

LEGAL PROTECTION OF ADOPTED CHILDREN'S RIGHTS UNDER THE CIVIL CODE AND ISLAMIC INHERITANCE LAW

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ABSTRACT

Child adoption transcends mere legal formality, representing a profound social and humanitarian responsibility. Its core must be the child's best interests, not just fulfilling parental desires, thereby offering children a path to a more prosperous life. This research employs a normative juridical method, utilizing statutory and conceptual approaches to compare the legal protection of adopted children's rights under the Civil Code and Islamic Inheritance Law. The findings reveal distinct paradigms. The Civil Code establishes adopted children in a position equal to biological children regarding custody, care, guardianship, and education. It ensures legal parity, administrative certainty, and prioritizes parental suitability for the child's welfare. Conversely, Islamic law maintains the child's lineage with their biological parents; adoption does not create a blood relationship. It is viewed as a social responsibility and virtuous deed. Nonetheless, Islam fundamentally supports initiatives for child protection and welfare. A key mechanism is the obligatory bequest (*wasiat wajibah*), which guarantees inheritance rights for adopted children. This provides concrete legal protection, as explicitly stipulated in Article 209 of the Compilation of Islamic Law (KHI), ensuring their financial security while honoring biological lineage principles. Thus, both systems, through different means, aim to safeguard the rights and future of adopted children.

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INTRODUCTION

The existence of children is not only viewed as a natural consequence of marital relations, but also serves as an important component that strengthens family emotional bonds while becoming a tangible representation of the continuity and unity of the household. However, in reality, various factors such as fertility issues, health conditions, or physical and psychological obstacles cause not all legally married couples to be able to have biological offspring. In situations like this, adoption emerges as an option that is not only appropriate but also greatly needed to fulfill

emotional and social needs in forming a complete family according to marriage ideals. Legally, the practice of child adoption in Indonesia is regulated in Government Regulation No. 54 of 2007 Article 1(1) which affirms that adoption is not merely a voluntary act, but rather a legal process subject to applicable regulations.

Thus, the status of adopted children in the family is not merely recognized formally through legal documents, but is also fully accepted in humanitarian relationships that develop naturally among family members. This process creates a true and profound family bond between foster parents and foster children, where the quality of the relationship formed is not fundamentally different from the relationship between biological parents and their biological children. Therefore, the adoption process should not be viewed merely as a formal legal action, but must also be seen as a manifestation of social and humanitarian responsibility that provides opportunities for children to develop in a family environment full of love, understanding, and strong commitment (Witanto, 2012).

Adoption prioritizes the best interests of the prospective child to be adopted, rather than fulfilling the desires of prospective adoptive mothers or fathers. Regulations regarding child adoption are not solely aimed at providing legal certainty and clarity, but also to protect children's rights, which include guarantees of certainty, security, safety, care, and child development (Theis & Shanty, 2022). Thus, child adoption is expected to provide opportunities for children to live a more prosperous life (Azhar, 2024). The essence of child adoption is an action that simultaneously contains social and legal aspects. This process includes the transfer of responsibility for care, nurturing, and protection of the child from biological parents to prospective foster parents who meet legal requirements. The adopted child then becomes a full part of the new family, with the same status and treatment as biological children, both legally and in daily activities.

In this context, regulatory changes and updates become urgent so that the child adoption process not only has formal legitimacy, but also provides firm legal protection for all parties involved, especially children as the main subjects. With legitimate and standardized procedures, the adoption process must go through legal mechanisms recognized by the state and may not be done carelessly. This causes only a small portion of prospective adoptive parents to be willing to pursue official legal channels to obtain full legality from the District Court. Nevertheless, this step becomes crucial to ensure that the rights of adopted children are protected fairly and in accordance with applicable national and international legal rules (Karaluhe, 2016).

Islamic inheritance law functions as a normative system that comprehensively regulates the process of transferring ownership rights over inherited property (*tirkah*) from the testator to legitimate heirs according to sharia provisions. This mechanism is based on the principle of divine justice established by Allah SWT. Thus, Islamic inheritance law ensures the property transfer process proceeds in an orderly, peaceful manner and in accordance with Sharia principles. In Islam, adopted children are not included in the group of heirs entitled to receive inherited property from their adoptive parents. However, the Compilation of Islamic Law shows a wise social response by accommodating legal protection for adopted children through the obligatory bequest mechanism. This institution allows religious courts to determine the allocation of part of the inheritance to adopted children, even though the testator did not leave a written will beforehand.

Although studies regarding the position of adopted children in inheritance law have been extensively conducted, most research is still normative and partial by separating analysis between civil law and Islamic law. These studies generally only compare the position of adopted children in each legal system without examining in depth harmonization efforts of norms in the context of Indonesia's pluralistic national legal system (Muhrarr, 2023; Siregar et al., 2022; Wahyudi & Djajaputra, 2024). In addition, studies linking legal norms with the reality of inheritance practices in society and court decisions are still relatively limited, so that legal protection of adopted children's rights has not fully provided adequate legal certainty. This condition shows a research gap, particularly regarding the integration of regulations on adopted children's inheritance rights in the Civil Code and Islamic inheritance law as two legal systems equally applicable in Indonesia (Shobirin & Andri, 2024).

The urgency of this research is increasingly strengthened considering that the regulation of child adoption in Government Regulation No. 54 of 2007 still focuses on procedural aspects of adoption, while its legal implications on adopted children's inheritance rights have not been firmly and systematically regulated. On the other hand, Islamic inheritance law does not recognize adopted children as heirs based on lineage relationships, but the Compilation of Islamic Law provides protection through the obligatory bequest mechanism which in practice still shows differences in application in the religious court environment (Senen & Kelib, 2019; Widiawati & Prabandari, 2019). This lack of synchronization in regulations and practices has the potential to create legal uncertainty and weaken the protection of adopted children's rights as legal subjects. Therefore, this research is important to provide conceptual and juridical clarity regarding the legal protection of adopted children's rights in the perspective of the Civil Code and Islamic inheritance law, while serving as a basis for strengthening legal certainty oriented toward the best interests of children. Based on considerations of various existing legal issues, this research is driven to conduct in-depth research and further examine legal protection for adopted children's rights according to the civil code and Islamic inheritance law.

METHOD

Normative legal research that exclusively focuses on in-depth study and analysis of various relevant legal documents that become primary sources in the legal sciences, including regulations such as legislation, court decisions or provisions that become legal precedents, contracts or agreements as specific legal objects as well as legal theories and academic opinions developing in the scientific world (Waluyo, 2008). This research also uses a statutory approach (Waluyo, 2008), this method is applied through in-depth and systematic study of every relevant legislation directly related to the legal issues that are the focus of research. And a conceptual approach, which is specifically defined as an approach based on deep understanding of relevant legal concepts, applicable legal theories, fundamental legal principles, and other elements closely related to the material or object being discussed in the study (Marzuki, 2007).

Primary legal materials include various applicable regulations as the main legal basis in community life such as the Civil Code, Compilation of Islamic Law (KHI), Decision Number 105/Pdt.P/2022/PN Jpa, Law No. 23 of 2002 on Child Protection, Government Regulation No. 54 of 2007 on Implementation of Child Adoption, Law No. 1979 on Child Welfare, Staatsblad Number 129 of 1917 and Law No. 1 of 1974 on Marriage. In addition, secondary legal materials are also used, in the form of literature, journals, books, and other legal publications, as well as tertiary legal materials such as legal dictionaries that provide supporting information.

Literature study, which is also often called bibliographic study, is a systematic method involving examination, study, and in-depth analysis of various written materials related to law, which have been widely published and come from various reliable sources, whether in the form of books, scientific journals, articles, official documents, legislation, court decisions, or other academic works (Muhamimin, 2020).

RESULTS AND DISCUSSION

The Position of Adopted Children's Rights According to the Civil Law System and Islamic Inheritance Law

The child adoption process in Indonesia is supported by legal instruments such as SEMA No. 6 of 1983 and SEMA No. 3 of 2005 which provide technical guidance for courts to ensure the principle of the best interests of the child. In the pluralistic national legal system, adoption practices must consider aspects of Islamic law related to lineage and inheritance, as well as Customary law that influences social acceptance. The success of child adoption does not only depend on formal legal compliance, but also on social legitimacy and conformity with cultural values. Therefore, child adoption must be understood as a legal mechanism that integrates state provisions, religious norms, and local traditions to create a just and sustainable child protection system for vulnerable children who need alternative care.

In the Civil Code itself, there are no clear provisions directly regulating the mechanism of child adoption. This legal vacuum then prompted the birth of Staatsblad Number 129 of 1917, a regulation historically enacted during the Dutch colonial period to regulate adoption practices, especially in the Chinese community in Indonesia. Staatsblad No. 129 of 1917 Article 14 shows official recognition of adopted children as an inseparable part of adoptive parents' families, although legally the relationship with biological parents is severed.

In line with legal developments in Indonesia, various new regulations have been produced to replace old provisions in Staatsblad 1917, although its influence is still felt today. Law Number 1 of 1974 on Marriage became a comprehensive foundation regulating family formation, including aspects of child adoption. To complete this legal framework, the government issued Government Regulation Number 54 of 2007 and Minister of Social Affairs Regulation Number 110/HUK/2009 which regulate in detail child adoption procedures, from administrative stages to psychological evaluation. In addition, Law Number 35 of 2014 as an amendment to the Child Protection Law affirms that child adoption must prioritize the best interests of the child and is only valid through a court determination that has permanent legal force, to guarantee the protection of children's rights in substitute families.

Basically, the position of adopted children in Minister of Social Affairs Regulation Number 110/Huk/2009 on Requirements for Child Adoption Article 2 paragraph 1 b explains that adopted children have the same position as biological children in terms of rights and obligations such as custody rights, care, education, and so forth, but does not sever blood relations with biological parents. Child adoption is carried out for the best interests of the child, based on local customs and habits, and applicable legal provisions.

This is emphasized in "Article 4 Chapter I of the Child Protection Law and Article 39 of Law No. 35 of 2014, which states that adopted children maintain blood relations with biological parents, while the purpose of child adoption is to fulfill the best interests of the child, including the right to care, education, and welfare, so that the adoption process focuses more on protecting children's rights rather than merely changing legal status."

In Islamic law, adopted children do not have lineage relations with adoptive parents so they are not entitled to inherit, referring to the Bukhari hadith which prohibits recognition of lineage other than to the biological father. The giving of property to adopted children can only be done through a will with a maximum limit of one-third of the property, according to fiqh principles for non-heirs. Adopted children remain legally and inheritance-bound to their biological parents.

From the above description, three main principles regarding the position of adopted children in Islamic law can be drawn. First, adopting children without changing the line of descent and solely for the purpose of care is a noble act recommended in Islam. Second, equating the status of adopted children with biological children in terms of lineage and inheritance contradicts the basic principles of Islamic law. Third, recognizing adopted children as full heirs without going through a valid will constitutes a serious violation in Islamic sharia because it damages the inheritance system that has been established (Al-Shabuni, 1996).

In Islamic inheritance law, adopted children are not included in the list of heirs, unless the testator consciously gives a will of a maximum of one-third of their wealth to the adopted child as a form of appreciation or affection, without reducing the rights of legitimate heirs according to sharia provisions (Hadikusuma, 2003). This obligatory bequest is binding while reflecting social and moral protection in the Islamic legal system (Permono, 2002). The following are the conditions for obligatory bequest:

One form of legal innovation considered capable of providing concrete solutions to various contemporary issues, especially in relation to the legal position of adopted children in the inheritance system, is by requiring a will that explicitly includes the allocation of property to the adopted child by their adoptive parents, as a form of appreciation and social responsibility that does not neglect positive legal provisions or principles of justice in religion. This provision not only reflects legal protection efforts for adopted children who biologically do not have lineage relations with their adoptive parents, but also shows how local values such as community subculture dynamics and

conventions developing in Indonesia's constitutional system can be integrated into the Islamic legal framework through a wise, adaptive approach based on general principles of Islamic law development that are always open to social change without sacrificing fundamental syar'i values.

From a benefit perspective, sharia as a divine legal system that is dynamic and responsive to the needs of the ummah, consistently maintains, considers, and accommodates customs that have been rooted in community life, including in social transactions, muamalah practices, and local customary policies that are hereditary, as long as there is no substantial contradiction with the main principles of Islamic teachings which include justice, honesty, responsibility, and do not contain harmful elements or potential that endangers individual life or society collectively. This principle shows that sharia is not rigid, but rather provides wide space for legal adjustment as long as it remains within the corridor established by the basic values of religion, thus enabling the creation of a legal system that is not only spiritually relevant, but also socially and culturally contextual (Permono, 2002)

The regulation of child adoption in the Indonesian legal system reflects a complex legal pluralism structure, where state law, Islamic law, and customary law are intertwined in determining the legal status of adopted children (Allagan, 2017; Hamida, 2022). In this context, national law emphasizes aspects of child protection and welfare through recognition of adopted children's position in foster families, while Islamic law maintains the principle of biological filiation (*nasab*) and limits the legal consequences of child adoption on inheritance rights (Umar et al., 2023). This normative tension is closely related to debates regarding children's identity rights, especially when the concept of social filiation in modern law is confronted with the principle of lineage clarity in Islamic law, which aims to maintain order in family law and the inheritance system (Ali, 2019). The conceptual difference between adoption in positive law and the concept of *kafâla* in the Islamic legal tradition also emphasizes the need for harmonization mechanisms that can guarantee legal certainty without neglecting religious and social values that live in society (Nurlaelawati & Van Huis, 2019). Thus, obligatory bequest functions as a normative bridge that allows protection of adopted children's rights to remain guaranteed without violating basic principles of Islamic law in the pluralistic national legal system.

Legal Protection of Adopted Children's Rights According to Civil Law and Islamic Inheritance Law

The child adoption process through judicial institutions is not merely a series of administrative procedures, but is a tangible manifestation of the presence of law as a protector of human dignity, especially children who are adopted to become part of a new family. Through a valid court decision, adopted children obtain legal status equal to biological children in family life relationships which include the right to proper education, the right to inherit legally, and other rights and obligations inherent in family relations recognized by law. Thus, child adoption becomes more than mere juridical validation. The process becomes a means that bridges the achievement of recognition, protection, and legal certainty for adopted children, a form of legitimacy that not only affirms the position of adopted children in the family structure juridically, but also confirms it in family relationships based on affection and legal validity that is legitimate and recognized by the state (Hadikusuma, 2003).

Philipus M. Hadjon argues for clearly distinguishing two main categories in legal protection, namely repressive and preventive legal protection, where preventive legal protection functions as an anticipatory step designed to prevent violations of children's fundamental rights from early on, by providing children with the opportunity to actively express consent or give opinions before the government makes decisions that have the potential to violate their rights (Sinay, 2020). Meanwhile, repressive legal protection is a form of protection that enables the government to take action or intervention to complete the defense process for children after their rights have been violated. In the context of adopted children, this legal protection effort becomes very important and strategic, because it aims to ensure that the rights of adopted children can be fulfilled comprehensively and effectively, so that they receive adequate legal protection both before and after potential violations occur, for the creation of justice and sustainable welfare for adopted children in the applicable social and legal environment (Rahman & Tomayahu, 2020).

SEMA No. 6 of 1983 requires court validation as the legal basis for valid child adoption, as also emphasized in Article 1 of Law No. 35/2014 on Child Protection which requires determination by authorized institutions. Its implementation is reflected in Jepara District Court Decision No. 105/Pdt.P/2022/PN Jpa (October 31, 2022), where the couple James Marbungaran Hutasoit and Endang Rinawati Purba submitted a child adoption application to provide a proper life while as a form of guarantee for old age, thus requiring legal recognition through court determination. The following are the judge's legal considerations in Jepara District Court Decision Number 105/Pdt.P/2022/PN Jpa as follows:

Based on legal facts revealed in the trial and supported by the conformity of the applicants' statements and witnesses, as well as document P-10 in the form of Child Surrender Legalization Letter Number 15/L/DFN/VII/2019 issued by Notary Dwi Femi Nasution, S.H., M.Kn. on July 19, 2019, it was revealed that the applicants had received the surrender of two twin children named Samuel Kitaro and Sean Kenji (born in Medan, July 9, 2019) from their biological parents, the late Dahlan and Zaretti, to be adopted. Since birth until now, these two children have been properly in the care and custody of the applicants;

Considering, that the matter mentioned above is also supported by evidence letter P-9 in the form of Minutes 20/7/Adp/2019, dated July 20, 2019, which essentially between Zuretti And Endang Rinawati Purba And James Marbungaran Hutasoit have agreed and confirmed about the adoption as in evidence P-10;

Considering that based on legal facts obtained from the applicants' and witnesses' statements and confirmed by evidence letter P-7 in the form of Birth Certificate Number 0088/SKL/RSIAAM/VII/2019, in the name of Sean Kenji, dated July 9, 2019 and P-8 in the form of Birth Certificate Number 0087/SKL/RSIAAM/VII/2019, in the name of Samuel Kitaro, dated July 9, 2019, it is known that these children were born on July 9, 2019 and when connected with the submission of the application by the Applicants, the age of these children is approximately 3 years 3 months or at least under 18 years of age, so according to the Judge, the children named Samuel Kitaro and Sean Kenji can be categorized as children;

Considering that based on evidence P-10 in the form of Child Handover for Care Validation Letter Number 15/L/DFN/VII/2019 issued by Notary Dwi Femi Nasution, S.H., M.Kn dated July 19, 2019, it is known that the biological mother of these children has fully handed over the children to the Applicants to be cared for, nurtured, raised, educated and raised properly and also to be treated in due time as legitimate heirs of the Applicants, in addition to that the Applicants also promise and bind themselves to treat the children mentioned above as their own biological children, as if these children were born from the Applicants' marriage and made their own heirs;

Considering, that the process of surrender or adoption of these children has also been approved by the extended families of both parties as in evidence P-23 in the form of Family Consent Statement for Adopting Children, in the name of Kusmiyati and P-24 in the form of Family Consent Statement for Adopting Children, in the name of Jinta Raja Hutasoit and Lasmaria Sianturi;

Considering that according to witness statements and confirmed by evidence letters P-29 and P-30 in the form of Employment Agreement / Work Agreement, in the name of James Marbungaran Hutasoit and Endang Rinawati Purba, it is known that the Applicants are still working in Japan until now and have wages/income as in evidence P-31 and P-32 in the form of Payslip/salary slips in the name of each Applicant, so according to the Judge, the Applicants have sufficient wages/income so they are able to finance their families including their future adopted children, in fact the Applicants have also financed the treatment of these children as in evidence P-19 through P-22 in the form of patient condition report results from each hospital;

Article 39 of the Child Protection Law stipulates that child adoption must be oriented toward the best interests of the child, including guarantees of comprehensive welfare and protection, while taking into account local socio-cultural norms and applicable legal provisions. As its implementation, Government Regulation Number 54 of 2007 jo. Law Number 23 of 2002 in Article 1 paragraph (2) defines child adoption as a formal legal process that transfers

responsibility for care, education, and maintenance of children from biological parents or legal guardians to adoptive parents legally, so it is legally binding and not merely an administrative action.

The Jepara District Court Decision Number 105/Pdt.P/2022/PN Jpa which affirms the validity of the applicants' request to enroll and adopt two twin boys named Samuel Kitaro and Sean Kenji who were born in Medan on July 9, 2019 from the married couple Dahlan and Zuretti, is true and valid based on legal statements and decisions of authorized judges, showing clear legal recognition of the adopted children's status. Legal protection guarantees for adopted children's inheritance rights in the Indonesian civil legal system provide opportunities for adopted children to obtain a portion of inherited property in accordance with generally applicable inheritance legal provisions, both through legislative provisions and through inheritance mechanisms based on wills (testaments). Thus, the existence of adopted children not only receives social recognition, but also obtains juridical legitimacy.

Islam fundamentally strongly supports every initiative and effort aimed at protecting children, including providing special protection to children in need, such as through the child activation or child adoption process, with a strong foundation in the values of compassion, justice, and social responsibility recommended in religious teachings; in this context, the child adoption that is permitted and recognized in Islam is adoption that does not claim the child as a biological child, but is done solely with the noble purpose of helping and providing proper protection for that child, so that the adopted child obtains welfare, legal protection, and social rights that should be theirs without changing the nasab status or lineage that remains attached to their biological parents, in accordance with sharia principles that maintain the authenticity of blood relations while meeting the child's needs for affection and security in the new family environment. The following are some reasons why it makes sense to prohibit child adoption from adoptive parents (Saiban, 2011):

Preventing misunderstandings about what is haram and what is halal. Adopted children are usually considered as biological children, thus giving the impression that even though they are others, they are mahram, whose genitals are forbidden to be seen or touched. Avoiding feelings of retaliation from heirs who believe the presence of adopted children has reduced their rights. So that confusion does not occur, align the lineage in the correct way.

Although there are differences in legal status and lineage, the obligatory bequest mechanism recognized by some scholars and regulated in the Compilation of Islamic Law allows the giving of part of the property (maximum one-third) 1/3 to adopted children. This is a form of recognition of the established social relationship as well as the enforcement of the principles of justice and benefit in Islam (Saiban, 2011). The Compilation of Islamic Law as a legal product resulting from collective ijihad of Indonesian scholars has presented inheritance law innovation through the obligatory bequest mechanism as a form of accommodation to the dynamics of modern society which often builds family relations not only through blood, but also through affection and social responsibility. This makes obligatory bequest not merely a legal instrument but also a concrete manifestation of the principles of justice and benefit in Islam where judges as holders of legal authority are given the authority to decide the validity or invalidity of the implementation of obligatory bequest based on the principle of benefit and ensure that adopted children truly receive their rights even though they are not heirs based on faraid law, thus creating a form of legal protection that is both repressive and preventive to guarantee the civil rights of adopted children in the Islamic legal system in Indonesia (Kunadi & Cahyaningsih, 2020).

CONCLUSION

The position of adopted children's rights based on the Civil Code is that adopted children are placed in a position equal to biological children in their family, this equality includes custody rights, care, guardianship, education. In Islamic law, adopted children never become biological children, because the child's lineage remains connected to their biological father, therefore adopting children in Islam is considered a sense of social responsibility

and a good deed to care for, nurture, and educate children who are not biological children. The moral obligation for adoptive parents is to provide adopted children's rights to receive affection, protection, education, and a proper life.

Legal protection of adopted children's rights in the Civil Code viewed from Jepara District Court Decision "No. 105/Pdt.P/2022/PN Jpa establishes legal equality of adopted children with biological children, protection of administrative legal certainty guarantee and identity, parental suitability for the best interests of the child, and evidence P-10 that the Applicants promise and bind themselves to treat the children as their own biological children, as if these children were born from the Applicants' marriage and made their own heirs. Islam fundamentally explicitly supports various forms of initiatives aimed at providing protection and ensuring child welfare, including recognition and activation of adopted children as part of the family. One concrete form of protection and fulfillment of these adopted children's rights can be found in the concept of obligatory bequest which provides legal protection guarantees to adopted children as clearly stated in Article 209 of the KHI. The regulation explains that the portion of property that can be given through obligatory bequest to adopted children is a maximum of 1/3 of the total inherited property.

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