

ADOPTED CHILDREN IN THE PERSPECTIVE OF NATIONAL LAW AND ISLAMIC LAW IN INDONESIA

Hasbi Umar, Husin Bafadhah, Arnelli Darwita

*Faculty of Sharia Sciences, Universitas Islam Negeri Sultan Thaha Syaifuddin, Jambi
arnellidarwita_not@gmail.com*

ABSTRACT

Adoption or adoption of children is clearly regulated in Islamic law where an adopted child remains devoted to his biological parents while adoptive parents are only obliged to maintain, educate the adopted child until the adopted child can be independent and between the adopted child and the adoptive family do not inherit each other and also applies the law on mahrom so that between adopted children and family must not be seen with each other, The adoptive father must not be the marital guardian of his adopted child if the adopted daughter is to marry. The arrangement of adopted children for non-Muslims in Indonesia is based on civil law provisions where between adopted children and adoptive families and children are considered as biological children as if adopted children were born from the womb of their adoptive mothers and inherit each other.

Keywords: *Adopted Son, Adoptive Parent, Nasab*

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INTRODUCTION

The definition of adoption in Indonesia in terms of language (etymology) comes from the Dutch "adoptie" which according to the legal dictionary is the adoption of a child to be made a biological child (Riadi, 2021). While the term adopt or adoption (English) which means adoption, it is often also said to be "adoption of a child" which means adoption or adoption of a child (Riley, 1997). According to the Big Dictionary Indonesian the definition of adoption is the adoption of someone else's child as one's own child. What is meant by child adoption here is to raise someone else's child so that it can be realized as one's own child with all the legal consequences (Bharadwaj, 2003). This results in a legal relationship between the person who takes the child and the one who adopts the child. Adoption is a legal act that transfers a child from the family power of the legal parents/legal guardians/other persons responsible for the care, education and upbringing of the child into the power environment of the adoptive parents' families based on the decision/determination of the District Court (Sjukrie, 1992).

According to Article 171 Paragraph 8 of the Compilation of Islamic Law, the definition of an adopted child is: "A child who in terms of maintenance for his daily life, education expenses and so on passes from the original parent to his adoptive parents based on a court decision." In Arabic, adopted children are called "tabanny" which was the custom in the days of jahiliyah and early Islam where a person who adopted someone else's child as a child, applies to the law that applies to the biological child.

Studying the history of child adoption in Indonesia, it is known that ten centuries cannot be separated from the history of Islamic development with the presence of traders and scholars who traded and migrated to Indonesia and spread Islam to the Indonesian people peacefully so that Islamic teachings have been embedded in the culture of the Indonesian people. The colonization of Europeans lasted for three and a half centuries, although accompanied by hard efforts to erase Islamic values in Indonesian society but because these values have formed

crystallized norms in people's lives, the colonial government was unable to uproot the roots of Islamic culture that had been embedded in the personality of the Indonesian nation (Hoffman & Rohde, 2007). Nevertheless, Islamic law still functions to maintain and maintain the spirit of anti-colonialism and tyranny in the hearts of Muslims / Indonesian people, through the chain of Indonesian resistance until the capture of independence on August 17, 1945.

Before the Dutch East Indies colonial launched its legal politics in Indonesia, Islamic law as a stand-alone law already had a strong position, both in society and in state legislation. Islamic kingdoms that once existed in Indonesia implemented Islamic law in their respective territories. The Islamic Kingdom of Samudera Pasai, which was established in North Aceh at the end of the 13th century AD (AD), was the first Islamic kingdom which was later followed by the establishment of other Islamic kingdoms, for example: Demak, Jepara, Tuban, Gresik, Ngampel and Banten. In the eastern part of Indonesia also stood Islamic kingdoms, such as: Tidore and Makassar. In the mid-16th century, a new dynasty, namely the kingdom of Mataram ruled Central Java, and finally succeeded in conquering small kingdoms on the north coast, very large role in the spread of Islam in the archipelago. With the entry of the ruler of the kingdom of Mataram into Islam, then at the beginning of the 17th century AD the spread of Islam almost covered most of Indonesia.

Efforts to abolish religious courts, which are synonymous with Islamic law, have begun since the VOC began to set foot on the earth of this archipelago. This effort is by reducing the authority of religious courts little by little. In 1830 the Dutch government placed religious courts under the supervision of "landraad" (district courts). Only the landraad institution has the power to order the execution of religious court rulings in the form of "excecutoire verklaring" (execution of judgments).

METHOD

The research method that the author uses in compiling this paper is Normative Juridical Research as the author mentioned above. Normative Juridical Research Method is a literature law study conducted by examining library materials or mere secondary data (Sunggono, 2003). Also, the author uses the Method of Deductive Thinking, which is a way of thinking used when drawing a conclusion from something that is general and has been proven to be true and then the conclusion is intended for something special (Sedarmayanti & Hidayat, 2002). Because of the things that the author has explained above, thus the object analyzed with qualitative research is a research method that refers to legal norms and provisions contained in the Laws and Regulations (Soekanto & Mahmudhi, 2003).

RESULTS AND DISCUSSION

Adopted Child Regulation in Indonesian National Law

After Indonesia's independence, the need for regulations to solve legal problems in society was increasingly felt. Law No. 1 of 1974 is a milestone in the law that regulates some family laws in Indonesia. On July 23, 1979 the President of the Republic of Indonesia enacted Law Number 4 of 1979 concerning Child Welfare consisting of 16 articles promulgated in the State Gazette of the Republic of Indonesia of 1979 Number 32, and Explanation to Law Number 4 of 1979 concerning Child Welfare in the Supplement to the State Gazette of the Republic of Indonesia Number 3143 on July 23, 1979 in Jakarta. Child welfare is a system of life and

livelihood of children that can ensure their growth and development reasonably, both spiritually, physically and socially. Child welfare business is a social welfare effort aimed at ensuring the realization of child welfare, especially the fulfillment of children's basic needs.

The adoption of children is regulated in Article 12 of Law Number 4 of 1979 which reads:

1. The adoption of children according to customs and customs is carried out by prioritizing the interests of child welfare.
2. The interests of child welfare referred to in paragraph (1) are further regulated by Government Regulation.
3. The adoption of children for the benefit of child welfare carried out outside customs and customs, is carried out based on laws and regulations.

In the explanation of Article 12 Paragraph (1) of Law Number 4 of 1979, it is explained that the adoption of children based on this article does not decide to establish blood relations between children and their parents and their parents' families based on the law applicable to the child concerned.

In 2002 Law Number 23 of 2002 concerning Child Protection was born. The adoption of children is regulated in Articles 39 to 41. Adoption of children can only be done in the best interests of the child and is carried out based on local customs and the provisions of applicable laws and regulations, the adoption of children does not sever the blood relationship between the adopted child and his biological parents. Prospective adoptive parents must be of the same religion as the religion adopted by the prospective adopted child which in previous legislation has not been regulated while the adoption of children by foreign nationals can only be done as a last resort. In case the origin of the child is unknown, then the child's religion is adapted to the religion of the majority of the local population.

Adoptive parents must inform their adopted children about their origin and their biological parents (Timmer et al., 2006). Notification of the origin and biological parents is carried out with due regard to the readiness of the child concerned (De Feyter & Winsler, 2009). The government and the community conduct guidance and supervision on the implementation of child adoption. Provisions regarding guidance and supervision are regulated by government regulations.

The regulation on the procedures for the adoption of children in Law Number 23 of 2002 concerning Child Protection is followed up by its technical regulations, namely Government Regulation Number 54 of 2007 and explained in more detail in the Regulation of the Minister of Social Affairs Number 110 of 2009 concerning Requirements for Adoption of Children. Any person who adopts a child shall be done in the best interest of the child, according to local custom, not to sever the blood relationship between the adopted child and his or her biological parents. Adoption of a child by a foreign national can only be done as a last resort. If the adoption of the child is contrary to these provisions, it shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Child Adoption Procedure

One of the considerations for the state to issue Law Number 23 of 2002 is because various laws only regulate certain matters concerning children and specifically have not regulated all

aspects related to child protection. Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption as an elaboration of Law Number 23 of 2003 also regulates the procedure for adopting children between Indonesian citizens that a person can lift a child at most 2 (two) times with a maximum distance of 2 (two) years. For the validity of child adoption in Indonesia, after the application for adoption of the child through the procedure of the rules in existing legislation, the adoption of the child is then ratified through the last step, namely by a court decision issued by the court in the form of a court determination or known as a declaratory decision, which is a statement from the panel of judges that the adopted child is valid as an adopted child of the adoptive parents who submit the application adoption of children. Court rulings also include the legal status of adopted children in the family that has adopted them, regarding the right to inherit from adopted children regulated variously both from customary law and laws and regulations, children's inheritance rights according to customary law follow the customary rules of each region (Simon & Altstein, 1996).

Requirements for Prospective Adopted Children

Based on Article 12 of Government Regulation Number 54 of 2007, the requirements for prospective children who can be appointed include:

1. children who are not yet 18 (eighteen) years old;
2. is an abandoned or abandoned child;
3. be in family care or in a childcare institution; and
4. requires special protection.

The age of adopted children as referred to in paragraph (1) letter a includes:

1. Children under 6 (six) years old are the top priority;
2. Children aged 6 (six) years, up to not yet 12 (twelve) years old, as long as there is an urgent reason; and
3. Children aged 12 (twelve) years to not yet 18 (eighteen) years old, as long as the child requires special protection.

Requirements to become an adoptive parent

Based on Article 13 of Government Regulation Number 54 of 2007 concerning the Implementation of Child Appointment, it is strengthened by Article 20 of the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110 / HUK / 2009 concerning Child Adoption Requirements that prospective adoptive parents must:

1. physically and spiritually healthy both physically and mentally able to take care of prospective adopted children;
2. be at least 30 (thirty) years old and at most 55 (fifty-five) years old;
3. religion equals religion of prospective adopted children
4. be of good conduct and have never been convicted of a crime;
5. legally married for at least 5 (five) years;
6. not be a same-sex couple;
7. not or have no children or have only one child;
8. in a state of economic and social ability;

9. obtain the consent of the child, for the child who has been able to express his opinion and written permission from the child's biological parents or guardians;
10. make a written statement that adoption is in the best interest of the child, the welfare and protection of the child;
11. the presence of social reports from social workers of local provincial social agencies;
12. obtain recommendations from the Head of District/City Social Agencies;
13. and obtained permission from the Head of the Provincial Social Agency.

Courts for the Determination of Adopted Children in Indonesia

Prior to 2006, whether adherents of non-Islamic or non-Islamic religions or adherents of the Islamic faith, applications for adoption were the absolute authority of the district courts so that Muslim communities demanded through the legislature to be given legal channels to apply for adoption under Islamic law. On April 20, 2006, Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts was issued which authorizes Religious Courts to receive, examine and try and settle cases based on Islamic Law, which is in accordance with the principles of Islamic personality which are subject and which can be subordinated to the power of the religious court environment, only those who claim to be followers of Islam. The principle of Islamic personality is regulated in Article 49 letter a number 20 of Law Number 3 of 2006 which states that religious courts have the duty and authority to examine, decide, and settle cases in the first instance, between people of Muslim faith marriage, inheritance, wills, grants, waqf, and shodaqah, changes regarding the determination of the origin of children and the determination of adoption of children. The existence of Article 49 letter number 20 gives hope about. Efforts to protect children in the implementation of child adoption so that it can be maximized so that it arises. The question is whether all this time, before the enactment of the Law. Number 3 of 2006 in the implementation of the determination of the adoption of children, is it really in the interests of the child, because in Law Number 23 of 2002 it is only stated that the adoption of children is carried out based on the best interests of the child.

The occurrence of improper distribution of authority. Prior to the enactment of Law Number 3 of 2006. Gives considerable trouble around. The judges' considerations in both the District Court and the Religious Court in determining the adoption of children are in favor of the best interests of the child, even though as we understand the judge is one of the pillars of the existence of justice, certainty, and legal expediency. By. Therefore. The judge's considerations in court in determining the adoption of children. Very important.

Adopted children according to Islamic law

In the Jahiliyah era, adopted children could become children and even the names of biological parents could be replaced with the names of adoptive parents. Prophet Muhammad's wife, Khadija *radhiyallahu 'anha* once owned a slave named Zaid bin Harithah. This slave was then presented to her husband, Prophet Muhammad *Sallallahu 'Alaihi Wassallam* before he was sent as a prophet. The Prophet Muhammad finally freed Zaid as a slave and made him his adopted son so that people knew him by the title, Zaid bin Muhammad.

After Islam came, this rule was abolished and not enforced. God said, *God did not make your adopted children your biological children. Such is only your word in your mouth, while Allah speaks the haq, and He points to the right way.*" (QS. Al-Ahzab: 4).

Ibn Umar once explained this verse, "Call your adopted sons by (sabbating) the names of their fathers, for that is what is more just in the sight of Allah." (QS. Al-Azhab. Verse 5) (HR. Bukhari 4782 and Muslim 2425) who straightened out the conception of the adopted son. So Zaid was finally called Zaid Bin Haritsah by the people while still using his father's name behind his name. When adopted children cannot be like biological children, the derivative is a problem of fame because this is related to maintaining interaction between children and their adoptive parents when in the house.

According to Imam Ibn Kathir, this verse contains a commandment (Allah Almighty) that abolished the permissible thing at the beginning of Islam, namely recognizing as a child a person who is not a biological child, that is, an adopted son. Allah the Exalted commands to return their blasphemy to their real father (biological father), and this is a just and unbiased attitude."

In the Compilation of Islamic Law (KHI) it is explained that there is an age determination for children, namely children who have not received puberty or reverse, and children who do not have the ability to live alone. In this determination, whether they have entered adulthood or not, these signs are considered in the lens of Islamic law. If the child has entered puberty or puberty, then the child has entered adulthood in accordance with what is regulated in the KHI. According to PM No. 54 of 2007 Article 1 Number 2 an act by transferring the obligations of the biological parents to the parents who will adopt the child, which is carried out legally with the agreement that the adoptive parents will meet the needs of the child's life, the child's education and by maintaining and caring for the child wholeheartedly in the environment of the adoptive parents later. With the adoption of children in Islamic Law, it is believed that the adoptive parents who adopt the child will take care of the child with good intentions such as not abandoning the child and being kept away from suffering by being cared for with all his heart.

Islam does not condone the legal act of raising a child to make a biological child and status his biological child. This kind of action may be taken for granted by the adoptive parents, it is only an administrative matter. Even though this is not only limited to administration but is related to the fate, mahraman, inheritance and guardianship of a person who must be associated with biological parents. This kind of act is a lie that is strictly forbidden in Islam.

Article 171 letter h of the Compilation of Islamic Law (KHI) states, an adopted child is a child who in terms of maintenance for his daily life, education costs, and so on, transfers his responsibility from the original parents to his adoptive parents based on a court decision. The Indonesian Ulema Council (MUI) has decreed on the adoption of children. The fatwa became one of the results of the MUI National Working Meeting which took place in March 1984. On one point of consideration, scholars consider that Islam recognizes legitimate offspring (nasab), is a child born of marriage (marriage). However, MUI reminds, when adopting a child, do not let the child break the relationship of descent (nasab) with his biological father and mother.

Surah Al-Ahzab Verse 40 reaffirms, "Muhammad is not the father of a man among you, but he is the Messenger of Allah and the cover of the prophets and Allah is All-Knower of all

things. The Prophet (peace and blessings be upon him) said, "And, Abu Zar RA indeed heard the Prophet PBUH say, "No one admits to not the real father, while he knows that it is not his father, but he has disbelieved." (HR Bukhari and Muslim).

MUI in its fatwa considers that raising children should not necessarily change their status (nasab) and religion. For example, by pinning the name of the adoptive parents behind the child's name. MUI expects that adoption is carried out with a sense of social responsibility to nurture, nurture, and educate children with affection, like their own children. This is a commendable deed and includes pious deeds. "There is no doubt that such efforts are commendable and encouraged by religion and rewarded," the MUI fatwa said. Later, for the adoptive father, he may bequeath part of his legacy to his adopted son as preparation for his future so that he feels the peace of life. Scholars in the country have also decreed that the adoption of Indonesian children by foreign nationals, in addition to contradicting Article 34 of the 1945 Constitution, also degrades the dignity of the nation.

The adoption of children in Islamic religious law can be seen from various aspects including in terms of Islamic teachings:

1. The duty to help others is the recommendation of Islam. In the Shari'ah it is recommended that every human being help each other help each other. Those who are able must help those who cannot afford it. Muslims should be socially minded in helping and caring for abandoned children or infants whose parents cannot afford it.

2. In terms of the meaning of adoption

In Islamic shari'a does not recognize the meaning of the word adoption (adoption of children) who are given the status of their own biological children. The adoption of children according to Islamic shari'a is more oriented towards love, bread, education and meeting all their needs.

3. In terms of social justice missions.

In terms of the mission of social justice in Islam, in accordance with Islamic law, the adoption of children opens opportunities for the rich to meet their needs in the future, so that they are not neglected by their livelihood and education. This action is a manifestation of the value of devotion to Allah SWT (Jamal, 2016).

Status of Adopted Children in Islamic Inheritance

The position of the adopted child is reviewed according to the Compilation of Islamic Law (KHI) in the distribution of inheritance. In the Compilation of Islamic Law (KHI) the grouping of heirs is regulated in Article 174. The position of adopted children according to the Compilation of Islamic Law (KHI) is still considered a legitimate child based on a court decision by not breaking the relationship with their biological parents. According to Islamic law, adoption can only be justified if it meets the following conditions—not severing the blood relationship between the adopted child and the biological and family parents.

1. Adopted children do not have the position of heirs of adoptive parents, but remain as heirs of their biological parents, nor do adoptive parents have the position of heirs of their adopted children.

2. Adopted children may not use the name of their adoptive parents directly except as an identification/address.

3. Adoptive parents cannot act as guardians in the marriage of their adopted children.

Guarantee for adopted children in the event of obtaining the property of their adoptive parents, the adoptive parents can provide grants or can also be given through a will to their adopted children). Article 209 Paragraphs (1) and (2) of the Compilation of Islamic Law (KHI) explains that adoptive parents who do not receive a mandatory will are given a mandatory will as much as 1/3 of the adopted child's estate, against adopted children who do not receive a will are given a mandatory will, as much as 1/3 of the adoptive parents' estate. In general, between adopted children and adoptive parents has legal consequences. In the event of a will or no will, the grandchild (adopted child) is given a mandatory will of a maximum of 1/3 of the estate of his adoptive parents (grandparents), the adoptive parents (his grandparents) are given a mandatory will of a maximum of 1/3 of the estate of his adopted son (grandson). But this needs to consider the feelings of other children or grandchildren of the adoptive parents (Kunadi & Cahyaningsih, 2020).

The Islamic Law Study Team in the National Law Development in the 1980/1981 Law Study Seminar in Jakarta once proposed points of thought as material for the draft law on adopted children viewed from the point of Islamic law. The main points are:

1. Islamic law does not prohibit adoption, but justifies and advocates for the welfare of children and the happiness of parents.
2. It is necessary to make adequate legislation on the adoption of children.
3. In order to strive for the unification of the term adoption of children by eliminating other terms.
4. Adoption should not sever the relationship between the adopted child and his biological parents.
5. The relationship of wealth or property between the adopted child and the adoptive parent is recommended to be in the relationship of grant and testament.
6. The adoption of children contained in customary law should be sought so as not to contradict Islamic law.
7. Adoption of children by foreign nationals in order to impose tighter restrictions.
8. It is not justifiable to appoint people of different religions. In Islamic law, adoption carries no legal consequences in terms of blood relations, guardian relationships and inheritance relationships with adoptive parents. He remains the heir of his biological parents and the child retains the name of his biological father.

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Nasab

In the Arabic dictionary, Ibn Sidah says, as quoted by Ibn Manzur, that "the child is called by the words *al-walad* and *al-wuldu* which means every child born both male and female, and

the plural forms are *aulad*, *wildah*, and *ildah*." Ali al-Shabuni argues that "al-walad includes both boys and girls, and the word "ibn" is specific to boys." While in the Indonesian dictionary, the word *nasab* adopted from Arabic did not experience a significant shift in meaning. *Nasab* means descent. Muhammad Ali al-Shabûnî, *Min Qumush al-Sunnah*, (especially the father's side) or family relations. Wahbah al-Zuhaylî defines *nasab* as a firm backrest on which to lay a family relationship based on the unity of blood or the consideration that one is part of the other. For example, a child is part of his father, and a father is part of his grandfather. Thus, people who are cognate are people who are related by blood. Furthermore, Wahbah al-Zuhaylî asserts that "the sexual relationship of a child is established to its mother under any circumstances whether born *shari'i* or not." This explanation differs from the opinion of most scholars that the child has a relationship to his father (Jamil, 2016).

A child must know about his descendants, because the origin that concerns his descendants is very important to live his life in society. The concept of *nasab* concerns not only the issue of parental origin and kinship, but also the issue of kinship status and hereditary ties. A child takes the *nasab* from both sides (father and mother), but the relationship of the *nasab* to the father is more dominant than to the mother.

In all schools of Islamic law the primary meaning of *nasab* concerns the father's side, which is closely related to the legitimacy by which the child acquires his legal and religious identity. The determination of *nasab* has a huge impact on individuals, families and society so that each individual is obliged to reflect it in society, thus it is hoped that the *nasabnya* (origin) will be clear.

In addition, with the vagueness of *nasab* it is feared that marriage will occur with the *mahram*. For this reason, Islam forbids giving one's fate to another person who is not his biological father, and vice versa. Such provisions can be developed to the following: the relationship between the adopted child and his original parents still exists, the relationship between the adopted child and the adoptive parents is only in the form of a legal relationship in the form of a transfer of responsibility from the original parents. As a consequence of the above, there are similar implications for the laws that occur in *munakahat*, such as if the adopted son is a boy, the adopted child is allowed to marry the widow of his adoptive father and vice versa. The prohibition of marrying a *mahrom* is due to the relationship with his original parents. The prohibition of marrying a *mahram* due to the relationship with him. The prohibition of marrying a *mahram* was due to a sexual relationship with his family of origin. The adoption of children does not result in mutual inheritance. In principle, in Islamic law, the main thing in inheritance is the existence of blood relations or *mahram*. Because an adopted child cannot inherit each other with his adoptive parents, if the adoptive parents do not have a family, then what can be done if he wishes to give property to the adopted child is, it can be distributed by way of grant while he is still alive, or by way of a will within the limit of one-third of the inheritance before the person concerned dies. The Compilation of Islamic Law (KHI) specifies the obligation of adoptive parents to give a mandatory will to their adopted child for the benefit of the adopted child as the adoptive parent has been burdened with the responsibility to take care of all his needs.

Although the *naqli* proposition is not found explicitly, it can be attributed to the word of Allah, among others in the Qur'an Surah Al-Maidah Verse 106 and Surah Az-Zariyat Verse 19: "O believers, if one of you faces death, and he will testify, then let (the testament) be

witnessed by two just men among you, or two people of different religions from you, If you are on a journey on earth and you are in danger of death." And in their possessions there is a right to the poor who ask and the poor who do not share." As for the provision of the amount of the will as much as 1/3 (one-third) of the estate in accordance with the Hadith Narrated Al-Bukhari from Saad Bin Abi Waqqas: "I suffered from illness then the Prophet Muhammad (PBUH), visited and I asked: "O Messenger of Allah (peace be upon him) pray to Allah may He not reject me". He said: "May Allah exalt you, and other human beings will benefit from you". I asked: "I want to testify half of my property, but I have a daughter." He replied: "Half is a lot". I asked (again): "One-third?" He replied: "one-third, one-third is a lot or a lot". He said: "men testify one-third, and such is permissible for them". The legal basis for the determination of compulsory wills is a compromise of the opinions of scholars about the obligation of wills to relatives who cannot receive heirlooms taken from the opinions of the fuqaha and the great character of jurists and hadith experts, among others Said Bin Al Musayyab, Hasan Al-Basry, Tawus Ahmad, Ishaq Bin Rahawaih and Ibn Hazm.

The giving of part of the deceased's estate to relatives who cannot receive an inheritance that functions as a mandatory will, if the deceased does not testify, is taken from the opinion of the mahzab Ibn Hazm quoted from the fuqaha tabiin and the opinion of Ahmad. The exclusion of relatives who cannot receive inheritance to grandchildren and the limitation of receipt of 1/3 (one-third) of the inheritance is based on Hazm's opinion and the rule of Shar'a: "The authority holder has the authority to order permissible matters (mubah), because he believes that it will bring public benefit. When the ruler commands so, it must be obeyed". This is also in line with the rule of jurisprudence: "The action of the ruler to his people is based on considerations of benefit".

Adopted children are not entitled to inheritance from their adoptive parents, in contrast to the custom in the Jahiliyah era which considers adopted children like biological children who are entitled to inheritance when their adoptive parents. The compilation of Islamic Law (KHI) which specifically regulates Muslims in resolving all legal problems including regarding the position of the adopted child, in Article 209 KHI explains that adopted children are entitled to receive a mandatory will of a maximum of 1/3 of the adoptive parents' estate.

Adopted Son Is Not the Mahram of His Adoptive Family

Adopted children are not mahram, so it is mandatory for their adoptive parents and biological children to wear hijab that covers the aurat in front of the adopted child if the adopted child is male and has reached puberty, as when they are in front of others who are not mahram, different from the custom in the Jahiliyah era.

As in the hadith narrated by 'Aisha radhiyallahu 'anha *that Salim Maula (former slave) Abu Hudzaifah radhiyallahu 'anhu lived with Abu Hudzaifah and his family in their house (as adopted sons), then (when the verse that abolished the adoption of children) came Sahlah Bint Suhail Radhiyallahu 'anha, wife of Abu Hudzaifah Radhiyallahu 'Anhu to the Messenger of Allah Sallallahu 'Alaihi Wa sallam and he said: Surely Salim has reached the age of a mature man and has understood as an adult man, even though he is used to (going in) in and out of our house (without us wearing hijab), and indeed I suspect in Abu Huddzaifah there is something (dislike) about it. So the Prophet Sallallahu 'Alaihi Wa Sallam said to him, "Milk him so that you become his mahram and to lose the dislike that is in Abu Hudzaifah".*

In the discussion of adopted children, the mahram law applies, covering the aurat for both women and men in Muslim families. If a family has an adopted daughter, the law applies to cover the aurat for the adopted child where the adoptive father and the biological son of the adoptive parents cannot see the aurat of the adopted child, on the other hand, if a family has a male adoptive child, the law applies to cover the aurat for the adopted child, adoptive mother and daughters of the adoptive parents since the adopted child reaches puberty.

In the view of lughah and mufassirin experts, aurat is the jama' form of "aurah". According to the language, it means everything that must be covered, everything that makes shame when seen. According to the term, 'aurah is a human limb that must be covered. In the Qur'an the words 'aurah are repeated 4 times with different meanings. In Surah An-Nur verse 31, the word 'aurat means a limb that must be covered. In the same surah Verse 58, the word salasu 'aurat means three kinds of times which are usually at times when the body is often open. In Surah Al-Ahzab Verse 13 the word is repeated 2 times, both meaning open.

There is also an opinion that one of the tools to cover the aurat is the hijab. But in its understanding the hijab itself there is still a contradiction between fiqh scholars and mufassirin. There is an opinion that Jalabib is the jama' form of jilbaab, derived from the word "jalbaba" (wearing hijab). In the Qur'an, the word hijab is mentioned only once, namely in Sura Al-Ahzab Verse 59: "O Prophet, say to your wives, daughters and wives of believers: let them extend their veils all over their bodies so that they may be easier to know, therefore they are not disturbed and Allah is the Most Merciful." (Nuraini & Dhiauddin, 2013)

QS. An-Nur-31 which reads: "Say to the believing woman" let them hold her gaze and her genitals, and let them not reveal her adornment, except that which is seen from her. and let them cover the scab cloth to their breasts, and do not reveal their adornment except to their husbands, or their fathers, or the fathers of their husbands, or their sons, or their brothers, or the sons of their brothers, or their sisters, or the women of Islam, or the slaves which they have, or the servants of men who have no desire or Children who do not understand the aw of a woman, and let them not smite their feet so that they may know what they hide, and repent to Allah, O those who believe that you may be lucky.

Adoptive Father Marries His Adopted Child & Marriage Guardian

It is permissible for an adoptive father to marry his adopted son's ex-wife, different from the custom in the Jahiliyah era because at that time the position of the adopted son was considered as a biological child. This was done by the Prophet Muhammad as an example for his people that marrying the ex-wife of an adopted daughter is permissible in Islamic law. In Islamic law, as mentioned above, the adoption of a child does not change its fate. This means that he is still sabbated to his original parents. Because adopted children do not change their fate, the adoption of children also cannot change the status of mahram.

Adopted children who were previously mahrams, for example, nieces or nephews. An adopted child who was not a mahram before, even if he lives with foster parents, his status is still not a mahram. Islam allows a man to marry a woman as long as she is not his mahram and not a woman who is forbidden to marry temporarily. Whoever is a mahram for a man, as long as the adopted child is not a mahram for his adoptive father, he may marry her, of course with the permission of his guardian, i.e. the child's biological father.

If the adoption of the child is done when the child is not yet 2 years old, then *radha'ah* (milk) causes the adopted child and the mother who breastfeeds him and his children to become *mahram*. If the adoption of the child is done after the child is 2 years old, then the status of the adopted child is someone else's child, and thirdly, if the adopted child is *mahram* from the beginning, then the adopted child and adoptive parents are *mahram*. Consequently, when the two get married, then the marriage law between them is *haram*. But if both of them do not have a *mahram*, then both are allowed to marry. Although legally both are allowed and legal to marry, this may be the subject of discussion in society because it is considered something unusual (*taboo*).

CONCLUSION

Child adoption in Indonesia still uses civil law for non-Muslim residents, Islamic law or the Compilation of Islamic Law for Muslim residents and customary law for customary law communities. Adoption for Muslim families is determined by the Religious Court and for non-Muslim families is determined by the District Court. In Islamic law, adopted children do not break their relationship from the biological family and adoptive parents only have the right to maintain, educate for the future of adopted children. Child adoption for Muslims in Indonesia is the jurisdiction of the Religious Court while for non-Muslims it is the jurisdiction of the District Court. According to Islam, an adopted child may marry his adoptive parents because it is not *mahram* that the adoptive parents cannot be the guardians of his adopted child's marriage.

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