

THE LEGAL CONSEQUENCES OF CHILD ADOPTION (ADOPTION) ARE REVIEWED FROM COMPILATION OF ISLAMIC LAW

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Abstract: Child adoption or adoption in society is one of the solutions that many families who do not have children by married couples. They then adopt children both from their own family and from other people's children who have nothing to do with the husband or wife. The adoption of a child is seen as a way to continue the offspring, but with the development of the function the adopted child is no longer considered fully as a child of his own, but with limited consequences.

The purpose of this study is to find out how the legal force of child adoption according to the Compilation of Islamic Law, as well as what are the consequences of the law of child adoption according to the Compilation of Islamic Law. The research uses a normative juridical method, namely a method of reviewing legislation and other legal materials related to the research.

Based on the results of the study, the legal force of child adoption in Islamic law has binding force for adopted children and adoptive parents. And as a result of the law of adoption according to the Compilation of Islamic Law, adopted children still have blood relations and inheritance relations with their biological parents, adopted children can use the name of their adoptive father after their name, there is no blood relationship between them. The new adopted child can inherit the inheritance of the adoptive parents if the adopted child does not obtain a mandatory will.

Keywords: *Legal consequences, child adoption*

Introduction

Children are creatures created by God Almighty which is a mandate as well as a gift from God. Every parent must want to have a child as an instinct that is human and natural. Having a child is also a blessing for a mother who conceives and gives birth to her.¹ A family based on a marriage. Marriage is included as a basic need (principle) of every human being whose purpose is to form a happy and eternal family or household based on the One Godhead.² Marriage is also aimed at obtaining children to connect the lineage of both parties, namely husband and wife.³

¹ M. Yahya Harahap, 1975, *National Marriage Law*, Medan: Zahir Trading Co, page 11

² T. Erwinsyahbana, 2012, *The Marriage System in the State of Law Based on Pancasila*, *Riau Journal of Law*, page 1.

³ Asmuni, 2004, *The Principles of Family Building Towards a Harmonious Life*, Medan Duta Azhar, page 83

One of the purposes of marriage is to obtain children as a bloodline,⁴ but sometimes this desire is conflicted by the fact that in some families they are not blessed with children because of infertility or infertility. Because children are considered the fruit of the happiness of family life, various ways are made to gain their presence in the midst of the family. One of the efforts that can be made is the adoption of children or known as adoption. Child adoption or adoption in the community is one of the solutions that many families choose without children. For married couples who have no children, they adopt a child or more often called an adopted child, which can be obtained from their own family or other people's children who do not have a kinship relationship. Child adoption is essentially a way to continue the offspring and consider it as one's own child for adoptive parents, but on the other hand, there is child adoption that only causes a relationship of maintenance and education which is always called foster parents. Because there are those who adopt children, not because they do not have children.⁵ An adopted child is a child whose rights are transferred from the parental authority, legal guardian, or other responsible person.⁶

The enactment of civil law in Indonesia is inseparable from the many liberal political forces in the Netherlands. The field of civil law in Indonesia at this time is experiencing legal pluralism which is still based on the classification of the Indonesian population according to the division carried out by the Dutch East Indies government in the past which enforced each group to apply a different civil law system. Therefore, there is no other way to do it except by tracing the applicable civil law system regarding child adoption in Indonesia, because there are still many legal systems that apply to each group (*Europeanen Inlanders en Vreemde Oosterlingen*), as a reality that must be faced with the pluralism of civil law in connection with the enactment of a different civil law system for each group of people in Indonesia.⁷

The diversity of the legal system turns out not only in Indonesia, but also in the legal system in the world which results in no adoption or adoption institution in any country that is the same in all respects as adoption in other countries. Regulations regarding child custody always have differences and vary as they apply in child adoption in the midst of the diversity of the civil legal system of Indonesian society.⁸ The adoption of children and adopted children is part of the substance of the child protection law and has become a part of the law that lives and develops in the community in accordance with different customs and motivations as well as legal feelings that live and develop in each region.⁹

Literature Review

Family law, which in Dutch is called *familierecht*,¹⁰ or in English is called *law of familie*, is interpreted as the entire provision regarding legal relations related to blood kinship and kinship due to marriage. Family law in the above sense contains two important

⁴ Berliana Intan Maharani, Seven Marriages according to Islam, Must Know Before Making a Decision, 2023

⁵ Rusli Pandika 2012, Child Adoption Law, Jakarta, Sinar Grafika, page 3

⁶ Budiman Ginting, The Development of Civil Law in Indonesia and the Renewal of Civil Law in Indonesia, USU, <https://mkn.usu.ac.id>

⁷ Rusli Pandika, *op cid* page 4.

⁸ Ibid

⁹ Ahmad Kamil and HM. Fauzan 2008, *Child Protection and Adoption Law in Indonesia*, Jakarta; Raja Grafindo Persada, page VII

¹⁰ J.S, Erwin, 2013, *Legal Dictionary*, Jakarta: New Script.

things, namely legal methods and legal substance. Islamic family law as an offer to solve several problems. Legal methods include written family law, which is legal methods that are sourced from laws, treaties and jurisprudence and unwritten family law, which are family law rules that arise, grow and also develop in community life. The scope of family law includes marriage, divorce of property in marriage. Parental power, custody and guardianship. Child adoption, which was initially intended only to meet the needs of a child's presence in the family and married life, began to shift and change with the aim of providing welfare for the adopted child.

Thus, the adoption of a child, regardless of the reason, must still pay attention to and prioritize the welfare of the adopted child, in accordance with the affirmation stipulated in Article 2 paragraph (1) of Law Number 4 of 2024 concerning the Welfare of Mothers and Children,¹¹ which emphasizes that children have the right to welfare, care, care, and guidance based on affection both in their families and in special care to grow and develop reasonably and Article 3 Law Number 17 of 2016,¹² concerning Child Protection, which emphasizes child protection, aims to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally according to human dignity and dignity, as well as receive protection from violence and discrimination, for the realization of Indonesian children who have quality, have noble morals and have a prosperous life. It is undeniable that child adoption has become a necessity for most Indonesian people, child adoption can be done by every adult who wants to become an adoptive parent. Adopting a child is not an easy thing and requires great commitment and responsibility. Therefore, prospective adopters must carefully consider their ability and readiness to meet the needs.¹³

Method

This study employs a qualitative descriptive approach to explore how the legal consequences of child adoption when it is reviewed from compilation of Islamic law.

Results and Discussion

Children are one of the national development assets that should be considered and taken into account in terms of quality and future. Children as the next generation of the nation¹⁴, discussing children means discussing maturity, indeed children are always categorized as human beings who are still young and cannot be associated with a responsibility. Thus, the classification of a child's age in the context of adulthood is actually related to the juridical responsibility of the child.¹⁵ Child in English "*child*".¹⁶ The meaning of child in the Great Indonesian Dictionary means second offspring.¹⁷ Sudarsono gave the understanding that

¹¹ See Law No. 4 of 2024

¹² See Law No. 17 of 2016

¹³ Maksum Rangkuti, 2023, *The Law of Adopting Children*, Umsu, <https://fahum.umsu.ac.id, law>

¹⁴ Nursariani Simatupang, 2021, *Juvenile Delinquency in the Form of Motorcycle Gangs*, *Journal umsu.ac.id*.

¹⁵ Bunadi Hidayat, 2010, *Juvenile Criminalization*, Bandung, Alumni, page 2

¹⁶ John M. Echols, 2005, *Indonesian English Dictionary*, Jakarta, Gramedia, Pustaka Utama, page 111

¹⁷ Dictionary Preparation Team of the Center for Language Development and Development, 2005, *Great Dictionary of Indonesian, Third Edition*, Jakarta; Balai Pustaka, page 41

children are young human beings.¹⁸ Lilik Mulyadi defines children as immature people or minors.¹⁹

Children as the next generation of the nation According to the provisions of Article 1 number 1 of Law No. 17 of 2016 concerning Child Protection, it is formulated that "a child is someone who is not yet 18 years old, including children who are still in the womb". The provisions of Article 1 number 3 of Law No. 11 of 2012 concerning Juvenile Justice "children who are complicit or children who are not yet 18 years old and unmarried. Children according to the Civil Code have several categories regarding children such as the formulation of various articles listed in the Civil Code, including:

1. Legitimate Children, namely children who are considered to be born from a legal marriage between their father and mother Provisions regarding legal children are regulated in Article 250 jo Article 255 of the Civil Code.
2. An illegitimate child is a child born as a result of a relationship between a man and a woman who are not bound by marriage with another person and there is no prohibition on marrying each other. The provisions for children out of wedlock are regulated in Article 280 of the Civil Code.
3. Child of adultery, which is a child born from an extramarital relationship between a man and a woman in which one or both of them is bound by marriage with another person. Provisions regarding child adultery are regulated in article 280 of the Civil Code²⁰.
4. Incest children are children born from a relationship between a man and a woman between the two based on the provisions of the law there is a prohibition on marrying each other.²¹ The provisions regarding this child connection are regulated in articles 283 and 272 of the Civil Code.

Based on the etymological meaning of the word tabanni, the meaning of child adoption means that a person adopts another person's child as a child, and for that child all legal provisions that apply to the biological child of the adoptive parents apply. Islam cancels and does not recognize the custom of adopting other people's children to be used as biological children because it will have a negative impact.²² Child adoption can also be interpreted as a legal act of transferring a child from an environment that was originally to the family environment of his adoptive parents.²³ Child adoption may only be carried out a maximum of 2 (two) times with the provision that the distance between the first and second appointments is at least 2 years, in accordance with Article 21 paragraph (1) and article 13 letter g of Government Regulation Number 54 of 2007 concerning the implementation of Child Adoption.²⁴

A. Legal Force of Child Adoption According to the Compilation of Islamic Law

¹⁸ Sudarsono, 2007, *Legal Dictionary, Jakarta: Rineka Cipta*, page 32.

¹⁹ Lilik Mulyadi, 2005, *Children's Court in Indonesia, Theory and Practice and Its Problems*, Bandung: Mandar Maju, page 32.

²⁰ S. Syamsudin 2021, The Position of Children Reviewed from the Normative Juridical Perspective, E Journal of Unuja 3.

²¹ S. Sofyan 2012 Analysis of the Constitutional Court Decision No. 46 on the Status of Children Out of Wedlock, www.lemhanas.go.id

²² Nuzha, 2019, The Appointment of Adopted Children in the Review of Islamic Law and Law in Indonesia, Al Mutsla, *Journal of Islamic and Social Sciences*

²³ Rusli Pandika, op cit, page 105

²⁴ See Government Regulation No. 54 of 2007, concerning the Implementation of Child Adoption.

The role of judges as judicial power apparatus is in accordance with the provisions of Law No. 50 of 2009 as amended from Law No. 7 of 2009 concerning Religious Courts, in principle, the executors of judicial duties are in accordance with the provisions of applicable regulations. Carrying out the functions of the judiciary, the judges of religious courts must be fully aware that the main task of a judge is to uphold law and justice, by adjudicating and deciding to settle a case with a verdict, among others: a. Decisions that are *declaratoir*, b. *Constitutive Decisions*, and c. *Condenmatoir Decisions*.²⁵ A declaratory *decision* only contains an *amar* or *dictum* that states a condition.²⁶ The Declaratoir decision was used for the application for adoption of the child, because there was no dispute. The determination of the Religious Court regarding the adoption of children has several powers, including: 1. binding force and 2. power of proof. The determination of the Religious Court in the form of a determination that already has permanent legal force, cannot be challenged anymore, because the determination of the Religious Court that has permanent legal force must be binding, thus the determination of the Religious Court regarding the adoption of children who have permanent legal force will by itself be binding. The matters that have been determined by the judge in the determination of the Religious Court regarding the adoption of the child, must be considered correct and the parties interested in the determination of the child are obliged to fulfill the content or *amar* of the determination. The legal product of the Religious Court in the form of a determination, in addition to having binding force, also has the power of proof, in the sense that the determination of the Religious Court can be used or used as evidence by the parties. The determination of the Religious Court itself is an authentic deed that can be used as evidence.²⁷

B. Consequences of the Law of Child Adoption according to the Compilation of Islamic Law

An act carried out by everyone as an object of law will definitely have consequences that can be in the form of consequences that are prohibited or justified by law. This legal consequence will always occur, because indeed the purpose of carrying out a legal act is to cause consequences, both consequences that give rise to new legal provisions or circumstances and consequences that only improve existing legal provisions or circumstances.

The legal consequences arising from the adoption of a child in the Compilation of Islamic Law are only regulated in one article, namely, Article 209 of the KHI, while other legal consequences of the adoption of a child still refer to the provisions of the Qur'an Surah Al Ahzab verses (4) and (5), which do not give the status of the adopted child as the biological child of the parents who adopted him, or in other words, according to Islam, the act of adopting the child does not change the status from an adopted child to a biological child of the parents who adopted him. For children who have been adopted, according to Islam, they are still children of their biological parents. The adoption of children is carried out according to Islam, stipulating that there is no *nasab* relationship between adoptive parents and adopted children, except for the relationship of affection and responsibility as fellow human beings.

²⁵ See Law No. 7 of 2009 concerning Religious Justice.

²⁶ Rizky Apdina Arzani, Juridical Review of the Unenforceable Declaratoir Decision, *E Nobel Journal*, <https://e-jurnal.nobel.ac.id>

²⁷ Deasy Evi Phani Toga Torop, The Legal Force of Child Adoption Deed Made Before a Notary after the Enactment of Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption, *Neliti*, <http://media.neliti.com>.

²⁸ The adoption of a child carried out according to the Islamic religion only gives rise to the right to inherit the adopted child from the inheritance of his adoptive parents if the adopted child does not receive a compulsory will and the adopted child's share is at most 1/3 of the inheritance of his adoptive parents. Therefore, even though the child has been adopted by his adoptive parents, does not sever the blood relationship between the child and his or her original parents, the right to inherit the adopted child remains with the biological parents. The giving of inheritance to an adopted child is a maximum of 1/3 of the inheritance of his adoptive parents in accordance with the provisions of Article 209 paragraph (2) of the Compilation of Islamic Law which formulates "for adopted children who do not receive a mandatory will of a maximum of 1/3 of the inheritance of their adoptive parents."²⁹

Conclusion: Even though the child has been adopted by his adoptive parents, it still applies to the child:

1. Adopted children still have blood relations and inheritance relations with their biological parents.
2. Behind the name of the adopted child can use the name of the adopted child.
3. There is no blood relationship between the adoptive parents and the adopted child
4. The new adopted child receives an inheritance from the inheritance of his adoptive parents as much as 1/3 of the inheritance, if the adopted child does not receive the obligatory will, and
5. The adoptive parents cannot act as the marriage guardian of the adopted child.

Conclusion:

The application for the adoption of the child will be stated by the Judge of the Religious Court in the form of a determination. The determination of the adoption of a child by the adoptive parents will have legal force, including: 1. Having binding legal force, namely binding the parties involved in the application for the determination of the adoption of the child to obey and comply with each of its stipulations. 2. It has the power of proof, which can be used as evidence for the adoptive parent as the applicant, but does not apply as proof to a third party. The legal consequences of this child adoption according to KHI include: 1. Adopted children still have blood relations and inheritance relations with their biological parents, 2. An adopted child may use the name of his adoptive father after his name, for example using the surname of the father who has adopted him, 3. There is no blood relationship between the adopted child and the adoptive parent, 4. The inheritance relationship between the adoptive parents and the adopted child only occurs if the adopted child does not receive a compulsory will, 4. The adoptive parents cannot act as the marriage guardian of the adopted child, and the person who has the right to marry is the guardian of his or her party or the guardian of the judge

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²⁸ Tri Tomi Wahyudi, Abdul Adib, Syech Ichsan

²⁹ See Compilation of Islamic Law.

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