

## LEGAL EFFECTS OF ADOPTION ON THE ADOPTED PARENTS' INHERITANCE

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### ABSTRACT

*Adoption of a child will have legal consequences for both the child being adopted and the person adopting it. One of the legal consequences is the inheritance of the parents who adopted the child if they die. The position of adopted children cannot be equated with biological children because adopting a child according to statutory regulations or Islamic law does not sever the adopted child's blood/lineage relationship with the biological family, but only a transfer of responsibility from the biological parents to the adoptive parents. Adoption does not change the legal, lineage and mahram relationship between the adopted child and the biological parents or adoptive parents. The procedure for adopting a child in the Compilation of Islamic Law (KHI) is to make a letter requesting adoption which is signed by the applicant or his attorney. The part of an adopted child's inheritance in the Compilation of Islamic Law (KHI) is that the adopted child and his or her adoptive parents do not inherit each other.*

**Keywords:** *Legal Consequences, Adoption, Inheritance*

## DAMPAK HUKUM ADOPSI TERHADAP WARISAN ORANG TUA ANGKAT

### ABSTRAK

*Pengangkatan anak akan menimbulkan akibat hukum baik terhadap anak yang diangkat maupun bagi orang yang mengangkat. Salah satu akibat hukum itu adalah terhadap harta waris orangtua yang mengangkat anak tersebut jika meninggal dunia. Kedudukan anak angkat tidak dapat disamakan dengan anak kandung karena pengangkatan anak menurut peraturan perundang-undangan maupun hukum Islam tidak memutuskan hubungan darah/nasab anak angkat dengan keluarga kandung, namun hanya terjadi peralihan tanggung jawab dari orang tua kandung kepada orang tua angkat. Pengangkatan anak tidak merubah hubungan hukum, nasab, dan mahram antara anak angkat dengan orang tua kandung ataupun orang tua angkat. prosedur pengangkatan anak dalam Kompilasi Hukum Islam (KHI) adalah membuat surat permohonan pengangkatan anak yang ditandatangani oleh pemohon atau kuasanya. Bagian harta warisan anak angkat dalam Kompilasi Hukum Islam (KHI) adalah tidak saling mewarisi antara anak angkat dengan orang tua angkatnya.*

**Kata Kunci:** *Akibat Hukum, Pengangkatan Anak, Harta Warisan*

## INTRODUCTION

Marriage is not happy without the presence of a child. The desire to have children is a human and natural instinct. But sometimes this instinct clashes with Divine destiny, where the will of having children is not fulfilled. The presence of a child is something that is very coveted. The happiness and harmony of a family is marked by the birth of a child, because one of the purposes of marriage is to pass on offspring. The desire to have children is a human and natural instinct, but sometimes this instinct is formed by divine destiny, where the desire to have children is not realized. Generally, humans will not be satisfied with what they experience, so various efforts are made to fulfill these desires. The effort that can be made in terms of wanting to have children is to adopt a child (adoption).

The tradition of raising children is still a living thing in society. The adoption of children in society is more predominantly influenced by Islamic law, when compared to the influence of customary law. Child adoption was initially carried out solely to continue and maintain the lineage in a family that did not have children or as a bait so that after adopting a child, it was hoped that the family could be blessed with children. In line with the development of society, the purpose of *adoption* is more aimed at the welfare of children, as stipulated in Article 28 B of the Constitution of the Republic of Indonesia of 1945 and also listed in Article 12 paragraph (1) of Law Number 4 of 1979 concerning Child Welfare, which states: the adoption of children according to customs and customs is carried out by prioritizing the interests of the welfare of the child.

The implementation of child adoption or *adoption* in Indonesia is carried out not only by paying attention to the interests of the adoptive parents, but also by paying attention to the interests and welfare of the children who will be used as adopted children. Adopted children who are legally adopted through a court determination are in the same position as the biological children in terms of inheritance. They are the heirs of group I, who are entitled to receive the inheritance of their adoptive parents in accordance with Article 852 of the Civil Code.

Adoption is intended so that the child becomes the child of his adoptive parents and the adoption of the child is carried out in such a way that the child is both innately and inwardly his own child. The ideal family structure in society is a family consisting of a husband as the

head of the family and a wife as a housewife and equipped with children as family members. The presence of children in the family is an inseparable part of a happy family structure. Adoption is actually not a strange thing for Indonesian society because the purpose and legal consequences of child adoption are very important in people's lives both as a way to pass on offspring, and as a manifestation of feelings of pity. Adoption of a child that is prohibited in Islamic teachings is an adoption that leads to the breakdown of the legal relationship between the adopted child and the biological parents, including in the case of the call of nasab. However, if the adoption of a child is based on compassion and mutual help, it is not something that is forbidden or even recommended in Islam.

In addition, Islamic law allows the adoption of children as long as they do not break the blood relationship with their biological parents, so that the principle of child adoption in Islamic law is only parenting, giving affection and providing education. M. Budiarto said that according to Islamic law, the adoption of a child can only be justified if the following provisions are met: It does not break the blood relationship between the adopted child and his biological parents and his family. Adopted children do not have a position as heirs of their adoptive parents, but remain as heirs of their biological parents, as well as adoptive parents do not have a position as heirs of their adopted children. Adopted children may not use the name of their adoptive parents directly, except as an address or identification card. Her adoptive parents cannot act as guardians in the marriage of their adopted child.

Although the Qur'an does not give the right for adopted children to receive inheritance from their adoptive parents, but in the Compilation of Islamic Law which is a human product of various madhhabs and is used as one of the sources of law in our country, it provides that adopted children have the right to receive a share of the inheritance as stipulated in Article 209 paragraph (1) and paragraph (2) of the Compilation of Islamic Law as follows:

The inheritance of adopted children is divided based on Articles 176 to 193, while adoptive parents who do not receive a will are given a *mandatory will*, a maximum of 1/3 (one-third) of the inheritance of their adopted child. For adopted children who do not receive a will, a *mandatory will is given a mandatory will* of a maximum of 1/3 (one-third) of the inheritance of the adoptive parents. Based on the content of Article 209 of the Compilation of Islamic Law paragraphs (1) and (2) above, it can be understood that *the mandatory will*

referred to by the Compilation of Islamic Law is a will that is required based on the provisions of the law intended for adopted children or vice versa adoptive parents who were not given a will previously by their adoptive parents or adopted children, with a maximum amount of 1/3 (one-third) of the inheritance.

It is factually recognized that child adoption has become part of the customary customs of the Muslim community in Indonesia and has penetrated into practice through the institution of the Religious Court, and the Religious Court has given a determination that is at the same time seen as permanent jurisprudence on the adoption of children among the judges of the Religious Court. Adoption of a child will have legal consequences both for the adopted child and for the person who adopts it. One of the consequences of the law is on the inheritance of the parents who raise the child if they die. Based on the background description mentioned above, the problem in this research/service activity is how the procedure for raising children in the Compilation of Islamic Law (KHI).

## **RESEARCH METHODS**

The method carried out is a normative juridical approach. A normative juridical approach is used to study laws and regulations related to child adoption. In relation to the research method used, the author does so by examining regulations, legislation, court decisions, circulars and jurisprudence, legal magazines, legal theories and opinions of leading legal scholars which are secondary data, then associated with the actual situation, namely the position of adopted children towards inheritance in Acehese society. Legal materials in the form of legal sources in the formal sense (laws and regulations) and literature studies are also used, an approach that aims to obtain applicable regulations regarding the position of adopted children towards inheritance in the Compilation of Islamic Law.

## **RESULTS AND DISCUSSION**

According to Hilman Hadikusuma, an adopted child is another person's child who is considered his own child by the adoptive parents officially according to local customary law,

because of the purpose of the continuity of the offspring and/or the maintenance of their household property.

Surojo Wignyodipuro Adoption is an act of taking another person's child into his own family in such a way that between the parents who adopt the child and the child who is taken into custody there is a similar family relationship, as exists between the parents and their own biological children. Muderis Zaini, adopted child is the union of a child who is known to be someone else's child into his family. He is treated as a child in terms of love, providing sustenance, education and service in all his needs, and not being treated as a child of his own nashab.

Child adoption is a legal reality of society. Child adoption is not only practiced in the life of the Muslim community but also in the life of the non-Muslim community. The procedure for child adoption in practice is carried out in two ways, namely through:

1. Formal procedure, namely with a determination from the District Court
2. Informal procedures, namely according to customs/habits of the community
3. The adoption procedure and conditions for child adoption are determined as follows:
4. Terms and form of application letter ( *voluntary*):
5. Such an application can only be accepted if it has been found that there is sufficient urgency. For example: there are provisions and laws that require it.
6. Like other applications, such an application can be made orally in accordance with the applicable procedural law in the District Court or a written application.

Can be submitted and signed by the applicant himself or his/her proxies. In addition, the applicant can also be accompanied/assisted by someone. In the case of being accompanied/assisted, hAlini means that the applicant/prospective adoptive parent must still be present at the examination at the trial. Likewise, even though the applicant uses a power of attorney, he is obliged to attend the examination of the District Court hearing. Affixed with a sufficient seal. It is addressed to the Chief Justice of the District Court whose jurisdiction includes the place of residence/domicile of the child to be raised. The content of the application letter contains:

In the legal basis of the application, the basis for the application for endorsement/adoption of the child is clearly described. It must also appear that the application for ratification of the

adoption of the child is made primarily for the benefit of the prospective child concerned, and describes the possibility of the child's future life after the adoption occurs.

The content of the petition is singular, i.e.: not accompanied *by (in samenloop met)* another petition. For example, it is enough to: "so that the child of B is designated as an adopted child of C", or "so that the adoption of a child that has been carried out by the applicant (C) against child B named A is declared valid". Without adding other demands such as: "in order to determine the child named A, be designated as the heir of C". The Compilation of Islamic Law (KHI) does not regulate the adoption of children by single parents. KHI only explained regarding the inheritance rights of adopted children. According to Article 171 letter h of the Compilation of Islamic Law , an adopted child is a child who, in terms of maintenance for his daily life, education costs, and so on, shifts his responsibility from the original parents to his adoptive parents based on the Court's decision.

Regarding the status of adopted children according to Islamic law, that adopted children cannot be equated with biological children so that the adoptive child's ex-wife can still be married by his adoptive father. Meanwhile, if you look at Article 16 of Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption, the adoption of a child by a single parent is possible, provided that the single parent is an Indonesian citizen and has received permission from the Minister The adoption of children is carried out in accordance with the provisions of laws and regulations so that it can prevent irregularities which can ultimately protect and improve the welfare of children for the future and the best interests of children. Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption and based on the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Child Adoption Requirements, there are principles of child adoption, namely:

1. Child adoption aims at the best interests of the child in order to realize child welfare and child protection, which is carried out based on local customs and the provisions of laws and regulations;
2. The prospective adoptive parents must be of the same religion as the religion adhered to by the prospective adoptive child;

3. In the event that the origin of the child is unknown, then the child's religion is adjusted to the religion of the majority of the local population;
4. Adoption of a child does not break the blood relationship between the adopted child and his or her biological parents;
5. The adoption of an Indonesian Citizen child by a Foreign Citizen can only be done as a last resort;
6. Adoptive parents are obliged to inform their adopted children about their origin and their biological parents;
7. The notification of the origin and biological parents is carried out by paying attention to the readiness of the child concerned;
8. According to Irma Setyowati Soemitro, that child adoption will have an impact on child protection, the conditions that must be met are:
9. Priority is given to the appointment of orphans;
10. Children with mental, physical, and social disabilities;
11. The child's parents are indeed unable to manage their finances;
12. Willing to nurture and maintain family bonds between children and biological parents throughout life;
13. Other things that continue to develop the whole human being.

Legal adoption of children (through court determination, as stipulated in Government Regulation No. 54 of 2007) does not break the blood relationship with the biological parents, so that the adopted child can still become the heir of his or her biological parents. Islamic law prohibits the practice of child adoption that has legal consequences such as the adoption of a child during *the period of jahiliyah*, namely the adoption of a child that changes the status of the adopted child to a biological child and the relationship between the adopted child and the biological parent, the adopted child becomes the heir, and the adoptive parent becomes the absolute guardian of the adopted child. "Islamic law only recognizes the adoption of children in the sense of the transfer of responsibilities to provide sustenance, educate, maintain, and others in the context of worshipping Allah SWT".

The concept of child adoption in Islamic law does not recognize the adoption of a child in the sense of being an absolute biological child, while what exists is only allowed or ordered

to be nurtured with the aim of treating the child in terms of the love of providing "sustenance", education or services in all needs that are not treated as biological children (nasab). In Islam, the term adoption of a child is also called *tabanny*, which is the adoption of another person's child as one's own child. Based on the above explanation, it can be understood that there are two forms of child adoption (*tabanny*) that are understood from the perspective of Islamic Law, namely:

1. For the adoption of a child (*tabanny*) which is prohibited as *tabanny* is practiced by *the jahilliyah* community and secular civil law, which makes the adopted child a biological child with all rights as a biological child, and severs the legal relationship with his or her original parents, then assigns the biological father to the adoptive father.
2. The adoption of a child (*tabanny*) that is recommended, that is, the adoption of a child who is motivated by the motivation to worship Allah SWT by taking care of daily living, education costs, maintenance, and others without having to break the legal relationship with his biological parents, does not interfere with his adoptive parents, does not make him his own biological child with all his rights.
3. According to Islamic Law, the adoption of a child can only be justified if the following conditions are met:

It does not break the blood relationship between the adopted child and the biological parents and family. Adopted children do not have a position as heirs of their adoptive parents but remain as heirs of their biological parents, as well as parents who do not have a position as heirs of their adopted children. Adopted children should not use the name of their adoptive parents directly except for identification or address.

Adoptive parents cannot act as guardians in the marriage of their adopted children. Child adoption today is often carried out by various circles in society. A person in raising a child must have goals that he wants to achieve because basically there are many factors that support someone to adopt a child, but usually the background of child adoption is carried out by people who are not given offspring. Child adoption is carried out to fulfill human desires to channel their affection to children who are felt to be a continuation of their lives.

The adoption of children is carried out by a family to continue and maintain the lineage in a family environment that does not have biological children. In addition, the purpose of child adoption here is to maintain the marital bond so that divorce does not arise, but currently with the development of motivation from child adoption, it has now changed, namely for the welfare of the adopted child. Islam advocates that mankind can help each other to help fellow humans. Adoption of a child or also called adoption is one way to help fellow humans, because adoption with the understanding of adopting someone else's child to be treated as one's own child without changing the child's status as a biological child is adoption that is allowed in Islam, and it is a very noble act.

The thing that needs to be considered in child adoption is that the position of adopted children in the family is not the same as that of biological children, therefore there is no special relationship between adopted children and adoptive parents regarding civil issues such as guardianship and inheritance. If you look back at the purpose of the adoption of the child, then the adoption of the child is carried out on the basis of helping fellow humans. Yusuf Qardawi argued that adoption can be justified if a person who carries it out does not have a family, then he intends to take care of the child by providing him with protection, education, affection, and sufficient clothing and food needs like his own biological children. As for the nasab, the child's fate remains with his biological father because between the adopted child and the adoptive parents there is no nasab relationship at all that can have rights like the biological child.

The motivation for adopting a child in Islam is more about providing treatment and channeling love and affection for the child, providing support, education, and service for all needs, not treating him as his own biological child with all its legal consequences. Islam directs humans to always care for others, because the attitude of caring for others is something that must always be practiced, especially for abandoned children and orphans. The purpose of child adoption is to continue the offspring when in a marriage there are no offspring, where hAlini is a justifiable motivation, and one of the positive and humane solutions to the instinct of a child's presence in the family after many years of not being blessed with children. In addition, it also aims to increase the number of families, with the intention that the adopted child gets a good education, or to strengthen family relationships.

On the other hand, it is also an obligation for people who can afford children who do not have parents, as a humanitarian mission and the practice of religious teachings. Islam also teaches its people to always support and care for children who are incapable, poor, and abandoned, where the act of nurturing and nurturing these children does not reach the termination of family relations and the rights of their biological parents and the maintenance must be based on nurturing alone. In contrast to the adoption of children according to Islamic law where there are conditions for the adoption of children in Islam, it is stated that the adoption of a child does not break the blood relationship between the child and the biological parents, and the adopted child does not have the position of heir of the adoptive parents, but the heir of the biological parents, and vice versa, the adoptive parents do not become the heirs of the adopted child. Furthermore, adopted children are not allowed to use the name of their adoptive parents directly as their identification or address, and also the biological parents do not act as guardians in the marriage of their adopted children.

Islam allows the adoption of a child but within certain limits, namely as long as it does not bring legal consequences in terms of blood relations, the relationship of the guardian *mewali* and the relationship of inheritance from the adoptive parents, where they remain the heirs of the biological parents and the child continues to use the name of the biological father. The implementation of the adoption process results in new legal provisions, where if there is a disaster that results in the death of the adoptive parents, there will be a social change regarding the distribution of inheritance left by the adoptive parents or the adopted child itself. The position of adopted children, adoptive parents is regulated in the Civil Code, inheritance law, and customary law, both are as heirs who can inherit each other, while in Islamic law both are not included as heirs.

Based on the above, the relationship of inheritance does not exist between the child and the person who finances it as well as there is no family relationship between the two. The situation is that each will can only bequeath their property if one of them dies, the provisions of which are regulated in the law of wills.

## CONCLUSION



The legal consequences of child adoption on the adoptive parent's inheritance depend on the legal system used. In the western civil code (KUHPercivil), legal adopted children have inheritance rights equal to biological children while in Islam they do not inherit directly but are entitled to a mandatory will (maximum 1/3 of the property). Appointment through court determination provides legal certainty. According to the Civil Code, adopted children who are legally adopted through a court determination are in the same position as biological children in terms of inheritance. They are the heirs of group I, who are entitled to receive the inheritance of their adoptive parents in accordance with Article 852 of the Civil Code. According to Islamic Law (Compilation of Islamic Law/KHI), adopted children do not inherit from each other with their adoptive parents because there is no blood relationship. However, adopted children are entitled to receive property through a mandatory will, which is regulated in Article 209 of the KHI, with a maximum amount of 1/3 of the inheritance of the adoptive parents.

According to customary law it depends on the type of adoption. In customs that adhere to the adoption of children to pass on their offspring (such as in Bali or China), adopted children have an equal position with biological children and are fully entitled to inheritance. Adoptive parents can give part of their property to the adopted child through grants (gifts while still alive), which are not counted as part of the inheritance, but must still pay attention to the absolute rights (*Legitime Portie*) of other biological heirs.

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