evolving needs of justice and human life<sup>21</sup>. Legal discovery in this context becomes a legitimate and necessary judicial function to fill the normative gaps that legislators have yet to address.

It is within this framework that further analysis is warranted: to examine what legal discovery method was applied by the judge in this case, how it was concretely implemented in the court's reasoning, and how it satisfied the demands of justice and legal certainty within the framework of child protection.

### ***The Method of Legal Discovery Applied by the Judge***

In resolving the revocation of child adoption in Decision No. 410/Pdt.G/2020/PN.Bdg, the judge did not merely engage in textual interpretation of existing statutory provisions but applied a substantive legal reasoning approach through the method of *rechtsvinding* (legal discovery). Amidst the absence of clear legal norms governing adoption revocation, the judge actively explored and constructed applicable norms using a legal reasoning technique known as *argumentum a contrario*—that is, reasoning by contrast or logical opposition to an existing rule.

*Argumentum a contrario* is a recognized method of legal logic that draws conclusions by interpreting that if a specific condition is expressly regulated, then its opposite or contrary is

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<sup>21</sup> Daniel Locke and Guido Zuccon, "Case Law Retrieval: Problems, Methods, Challenges and Evaluations in the Last 20 Years," arXiv:2202.07209, preprint, arXiv, February 15, 2022, <https://doi.org/10.48550/arXiv.2202.07209>.



implicitly not permitted or not contemplated<sup>22</sup>. In this context, since the law explicitly regulates the procedure and conditions for establishing child adoption but remains silent on its revocation, the judge constructed the argument that revocation should nevertheless be possible when the fundamental conditions for adoption are no longer met—particularly when the situation no longer serves the core purpose of adoption: the best interest of the child.

The judge stated that while the law does not explicitly provide for the mechanism of adoption revocation, such silence should not be interpreted as a prohibition. On the contrary, where the adoption no longer reflects the child's well-being or psychological safety, revocation becomes a legal and ethical necessity. By employing the principle of *argumentum a contrario*, the judge argued that if positive law requires adoption to serve the child's protection, welfare, and future security, then any condition that contradicts those objectives provides sufficient grounds for the court to annul the adoption as a corrective measure.

This method is clearly applied in the court's legal considerations, where it was found that the adopted child (F) never consciously consented to the adoption and expressed discomfort living with the adoptive mother. Moreover, the biological parents (the Defendants) were found to have acted in bad faith by removing the child from the adoptive home without legal authority and obstructing communication between the child and the Plaintiff. These facts led the court to conclude that the primary purpose of the adoption—namely, the child's protection and well-being—had not only failed but had been distorted.

The judge's reasoning was further reinforced by testimony from the child herself and corroborated by teachers and other witnesses, all indicating the child's discomfort and rejection of the adoptive arrangement. This was a crucial element in establishing that formal legality does not necessarily ensure substantive justice or protection of children's rights<sup>23</sup>. Accordingly, the court held that maintaining the legal status of the adoption in such circumstances would violate the principles of child protection and could harm the child as an autonomous legal subject.

By constructing a legal argument based on the inverse of existing adoption norms, the judge effectively created legal space in an area not explicitly regulated. This represents a clear example of judicial creativity within the Indonesian legal system. On the one hand, the judge remained within the boundaries of the positive legal framework; on the other, the decision expanded the meaning and application of legal norms through contextual and value-based reasoning.

Furthermore, the judge's application of *argumentum a contrario* demonstrates a willingness to move beyond legalistic formalism in pursuit of substantive justice. In cases unregulated by positive law, this method acts as a bridge between legal certainty and the societal sense of justice. The court did not rigidly adhere to textual interpretation, but instead prioritized

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<sup>22</sup> Fabrizio Macagno and Douglas Walton, "Arguments of Statutory Interpretation and Argumentation Schemes," *International Journal of Legal Discourse* 2, no. 1 (April 2017): 47–83, <https://doi.org/10.1515/ijld-2017-0002>.

<sup>23</sup> Alexander Hicks, "Transparency, Compliance, And Contestability When Code Is(n't) Law," *Proceedings of the 2022 New Security Paradigms Workshop*, October 24, 2022, 130–42, <https://doi.org/10.1145/3584318.3584854>.

the child's social and psychological reality as integral components of a just and meaningful judgment.

From a theoretical standpoint<sup>24</sup>, this also illustrates the evolving role of judges in Indonesia—from mere interpreters of law to constructors of normative guidance, particularly through rulings grounded in general principles of law, moral reasoning, and living social values. This decision may serve as an important jurisprudential reference in future cases, demonstrating a corrective mechanism for reconciling the imbalance between formal legality and substantive fairness—especially in matters concerning child protection.

In conclusion, the method of legal discovery applied in this decision reflects a progressive legal approach that prioritizes not only legal certainty but also affirmative protection for vulnerable parties—in this case, the adopted child. Further analysis of the legal and sociological considerations in the ruling will reveal the extent to which the judge successfully balanced formal legal structure with the human values that underpin a just society.

### ***Juridical and Sociological Considerations in the Court's Decision***

In Decision No. 410/Pdt.G/2020/PN.Bdg, the presiding judge based the ruling not solely on legal logic, but also on social, psychological, and moral dimensions relevant to the case. This reflects a paradigm of modern legal thinking that integrates juridical and sociological approaches, whereby legal norms are not treated as rigid texts but as instruments for achieving tangible justice within society.

From a juridical perspective, the judge referred to the legal facts presented during the trial. The Plaintiff (the adoptive mother) demonstrated that the adoption had been legally established under Court Decision No. 254/Pdt.P/2018/PN.Bdg and officially registered with the Civil Registry Office. However, following the adoption, the child was returned to the custody of her biological parents—who, under law, no longer held parental authority. The judge found that the act of reclaiming the child by the biological parents without legal basis, and their obstruction of the child's communication with her adoptive mother, constituted a violation of the Plaintiff's civil and custodial rights.

Yet, the judge did not limit the assessment to these formal aspects. A thorough evaluation of the evidence revealed that the child (F) felt emotionally distressed and uncomfortable with her status as an adopted child while living with the Plaintiff. Testimonies from teachers, the child's own statements, and communications captured through third parties revealed that the adoption had not been a product of the child's will but was instead driven by the biological parents' motivation to gain financial and material benefits from the Plaintiff.

This sociological dimension proved essential, particularly in light of Indonesia's Law No. 23 of 2002 (amended by Law No. 35 of 2014) on Child Protection. Article 4 of the law guarantees

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<sup>24</sup> Silvia Crafa, "From Legal Contracts to Legal Calculi: The Code-Driven Normativity," *Electronic Proceedings in Theoretical Computer Science* 368 (September 2022): 23–42, <https://doi.org/10.4204/EPTCS.368.2>; Ria Silviana, "State Responsibility in Addressing Internally Displaced Persons (IDPs) Based on the International Legal Framework," *NEGREI: Academic Journal of Law and Governance* 4, no. 1 (May 2024): 185–202, <https://doi.org/10.29240/negrei.v4i1.11703>.

every child's right to life, growth, development, and protection from violence and discrimination. The judge interpreted the act of adoption as a legal process that must be rooted in the protection of the child's rights—not as a tool to serve the interests of adults, whether biological or adoptive parents.

Thus, when the purpose of adoption is no longer realized—and instead poses psychological harm to the child—the legal status of the adoption loses its legitimacy. In the ruling's reasoning, the judge emphasized that a forced parent–child relationship lacking emotional comfort and the child's consent may contravene the “best interest of the child” principle, a standard firmly established in both international and national child welfare frameworks.

The judge further considered moral and justice-oriented dimensions by highlighting the apparent bad faith of the biological parents, as evidenced by their behavior before and after the adoption process. Despite receiving financial support and housing from the Plaintiff, the Defendants later removed the child from her adoptive home without consultation or agreement, an act seen as an abuse of the legal process. In this light, the revocation of the adoption was not only a correction of an ineffective legal relationship but also a measure to protect the child from emotional and economic exploitation by those closest to her.

This dual juridical-sociological approach demonstrates that the judge did not view the law merely as an instrument of state power, but as a means to ensure social welfare. The decision implicitly recognizes that legal relationships in adoption are not merely administrative constructs, but involve elements of affection, moral responsibility, and alignment with prevailing societal values. This highlights a nuanced judicial understanding wherein the formal legal framework is interwoven with the substantive well-being of the parties involved, especially vulnerable populations such as children<sup>25</sup>.

By prioritizing the child's psychological well-being, social comfort, and the authenticity of caregiving relationships, the court placed family law within a broader value framework than mere legality. This makes the decision not only normatively important but also ethically and sociologically significant.

Moreover, the approach exemplified in this case provides a model for other judges handling similar disputes. The protection of children—especially in adoption and family conflict contexts—requires not just technical legal competence but also moral sensitivity and sociological understanding. As such, this decision can be seen as a reflection of progressive judicial governance, where judges act as protectors of society and strive to balance the rule of law with the imperatives of human dignity<sup>26</sup>.

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<sup>25</sup> McEwan-Strand and Skivenes, “Children's Capacities and Role in Matters of Great Significance for Them”; Salma Salsabila Imtina, Nurini Aprilianda, and Yeni Eka Widyanti, “Legal Protection Strategies for Child Adoption Without a Court Order: A Comparative Study of Indonesia, USA and Malaysia,” *NEGREI: Academic Journal of Law and Governance* 4, no. 1 (July 2024): 69–88, <https://doi.org/10.29240/negrei.v4i1.10092>.

<sup>26</sup> Hege Stein Helland, “Tipping the Scales: The Power of Parental Commitment in Decisions on Adoption from Care,” *Children and Youth Services Review* 119 (December 2020): 105693, <https://doi.org/10.1016/j.childyouth.2020.105693>.

### ***The Judicial Philosophy: Utilitarian Reasoning and Child Protection***

In interpreting the legal action of revoking child adoption in Decision No. 410/Pdt.G/2020/PN.Bdg, the judge adopted a legal reasoning approach that moved beyond rigid legal positivism, reflecting instead a utilitarian orientation and a commitment to protecting vulnerable groups—particularly children. Utilitarianism in legal philosophy holds that law should maximize the greatest benefit for the greatest number of people<sup>27</sup>. In this context, the judge deliberately set aside the rigidity of positive norms in favor of achieving broader welfare—namely, the child’s safety, psychological well-being, and emotional development.

This approach reveals that the judge placed the “best interest of the child” as the primary criterion in determining the legitimacy and continuity of the legal relationship between the child and the adoptive parent. By embracing principles widely acknowledged in child protection law—both within national legal frameworks and international instruments such as the Convention on the Rights of the Child (CRC)<sup>28</sup>—the judge gave paramount consideration to the child’s voice, will, and emotional experience in relation to the legal status imposed upon her.

Rather than treating adoption as an irrevocable civil relationship bound strictly by formalities, the judge construed it as a social and moral relationship whose sustainability must be tested against the principles of suitability, emotional harmony, and functional viability. In other words, the court viewed adoption as a legal arrangement that is only valid and beneficial insofar as it does not harm the very subject it is meant to protect: the child.

The utilitarian traits of the judge’s reasoning are evident in the consideration that sustaining a dysfunctional adoptive relationship would lead to greater harm to the child and aggravate her psychological condition. The decision identifies indicators of emotional distress experienced by the child, the lack of sincerity from the biological parents in relinquishing custody, and the suspicion of economic motives underlying the adoption. These considerations demonstrate that the continuation of the legal relationship no longer yielded any benefit for the child and might even amount to exploitation.

Furthermore, the judge’s emphasis on child protection affirms the legal standing of children not merely as objects of legal procedures, but as autonomous legal subjects whose will and interests must be respected. This reflects a child-centered approach in family law doctrine, wherein the child’s voice becomes an integral and legitimate element in judicial decision-making—particularly in cases that directly affect their future and well-being.

The judge appeared well aware of the absence of explicit legal provisions on adoption revocation in Indonesian statutory law. Yet, rather than yielding to this normative void, the court

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<sup>27</sup> Shkileva Natalya, “The Principle of Best Interests in the Concept of the Constitutional and Legal Status of Children Left without Parental Care,” *Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia* 2023, no. 1 (June 2023): 42–45, <https://doi.org/10.36511/2078-5356-2023-1-42-45>.

<sup>28</sup> Sheila Varadan, “The Principle of Evolving Capacities under the UN Convention on the Rights of the Child,” *The International Journal of Children’s Rights* 27 (May 2019): 306–38, <https://doi.org/10.1163/15718182-02702006>; Zakiati Salma, Rahmad Hidayat, and Sumper Mulia Harahap, “The Medina Charter and Lessons of Multiculturalism in Contemporary Islamic Politics,” *NEGREI: Academic Journal of Law and Governance* 4, no. 2 (November 2024): 111–38, <https://doi.org/10.29240/negrei.v4i2.11387>.

filled the gap with norms derived from justice, legal reasoning, and humanitarian values. In this role, the judge acted as a negative legislator, not merely interpreting law but shaping it where legislation fails to address pressing social realities. This strengthens the judiciary's role as a central pillar of legal governance capable of responding to society's evolving needs.

Additionally, the court's legal reasoning reflects an integration of progressive legal theory and responsive legal thought. Law is not treated as a dead text isolated from social values, but as an ethical instrument for resolving conflict in a humane way. The judge's choice to revoke the adoption was not merely about protecting the adoptive mother's interests but was motivated by a commitment to preventing further suffering for the child, who had clearly experienced emotional pressure and rejected the forced legal relationship.

From a practical standpoint, this line of judicial reasoning underscores that in family law disputes—especially those involving children—justice cannot rely solely on formal legal validity. In such cases, substantive justice and sensitivity to the child's psychosocial condition are critical in determining what is fair and appropriate. This simultaneously serves as a critique of formalistic approaches that tend to ignore the lived realities of vulnerable parties<sup>29</sup>.

Thus, the judicial philosophy expressed in this ruling is not only conceptually significant but also strategically relevant for shaping future judicial paradigms in Indonesia. Judges are not merely enforcers of written law; they also breathe life into latent legal values that legislation has yet to articulate. In the context of family law and child protection, this mindset is both urgent and necessary, given the increasing complexity of social issues that cannot be entirely anticipated by statutory norms.

### ***Juridical Implications and Academic Significance***

The Bandung District Court Decision No. 410/Pdt.G/2020/PN.Bdg, which annulled a legally recognized child adoption in the context of a legal vacuum, carries substantial implications—both juridically and academically. From a legal-practical standpoint, this decision establishes a significant precedent concerning the revocation of child adoption, an area that had previously not been explicitly addressed within Indonesia's positive law. As such, it broadens judicial understanding of the child protection concept and demonstrates that family law must remain dynamic and responsive to the evolving social and psychological needs of children.

The first important implication lies in the reinforcement of the judge's role as an active participant in legal development, especially in situations where the law is normatively silent. Although Indonesia's civil law system does not treat judicial decisions as binding sources of law in the same way as the common law tradition, judicial precedents still play a crucial role in guiding interpretation and acting as a corrective against the rigidity of statutory norms<sup>30</sup>. This ruling confirms that, even in the absence of explicit legal provisions, the revocation of child adoption is

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<sup>29</sup> Sondra Miller, "Judicial Discretion and the Voice of the Child in Resolving Custody Disputes: Comments on the Think Tank Report," *Family Court Review* 52, no. 2 (2014): 198–99, <https://doi.org/10.1111/fcre.12083>.

<sup>30</sup> Ferdinand Zito, "The Child's Best Interests ... or near Enough? A Lawyer's Perspective," *Children Australia* 35, no. 2 (January 2010): 48–52, <https://doi.org/10.1017/S1035077200001073>.



legally conceivable through judicial rechtsvinding (legal discovery), provided that the reasoning rests on principles of justice and the best interests of the child.

Secondly, the decision highlights the urgency of revising or developing more comprehensive and responsive legislation concerning child care and adoption practices, including the possibility of revocation. Current regulations govern the procedures for adoption but fail to provide legal mechanisms for revocation in cases where adoption becomes detrimental to the child or no longer serves their best interest<sup>31</sup>. This legislative gap creates legal uncertainty and opens the door to potential abuse by parties with vested interests. Accordingly, this judgment serves as a critical signal to lawmakers to address the normative vacuum with explicit rules that uphold the rights and autonomy of children in adoption-related legal processes.

From an academic-theoretical perspective, the decision makes a meaningful contribution to the development of progressive and responsive legal theory. It illustrates that judicial decision-making cannot be confined to written norms alone but must respond to emerging legal challenges through moral reasoning, general legal principles, and the social values that live within society. This aligns with Satjipto Rahardjo's idea of progressive law, which views law not as an end in itself, but as a means to achieve social justice<sup>32</sup>. In this case, the judge demonstrated the courage to prioritize the child's welfare over a rigid normative structure that was incomplete and inadequate.

Additionally, the decision offers a concrete example of the judicial application of the argumentum a contrario method in Indonesian courts. While legal interpretation methods are frequently discussed in academic literature, few studies have thoroughly examined how such methods are applied in actual judicial decisions. Thus, this article also contributes to enriching the academic discourse on legal discovery methods within Indonesia's judicial practice, particularly in the domain of family law.

Another notable significance of the decision lies in its implications for legal governance. The judiciary, in this context, does not merely serve to resolve disputes between private parties; it also functions as a normative agent shaping the development of legal doctrine. This is pertinent to the ongoing discourse on judicial governance, where courts are seen not only as enforcers of law but also as actors that influence the direction, substance, and character of the law in society. This ruling exemplifies how Indonesia's judiciary possesses the capacity to act adaptively, responsively, and empathetically in addressing legal and social realities.

Finally, from a legal education perspective, this case study reinforces the importance of integrating legal theory with practice. It encourages students and scholars to move beyond doctrinal analysis and engage critically with how law functions in real-world contexts, and how legal actors—particularly judges—exercise their discretion to fill normative gaps and address the imperfections of written statutes.

<sup>31</sup> McEwan-Strand and Skivenes, "Children's Capacities and Role in Matters of Great Significance for Them."

<sup>32</sup> M. Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat, Urgensi, Dan Relevansi," *Undang: Jurnal Hukum* 1, no. 1 (June 2018): 159–85, <https://doi.org/10.22437/ujh.1.1.159-185>; Hardivizon Hardivizon and Mufutau Olusola Bello, "The Relevance of Hadith Principles in Balancing Power within the Legal System of a State," *NEGRI: Academic Journal of Law and Governance* 3, no. 2 (December 2023): 99–118, <https://doi.org/10.29240/negrei.v3i2.9201>.

In summary, the implications of this decision extend beyond the courtroom into the realms of legislation, legal education, and jurisprudential theory. It affirms that even in the absence of codified norms, law can still operate meaningfully—driven by reason, justice, and the imperative to protect the most vulnerable party in any legal relationship: the child

### Conclusion

This study has demonstrated that judicial *rechtsvinding* plays a critical role in addressing legal disputes that arise in the absence of explicit statutory norms. The case of Decision No. 410/Pdt.G/2020/PN.Bdg, concerning the revocation of child adoption in Indonesia, serves as a compelling example of how judges can construct legal reasoning beyond the limits of codified law to uphold substantive justice and social welfare. Faced with a normative vacuum regarding the cancellation of legally recognized child adoption, the judge in this case applied the method of *argumentum a contrario* to interpret existing norms and derive a legal basis for annulment—grounded on the failure to fulfill the child's best interests.

Through the analysis of the court's reasoning, it is evident that the judge combined both juridical and sociological considerations in reaching a decision. This involved not only assessing formal legal documents but also incorporating the psychological condition of the child, the intentions of the biological parents, and the ethical implications of sustaining a forced legal relationship. Such reasoning reflects a shift from a purely positivist legal mindset toward a more utilitarian and progressive approach, where legal decisions are guided by the real impact on human well-being—particularly that of vulnerable subjects like children.

The findings of this research underscore several important implications. Legally, this decision has opened space for the judiciary to actively engage in legal norm-creation where legislative silence exists, especially in areas such as family and child protection law. Practically, it highlights the need for the legislative body to address this normative gap and establish clear procedures for adoption revocation. Academically, the case contributes to the discourse on legal interpretation, judicial governance, and the application of legal reasoning methods in civil law jurisdictions.

Ultimately, this article affirms that justice in family law cannot be attained through rigid adherence to written norms alone. In matters involving the dignity, rights, and psychological well-being of children, judges are called to act as agents of legal justice and moral accountability. Judicial *rechtsvinding*, when grounded in integrity and ethical reasoning, becomes a necessary instrument to bridge the distance between the static nature of law and the dynamic realities of human experience.

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