

# Islamic Inheritance Law and Its Implications on the Rights of Adopted Children in Indonesia Perspective on Adopted Children Enforcement in The Law of Inheritance

Megawati Atiyatunnajah<sup>1\*</sup>, Sidik Setyawan<sup>2</sup>

<sup>1</sup>Fine Arts Faculty, Institut Seni Indonesia Yogyakarta, Indonesia

<sup>2</sup>Faculty of Law, social sciences and political science, Universitas Terbuka, Indonesia

ARTICLE INFO	ABSTRACT
<p><b>Chapter history:</b></p> <p>Received Mar 25, 2023                      Revised Apr 4, 2023                      Accepted Apr 17, 2023</p> <p><b>Keywords:</b></p> <p>Adopted Children;                      Inheritance Law;                      Islamic Law.</p>	<p>Adoption has developed into a widespread phenomenon in the context of Indonesian society. Due to the fact that adoption affects the interests of individuals within a family, adoption has been integrated into the legal framework that regulates family relationships. As a result of the way it influences individual interests within the family, it has been incorporated into the legal framework governing family relationships. Article 39 of the Child Protection Law, adoptive parents must pay attention to the best interests of the child during the process, which must also be carried out in accordance with community habits, applicable laws and regulations. There are two categories of adoption in Indonesia: domestic adoption, which occurs between Indonesian citizens, and international adoption, which involves children of Indonesian citizens who are adopted by people who are not residents of Indonesia. The research method used is known as normative juridical research. This research method is used to understand and evaluate whether a legal regulation has complied with the applicable legal principles and formal requirements set by the law. The author chooses this method because it is relevant to various fields of law and generates new ideas. According to research, the inheritance rights of indigenous Indonesians are carried out based on Islamic law in situations involving Indonesian inheritance law. Adopted children are still considered biological parents and are not entitled to inherit from their adoptive parents. The local customary law system will determine how many adopted children are entitled to inheritance. Adopted children still receive inheritance from their biological parents, not from their adoptive parents because adopted children do not inherit from their adoptive parents. Increased public awareness and stricter regulations in Indonesia regarding adoption practices can help protect the rights and interests of children and promote safer and more secure adoption practices.</p>
	<p><b>ABSTRAK</b></p> <p>Adopsi telah berkembang menjadi fenomena yang meluas dalam konteks masyarakat Indonesia. Dikarenakan adopsi mempengaruhi kepentingan individu dalam keluarga, adopsi telah diintegrasikan ke dalam kerangka hukum yang mengatur hubungan keluarga. Sebagai hasil cara mempengaruhi kepentingan individu di dalam keluarga, itu telah dimasukkan ke dalam kerangka hukum yang mengatur hubungan keluarga. Pasal 39 UU Perlindungan Anak, orang tua angkat wajib memperhatikan kepentingan terbaik bagi anak selama proses berlangsung, yang juga harus dilakukan sesuai dengan kebiasaan masyarakat, hukum yang berlaku, dan peraturan. Ada dua kategori adopsi di Indonesia: adopsi domestik, yang terjadi antara warga negara Indonesia, dan adopsi internasional, yang melibatkan anak warga negara Indonesia yang diadopsi oleh orang yang bukan penduduk Indonesia. Metode penelitian yang digunakan dikenal dengan penelitian yuridis normatif. Metode penelitian ini digunakan untuk memahami dan mengevaluasi apakah suatu peraturan hukum telah sesuai dengan prinsip-prinsip hukum yang berlaku dan memenuhi persyaratan formal yang ditetapkan oleh hukum. Penulis memilih metode ini karena relevan sebagai bidang hukum serta menghasilkan pemikiran baru. Menurut penelitian, hak waris Warga Negara Indonesia asli Indonesia dilakukan berdasarkan hukum Islam dalam situasi yang melibatkan hukum waris Indonesia. Anak angkat tetap dianggap sebagai orang tua kandung dan tidak berhak mewaris dari orang tua angkatnya. Sistem hukum adat setempat akan menentukan berapa banyak anak angkat berhak mendapat warisan. Anak angkat tetap mendapat</p>

warisan dari orang tua kandungnya bukan dari orang tua angkatnya karena anak angkat tidak mewarisi dari orang tua angkatnya. Peningkatan kesadaran masyarakat dan regulasi yang lebih ketat di Indonesia terhadap praktek adopsi dapat membantu melindungi hak dan kepentingan anak serta mendorong praktik adopsi yang lebih aman dan terjamin.

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**Corresponding Author:**

Megawati Atiyatunnajah,  
Fine Arts Faculty,  
Institut Seni Indonesia Yogyakarta,  
Parangtritis Road, km.6,5, Yogyakarta.  
Email: megajusticia@gmail.com

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## I. INTRODUCTION

Parents get the greatest gift from Allah (swt) in the form of their children. Moreover, its value far exceeds any other form of wealth. They are religious beliefs that must be guarded and protected because they have human dignity and rights and rights that need to be protected, including children's rights. Including the rights they have. When a couple does not have biological children of their own but raises their foster children with the same level of affection and attention they would give to themselves, those children are considered members of the childless couple's biological family (Al Fahmi et al., 2017)(Al Fahmi et al., 2017). In Islam, adoption is considered a noble social act, but it does not legally change the kinship or inheritance status between the adopted child and the adoptive parents. In Indonesia, adoption regulations are governed by Law No. 23 of 2002, which allows adoption by married couples and prohibits adoption by unmarried or divorced individuals. The protection of adopted children's rights is guaranteed by Law No. 35 of 2014 on Child Protection, which establishes the basic rights of adopted children and empowers the Ministry of Social Affairs to supervise adoption practices.

Adoption of children is permissible in Islam provided that the process does not form a lineage for the adopted child and the status of the adopted child does not affect their ability to inherit. 1 This can be understood from verse 37 of the Book of Azab in the Qur'an, where asbab al -nuzul describes the time when Allah ordered the Prophet to marry Zaynab, who the coincidence is that she is the wife of Zaid bin Harisah, his former adopted son happened to be his former adoptive wife. son of Zaid bin Harisah<sup>1</sup>. Adopting a child from another family or having that child as a member of one's own family is against Islamic rules. The person who adopts the child is said to have adopted the child, and the person who adopted is said to have adopted the child.

The emergence of different perspectives between Islamic law and Civil law in Indonesia regarding the status of adopted children and its implications on inheritance has become an interesting topic to study. From a sociological perspective, adoption or foster care has provided a new meaning, which is a transfer of responsibility and motivation for parents to raise and educate the adopted child. However, this has also resulted in new legal provisions, especially concerning inheritance. Therefore, it is important to discuss the inheritance status of adopted children in relation to their foster parents in this research (Yasin, 2021).

Even though article 15 paragraph 2 expressly states that "adopting girls and adopting children in other ways other than by showing an authentic deed is null and void because of the law", according to law 129 of 1917, only men have the right on certain jobs. The procedure for adopting children in Indonesia has been regulated by the Circular Letter of the Director General of Law and Legislation of the Ministry of Justice No. JHA.1/1/2, dated 24 February 1978. In theory, every child in the

family is entitled to certain rights and responsibilities; but in practice, children's rights are often ignored because the dynamics of many families do not allow it. According to him, one of the government's duties is to care for children who are neglected or do not have sufficient resources. Article 34 paragraph one states that "the poor and neglected children are cared for by the State". This article was added to the 1945 Constitution. This provision can be found there. Article 12 paragraphs (1) and (3) of Law Number 4 of 1979 concerning Child Welfare regulates adoption as an effort to improve children's welfare. Child Protection Act. Article 12 paragraph 1 of this Law states that child adoption is carried out routinely with the intention of improving the welfare of the child is deemed to have been carried out in accordance with the provisions of laws and regulations. Law Number 23 of 2002 concerning Child Protection does not provide a definition of the term "appointment". While Article 1 number 92 states that:

"An adopted child is a child whose rights are transferred from the family environment of the parents, legal guardians, or other persons who are responsible for the care, education and upbringing of the child, to the family environment of the adoptive parents based on a decision or court decision" This definition refers to children children whose rights to raise, educate and care for them are transferred from their biological parents or legal guardians to other adults. The following is an excerpt from Articles 1 and 2 of Government Regulation No. 54 of 2007 concerning Child Adoption:

"Appointment of a child is a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other persons who are responsible for the care, education and upbringing of children into the family environment of adoptive parents". Government Regulation No. 54 of 2007 defines such adoption".

## II. RESEARCH METHOD

In research using normative literature search methods and also conducted research in the field of law which mainly consists of examination of secondary sources known as "normative legal research". Normative legal research is a type of legal research that focuses on analyzing and evaluating legal norms, principles, rules, and doctrines. It involves examining legal sources such as statutes, regulations, and case law to identify and interpret legal principles and rules. The aim of normative legal research is to provide guidance on how the law should be applied and to identify areas where the law may need to be reformed or clarified. This type of research is particularly important in shaping legal policy and practice, as it provides a basis for decision-making and legal argumentation. Primary sources, secondary sources, and tertiary sources are all considered secondary sources. Library legal research is defined as legal research conducted in libraries. Library legal research is a type of legal research that involves using library resources, such as books, journals, and online databases, to locate and analyze legal information. This type of research is commonly used by legal professionals, law students, and academics to gain a deeper understanding of legal issues and to support legal arguments. Library legal research involves conducting searches in legal databases, reading and analyzing legal texts, and using legal research tools to find relevant information. The results of library legal research can be used to develop legal arguments, draft legal documents, and inform legal decision-making. Library legal research is an important skill for anyone involved in the legal profession, as it provides the foundation for effective legal practice. Following the systematic organization, analysis, and drawing of conclusions regarding the topic under investigation, this resource is presented. Studying law can be achieved in many ways. To find solutions to these problems, researchers will collect data from various aspects of the subject using this approach. In this particular investigation, statutory techniques were used or a statutory legal approach. The purpose of this study was to evaluate the adequacy and comparability of the laws applied, and the results will be used as supporting evidence when faced with legal challenges. The author's legal strategy includes researching any and all statutes and

applicable court decisions relating to the topics discussed. This study was conducted to determine the adequacy and comparability of the applicable laws and regulations. Such studies are concerned with basic aspects of the legal system. Law is considered a prescriptive science, which means it investigates issues such as the purpose of law, the principles of justice, the legitimacy of legal norms, the conception of law, and legal standards.

Adopted children are not considered heirs under civil or Islamic law, among other inheritance issues (Hapsin, 2017)(Hapsin, 2017). This occurs even if the child is biologically related to the adoptive parents. For children who are adopted into families that uphold paternal/fatherly ideals, such as those found in Java, the adoption process does not always sever their ties with their biological family. Paternal ideals refer to the set of beliefs, values, and behaviors that are associated with fatherhood and the role of fathers in society. These ideals are often influenced by cultural, social, and historical factors and can vary across different societies and time periods. In general, paternal ideals emphasize the importance of fathers as role models, protectors, and providers for their children and families. This includes promoting qualities such as responsibility, discipline, respect, and love. Fathers are often expected to play an active role in the upbringing and development of their children, and to provide emotional and financial support to their families. However, the specific characteristics and expectations associated with paternal ideals can vary widely across different cultures and societies. For example, in some cultures, fathers may be expected to be strict disciplinarians, while in others, they may be encouraged to be more nurturing and emotionally supportive. Despite these differences, the concept of paternal ideals is an important aspect of understanding fatherhood and the role of fathers in society. It can inform policy and practice related to issues such as parenting, family dynamics, and gender roles. As a direct consequence, adopted children have rights from either the adoptive family or the biological family. On the other hand, in Bali, adoption is a legally mandated process that must be completed before a child can be placed in a foster home. The person who raises the child is legally recognized as the child's biological parent, while the child's adoptive parents continue to act as the adoptive parent.

Identify the legal issue: Determine the legal problem to be researched and limit the scope of the study. (a) Collect data: Collect data through library legal research, such as legal sources like laws and regulations, court decisions, and other documents related to the problem being studied. (b) Analyze the data: Analyze the data collected by identifying relevant legal arguments to the legal issue being studied. In this analysis, the researcher must be able to identify and understand legal concepts and doctrines related to the issue being studied. (c) Evaluate the arguments: Evaluate the legal arguments collected by considering aspects such as consistency, conformity with legal norms, and applicability in legal practice. (d) Conclusion: After collecting and analyzing data, the researcher can draw conclusions from the research conducted and make recommendations for the resolution of the problem studied. The conclusions drawn must be based on the data analysis conducted and must describe the correct legal view and consider social implications and policies. (e) Write a research report: After drawing conclusions, the researcher must write a research report that summarizes the problem, research objectives, methodology, findings, conclusions, and recommendations. The research report must meet academic and legal standards and comply with applicable scientific writing rules.

To analyze the differences in the treatment of adopted children in civil and Islamic inheritance law, a normative juridical research method can be used. The following are the steps that can be taken: (a) Identification of legal issues: Identify the legal issue to be studied, namely the differences in the treatment of adopted children in civil and Islamic inheritance law. (b) Data collection: Collect data through literature review or legal research from sources such as legislation and legal literature related to civil and Islamic inheritance law. (c) Data analysis: Analyze the collected data by identifying differences between civil and Islamic inheritance law in treating adopted children. In this analysis, the researcher should pay attention to the differences in the definition of adopted children

in both laws, differences in inheritance rights for adopted children, and other factors that affect the treatment of adopted children in inheritance law. (d) Argument evaluation: Evaluate the arguments collected by considering aspects such as consistency, compliance with legal norms, and applicability in legal practice. (e) Conclusion: After collecting and analyzing the data, the researcher can draw conclusions from the study and make recommendations for solving the problem being studied. The conclusion must be based on the analysis of the data and must describe the correct legal perspective while considering the social and policy implications.

In this analysis, the researcher must consider the weaknesses and strengths of both legal systems, as well as the social and political impact of these differences. In writing the research report, the researcher must follow academic and legal standards and comply with applicable scientific writing rules.

### III. RESULTS AND DISCUSSION

#### 1. Existence of Inheritance

Inheritance law is part of Islamic law and occupies a very important place in Islamic law. The verses of the Koran regulate the causes of inheritance problems for sure experienced by everyone (Basri, 2020)(Basri, 2020). In Islamic inheritance law, there are several conditions and limitations that determine the distribution of an estate. Here are the terms and factors that affect inheritance and the limitations in Islamic inheritance law:

Conditions for inheritance: (a) The deceased must have left some property, (b) The property must be capable of being inherited, (c) The deceased must not have left any specific bequest (wasiyah) for the person to inherit, (d) The heir must be alive at the time of the deceased's death

Factors that affect inheritance: (a) The type of relationship between the deceased and the heirs, (b) The gender of the heirs, (c) The number of heirs, (d) The presence of any specific bequests (wasiyah) (f) The presence of any debts owed by the deceased

Limitations in Islamic inheritance law: (a) Non-Muslims cannot inherit from Muslims, and vice versa, (b) A child born out of wedlock cannot inherit from their biological father, (c) Adopted , (d) children do not have inheritance rights in Islamic law Inheritance cannot be passed down beyond one's own children and grandchildren (i.e. great-grandchildren have no inheritance rights), (e) The estate cannot be distributed until all debts of the deceased have been paid off

These conditions, factors, and limitations help to ensure a fair and just distribution of the estate according to Islamic inheritance law (Suhartono et al., 2022).

"Wala' al-Itq" is an Arabic term that can be translated as "choosing self-liberation". In the context of Islam, this term refers to the action of a slave who chooses to free himself from slavery by paying ransom or following the procedures stipulated in Islamic Sharia law. In Islamic history, there are many examples of "Wala' al-Itq". One example is Zaid bin Harithah, a slave who was taken as an adopted son by Prophet Muhammad. After being adopted, Prophet Muhammad freed Zaid from slavery and gave him the choice to remain as an adopted son or return to his family. Zaid chose to remain as an adopted son of Prophet Muhammad and took the name Zaid bin Muhammad. This action is evidence that Islam emphasizes individual freedom and respects human rights, including the right to choose self-liberation from slavery. Another example of "Wala' al-Itq" is when a slave in the time of Prophet Muhammad, named Abu Bakrah, asked Prophet Muhammad to free him from slavery by paying ransom. Prophet Muhammad taught him to ask for donations from the companions to pay for his freedom and gave him the ability to buy his freedom. After being freed, Abu Bakrah joined the Muslim group and became one of the famous companions of Prophet Muhammad.

In modern context, the concept of "Wala' al-Itq" is still relevant in the Muslim society, especially in terms of protecting human rights and combating human trafficking. Some Muslim organizations around the world are advocating for individual freedom and respect for human rights, including the right to choose self-liberation from slavery or oppression.

The word "inheritance" comes from the Arabic word "mirth", which means "gift". According to Islamic law, each deceased person's heirs are entitled to an equal share of mawrith (plural) which will be awarded to them after their death. Mawrith is an Arabic term that refers to the inheritance or assets left by someone after their death. In Islam, mawrith is governed by Sharia law and is given to legally determined heirs. The distribution of inheritance must comply with the rules established in Islamic Sharia law. Heirs who have the right to receive inheritance include close family members, such as spouses, children, parents, and siblings. There are also heirs who have rights after close family members, such as aunts, uncles, and other close relatives. An example of mawrith is when someone dies and leaves assets such as a house, car, and cash. Mawrith can also include immovable assets such as land or other properties. Close family members such as spouses and children will receive a larger share of the inheritance than distant relatives or non-relatives. In modern context, the distribution of mawrith is still relevant and governed by Sharia law in countries with a majority Muslim population. Issues related to the distribution of inheritance can arise if there are several families claiming the same inheritance rights or if there are no close surviving family members. However, with established rules and procedures, the distribution of inheritance can be resolved fairly and in accordance with the principles of Islam. Islamic inheritance law is studied scientifically through the lens of inheritance science. According to Islamic Inheritance Law, a person can get a share of the inheritance if they can prove that they are related to the deceased person, married to the deceased person, or are relatives of the deceased person. The concept of wala also plays a role in the transmission of wealth from generation to generation. This is the familial bond known as wala' al-itq between a man who frees a slave and the slave he frees. Because of this relationship, men were entitled to inherit their former slaves even if they were freed by someone else. Slaves cannot have children, regardless of whether they are married or not (Wahyuni, 2018)(Wahyuni, 2018). The wala legacy reason, on the other hand, has lost its significance today. Because there was no such thing as slavery in that time period (Wati, 2018)(Wati, 2018). In terms of inheritance and inheritance, there are three considerations that must be made (Muhibbin & Wahid, 2022).(Muhibbin & Wahid, 2022)

(1) heirs or have left an inheritance (muwarrith), as well as heirs. While there are 3 conditions for inheriting an inheritance, the first is that the heir must pass away. This shows that the deceased died due to natural causes, hukmi (according to the court's decision), and taqdiri (supposedly). There is a possibility that the inheritance will not be given to the heirs if they cannot provide certainty that they have died. Secondly, you need to think about the life of the heirs. The time of death of the testator must be determined. This is because heirs often act as substitutes to handle the management of inheritance left by relatives. Inheritance of money is done through the process of inheritance. Consequently, the heir must continue to exist after the death of the heir. Third, be aware of the circumstances surrounding your inheritance. The only requirement for inheriting property is a direct relationship between the heir and the heir, such as a parent-child relationship, marriage, or sibling relationship. In addition, it is necessary to determine whether there are problems related to inheritance. There are three restrictions on who may inherit property in Islam: first, slavery. Because slave owners withheld all of their slaves' earnings, there was no way for slaves to leave an inheritance. If we give him an inheritance passed down to us by a relative, it will immediately belong to him. This suggests that certain traits are inherited for no apparent reason (Kamal, 2009)(Kamal, 2009). The second problem is murder. Hanafi scholars distinguish between "direct killing", which they call "mubsharah", and "indirect killing", which they call "qatl" (tasabbub). There are three types of direct killing: accidental killing, intentional killing, and

accidental killing. Killing someone without his knowledge, like when someone digs a hole in his yard and then dies after falling into it. The perpetrator of the crime is not directly responsible for the death of the victim; instead, the death was caused by something completely different. Killing someone directly, rather than indirectly, does not prevent someone from inheriting property, according to Hanafiyah theorists. Third, religion is unique. When we talk about "different religions", we mean that the beliefs and religions of the inheritor are not identical to each other. This is because the Prophet said, "A Muslim cannot inherit the property of an infidel, nor can an infidel inherit the property of a Muslim" (Al-Bukhari, 1978)(Al-Bukhari, 1978). The aspects of inheritance law discussed in this section have an impact on the rights of adopted children in inheritance. In Islamic inheritance law, adopted children are not considered legal heirs and are not entitled to a share of the inheritance of their adoptive parents. This is because adoption is not recognized in Islam, and therefore, the adopted child does not have a blood relationship with the adoptive parent. On the other hand, in civil inheritance law, adopted children are considered legal heirs and are entitled to a share of their adoptive parents' inheritance, just like biological children. However, the extent of their share may vary depending on the jurisdiction and the specific circumstances of the adoption. The factors that may influence the inheritance rights of adopted children include the legal system governing the inheritance, the specific laws and regulations in that system regarding adoption, and the legal relationship between the adopted child and the adoptive parent. For example, in some legal systems, adopted children may only be entitled to a share of the inheritance if they were legally adopted before a certain age or if they have lived with the adoptive parents for a minimum period of time. In addition, there may be limitations on the inheritance rights of adopted children, such as the exclusion of adopted children from inheriting certain types of property or assets, or restrictions on the share of inheritance that they are entitled to receive. In summary, the impact of inheritance law on the rights of adopted children in inheritance varies depending on the legal system and specific circumstances involved. While adopted children may be entitled to inheritance in civil law, Islamic law does not recognize adopted children as legal heirs. Factors that may influence their inheritance rights include the specific laws and regulations governing adoption, the legal relationship between the adopted child and the adoptive parent, and any limitations or restrictions imposed by the inheritance laws.

## **2. The Phenomenon of Child Adoption**

As an introduction to the situation of child adoption practices that occur in Indonesia, with the setting of cases of adoption of children with biological parents who are poor families so that they give their children to be adopted by other families as prospective adoptive parents of their children. After being in the process of being adopted and being cared for for six months as a probationary period, the biological parents still want to visit their child frequently, so that the prospective adoptive parents feel uncomfortable because they are seen as interfering with the adoption process that is being carried out (Siregar & Santoso, 2018)(Siregar & Santoso, 2018). In Indonesia, there are several cases that illustrate the interaction between Islamic law and positive law, where both legal systems coexist and interact. One such case is a divorce case in which one spouse requests the court to use Islamic law as a basis for making a decision. An example of this is a divorce case in the East Jakarta Religious Court in 2018, where a Muslim husband requested the use of Islamic law in deciding their child custody rights. His non-Muslim wife objected to the use of Islamic law and filed a lawsuit in the civil court. This created a conflict between Islamic law and positive law. The Religious Court and the Civil Court then interacted to resolve the case. Finally, the court decided that Islamic law could not be applied in this case because the wife was not a Muslim and was not bound by Islamic law. The court then decided that the custody rights of the child would be determined based on the best interests of the child, as provided for in positive law. This case illustrates how the interaction between Islamic law and positive law can occur in Indonesia. Although Indonesia has a legal system based on positive law, religious courts still have the authority to handle cases related to Islamic law, especially in family matters such as divorce,

inheritance, and others. However, when there is a conflict between Islamic law and positive law, the court must decide based on the principles of positive law that apply.

In terms of inheritance rights in Islamic law, an adopted child may not become an heir, but an adopted child is entitled to a grant or will from adoptive parents, the amount of which is not more than 1/3 of the inheritance. Basically, adopted children cannot be the heirs of their adoptive parents but are the heirs of their biological parents. However, there are several ways that can be applied in the distribution of inheritance to adopted children, namely by transferring assets in the form of grants and wills (Yuniarsih et al., 2022)(Yuniarsih et al., 2022). Islamic law as religious law originates from God's revelation which is guided by Muslims. But now, there is a phenomenon assimilation between Islamic law and positive law in Muslim countries. Like the legalization of Islamic law as national law, a phenomenon This happens a lot in Muslim countries that have long implemented it western legal system. In a country where the majority of the population is religious Islam, the aspiration to implement Islamic law as national law very strong, so that with the material legislation strategy in Islamic law this form of legislation also occurs. The nature of the act of adoption is a legal action that cannot be considered merely as the result of an agreement between the parties alone, adoption must be considered as an institution that creates a legal relationship between the adopted child and the family environment of the adoptive parents based on a court decision. It should be understood that the act of adoption is not a legal act that can be occurs at one time as is the case with the delivery of goods, but is a series of events in family relations that show sincerity, love and full awareness of all the consequences of child adoption (TAMIANG, 2023)(TAMIANG, 2023). In Indonesia, adopted children have the same legal status as children born to their biological parents, legal guardians, or anyone who is legally responsible for the upbringing of the child. Children who had parental responsibilities in the past are entitled to this benefit. Law Number 35 of 2014 The provisions of Law Number 35 of 2014 of the Republic of Indonesia listed here have been fulfilled with this understanding. Article 171 of the Compilation of Islamic Law defines an adopted child as a person whose responsibilities for meeting daily needs, education and other tasks, as well as the responsibility of caring for children, are transferred from biological responsibilities. parents to adoptive parents by court decision. The biological parents of adopted children are no longer responsible for meeting the child's basic needs, including food, clothing, shelter, and education. This understanding is included in the content of the article. However, there will be no changes to family relationships, marriage guardians for adopted children, or inheritance rights from biological parents as a result of transferring obligations (Gerhastuti & Yunanto, 2017)(Gerhastuti & Yunanto, 2017). Adoption does not create a relationship between a child and his biological family, which is an underlying principle of Islamic law. As a result, adoption has no impact on mahram, marriage, or inheritance. Al- Azab verse 37 explains very clearly that the event known as asbabun nuzul occurred when Allah ordered the Prophet to marry Zaynab, who was previously married to his adopted son Zayd bin binarisah.

Child adoption is a highly complex cultural phenomenon that is influenced by various cultural factors, such as regional differences and kinship systems. A more detailed exploration of these factors would provide a richer understanding of the phenomenon of child adoption. Firstly, regional differences can affect the practice of child adoption. For example, in some societies, child adoption is not a common practice, while in others, it is considered a norm and even a moral duty. In some societies, such as in some Asian countries, child adoption is considered taboo because it is believed to not guarantee the continuation of lineage and family continuity. Meanwhile, in Western countries, child adoption becomes an alternative for couples who struggle to have children biologically. Therefore, regional factors are crucial to understanding the practice of child adoption.

Secondly, the role of kinship systems also greatly influences child adoption. Some kinship systems, such as bilateral kinship systems, recognize lineage from both sides of the family, making child adoption easier. Meanwhile, in patrilineal kinship systems, kinship interests are prioritized, so



child adoption is often considered unacceptable. In matrilineal kinship systems, child adoption can be more easily accepted because kinship status is counted from the mother's line. Therefore, understanding the role of kinship systems in society is also important to understanding child adoption. Thirdly, social norms also play a significant role in child adoption. Some societies view child adoption as a positive thing, while others still hold negative views on child adoption. Additionally, religion and belief can also affect the practice of child adoption. In some religions, such as Christianity, child adoption is considered a moral duty and a way to help children who do not have parents. On the other hand, in some religions, such as Islam, child adoption is often prohibited or restricted because it is believed to not allow for maintaining proper lineage. Overall, child adoption is influenced by various cultural factors, including regional differences, the role of kinship systems, and social norms. Understanding these factors would provide a richer understanding of the phenomenon of child adoption and help societies decide on appropriate and culturally fitting child adoption practices.

In Indonesia's traditional legal system, adopting a child is considered a charitable act which can be justified in a number of ways due to the country's diverse socio-economic makeup and complex family structures. When a legitimate child is adopted by a family, new civil regulations emerge to regulate issues related to the adopted child's livelihood, child care, and inheritance from the biological family to the adoptive family. The motivation of adopted children must be based on local customs, as stated in Law Number 23 of 2002 concerning Child Protection. This law also requires that the goals and motivations of adopted children must comply with the law. Adopt a child with the intention of running a business for the purpose trafficking in persons or solely for the purpose of inciting a spouse to have children so that the adopted child can be abandoned is a violation of the human rights of the child.

Adopting a child in Indonesia can serve a variety of functions and purposes for a variety of different people. One of the goals of a childless family is to continue the family lineage in some way. Adopting a child is seen as a beneficial act under Indonesian customary law, and there are a number of financial and social benefits associated with such adoption.<sup>4</sup> This is because Indonesia's culture and kinship ranges are so diverse. Following are some of the legal consequences that may arise from child adoption, as stated in Statblad 1917 No. 219: (a) Based on the provisions of Article 11, adopted children are given the names of the ancestors of their adoptive parents. (b) According to paragraph 1 of Article 12 of the Constitution, adopted children are given the same rights as children born to adoptive parents. Therefore, the adopter is legally entitled to inherit from his adopted child.

Conversely, adopted children are not recognized as the basis and cause of inheritance in Islamic law. This is because the basic understanding of inheritance is a relationship through blood known as *arham*. Many Muslim-majority countries still have adoption agreements. According to the provisions of the adoption agreement, adopted children have the right to inherit the assets of their adoptive parents. Apparently, the division of inheritance continues to be carried out as long as the heirs are still alive as a result of their love for adopted children. However, adopted children are not considered as the source and basis of inheritance in Islamic law. This is because the concept of *arham* or blood relationship is the basis of inheritance. Many Muslim-majority countries still have adoption agreements. According to the provisions of the adoption agreement, adopted children have the right to inherit the assets of their adoptive parents. Because of the great commitment of the heirs to the welfare of the adopted child, the distribution of wills really starts when the heirs are still alive.

Every foster child has the right to access education, healthcare, and social services equal to that of biological children. This includes the right to access basic and secondary education services, healthcare services, and social services such as social assistance and social protection. The state and government have a responsibility to ensure that these rights are fulfilled. In terms of access to

education, foster children should be given the opportunity to attend the same school as biological children and have the same rights to access education programs and services. Foster children should also be provided with special support if they need it, such as special education support services if they experience learning difficulties. In terms of healthcare, foster children have the right to healthcare services equal to that of biological children. This includes access to basic healthcare services such as health check-ups and immunizations, as well as access to more advanced healthcare services if necessary. Foster children should also be protected from drug abuse or other harmful substances and be educated about overall health and safety. In terms of social services, foster children also have the right to protection from potential abuse or exploitation. The state and government must ensure that foster children are not financially or sexually exploited and that they have access to social protection and social assistance services if necessary.

To protect these rights of foster children, the state and government must also have clear policies and laws on child protection and adoption. This may include background checks requirements for potential foster parents, close supervision by courts or relevant bodies in the adoption process, as well as efforts to ensure that foster children are given the same rights and protections as biological children. Overall, the rights of foster children include the right to access education, healthcare, and social services equal to that of biological children, as well as protection from potential abuse or exploitation. The state and government have a responsibility to ensure that these rights are fulfilled and that foster children are well-protected.

The situation where a child is raised by someone else can evoke various emotions and motivations for biological parents. Some parents may feel unable to care for their child and decide to hand them over to the care of someone else so that the child can grow and develop better. However, there are also parents who lose custody of their child for reasons such as neglect, violence, or drug abuse.

Biological parents who find it difficult to care for their child may feel sad, disappointed, and guilty. They may feel that they have failed as parents and worry about their child's well-being under the care of someone else. Meanwhile, biological parents who lose custody of their child may feel angry, frustrated, and guilty. They may feel that it is unfair that someone else can take care of their child and they no longer have control over their child's life.

Visits between biological parents and adopted children can have different impacts on the child's well-being depending on the specific situation and conditions. In some cases, visits can help children understand their family history and build positive relationships with their biological parents. However, in other cases, visits can cause stress and confusion for the child, especially if they are still young and do not fully understand the situation. In addition, visits can also trigger conflicts between biological parents and adoptive families, which can have a negative impact on the child's well-being.

It is important for adoptive parents and authorities to consider the impact of visits on the child's well-being as a whole. They must ensure that visits do not cause excessive stress or danger to the child. In addition, it is advisable to consider whether these visits will benefit the child in the long term and whether there are better alternatives to help the child understand their family history.

### **3. Position of the Adopted Child**

Customary law adoption is the norm and includes a third party bringing a child into the family in the same way that the child's biological parents did. Adopted children have various rights and associated responsibilities with its role in the family structure. This involves the obligation to continue to provide care and assistance, the use of family facilities, and the use of last names known as marga or marga (Mutasir, n.d.)(Mutasir, n.d.). Since adopting a child means providing assistance to children in need, especially orphans, Muslims view adoption as a good deed. However, it is important to recognize that there are certain boundaries that must be respected and not violated at any point. It is unacceptable, for example, for mahram members to treat their adult

children as if they were their own because this has no impact on their mahram. However, they are not mahrams from their parents at all (Hadikusuma & Indonesia, 2015)(Hadikusuma & Indonesia, 2015). The process of adopting a child must comply with the laws governing adoption. This can be seen in the Supreme Court Decision No. 210/K/Sip/1973 which states that the legitimacy of an adopted child is determined by the implementation of traditional ceremonies, does not objectively analyze the presence of children in community life. adoptive parent household. This decision states that the legitimacy of adopted children is determined by the implementation of traditional ceremonies. Even though he was cared for and married by his adoptive parents since he was a baby, adoption that is not accompanied by the traditional ceremonial procedures required by Number 912 K/SIP/1975 is considered invalid (Purba, 2005)(Purba, 2005).

The conflict between customary law and Islamic law in the context of adoption can be resolved or managed in several ways. Here are some solutions or approaches that may help: (a) Increasing understanding of customary law and Islamic law: Conflict can arise due to a lack of understanding or misconception about customary law or Islamic law. Therefore, efforts to increase understanding of both laws are crucial. Parties involved, such as adoptive parents, biological families, and adoption agencies can hold meetings and discussions to discuss the differences and similarities between the two laws, as well as seek solutions that can be accepted by all parties. (b) Adopting a hybrid approach: A hybrid approach can be an effective solution to manage the conflict between customary law and Islamic law in adoption. This approach involves the integration of elements from both laws to achieve better results. For example, adoption agencies can adopt adoption practices from customary law while considering Islamic principles such as Kafalah. (c) Enhancing the role of positive law: Positive law, which is laws and government regulations, can help to overcome the conflict between customary law and Islamic law in adoption. The government can make regulations that accommodate adoption practices from customary law while considering Islamic principles. This can help reduce legal uncertainty and enhance protection for adopted children. (d) Building a dialogue among legal experts: It is important to build a dialogue among legal experts in customary law and Islamic law. Through this dialogue, legal experts can share knowledge and experience and seek solutions that can be accepted by all parties. This can also help improve the quality of law and ensure that customary law and Islamic law are respected and applied correctly. (e) In managing the conflict between customary law and Islamic law in adoption, it is important to prioritize the principles of justice, equality, and protection for adopted children. The solutions or approaches applied should consider the interests and rights of all parties involved, including the adopted child, biological family, and adoptive parents.

This perception has shifted due to the proliferation of new ideas on how to determine whether someone is adopted or not. These new ideas relied not only on adoption as a formality, but also on the fact that the individual had been raised, circumcised, schooled, and married. This causes a shift in the way people view adopted individuals. This is in accordance with the Supreme Court Decision No. 53 K/Pdt/1995 which was passed on March 18, 1996. The reasons for adopting a child according to the Child Protection Law are not the same as the reasons for adopting a child. under the customary law of a particular jurisdiction. Bringing attention to the fact that the act of legal adoption must be based on more than what is in the best interests of the child, Customary Law places greater emphasis on the adoptive parents' possible fear of extinction; consequently, it is more common for childless couples to raise children with the help of other willing family members. A direct consequence of this, these children are raised as if they were the biological offspring of their adoptive parents, and they are cut off from their families biological.

The legal status of children raised through the KHI process is not affected in any way. It is impossible to inherit a child who is not a biological relative from the parent who raised him. One of the conditions for a new adoption to be recognized by KHI is that the child maintains a good relationship with both sets of parents. Adopted children also do not directly use the names of their

adoptive parents and their adoptive parents do not have the legal right to be their guardians (Fauzi, 2022).(Fauzi, 2022).

One of the legal consequences of adopting a child is that the child automatically becomes the legal heir of the adoptive parents. Because the basic concept of Islamic Inheritance Law is that there must be blood, lineage, or hereditary relationship, KHI is of the opinion that adopted children cannot legally be the source and cause of inheritance. Adopted children cannot legally become the basis and cause of inheritance. This shows that according to KHI, adoption does not affect the legal status of the adopted child. If they are not descended from their own parents, then they are not entitled to inherit from their adoptive parents; however, they are eligible to inherit from their biological parents and other bloodline connections.

Children were often taken away from their biological parents under customary law on the basis of behavior similar to that of their adoptive parents or recognition of kinship between the two sets of parents. Nearly everyone who responded to the poll said that adopted children were not considered heirs to the wealth of their adoptive parents. Adopted children are not considered members of the heirs group, according to survey respondents. As a direct consequence of this, adopted children do not inherit their adoptive father's lineage. On the other hand, adopted children are in the same situation as biological children in terms of inheritance rights, they still have this right. Adopted children are treated exactly the same as biological children in terms of inheritance rights. The informants of this study rely on the fundamental conflict theory, which me.

One type of customary law that regulates the law of adoption in Islam is "Kafalah". Kafalah is a form of legal protection for orphans or children who are left by their biological parents to be adopted by others. In Islam, Kafalah is regulated in the Quran (Surah al-Ahzab verse 5) and also in the hadiths of Prophet Muhammad. According to Kafalah law, the person who adopts an orphan or a child who is left by their biological parents will be considered as the adoptive parent and fully responsible for the protection, care, and education of the child. A child who is adopted through Kafalah has the same rights as the biological children of the adoptive parents, except in matters of inheritance.

In Kafalah, there are several requirements that must be met by prospective adoptive parents. These requirements include having adequate moral and financial qualifications to care for the child, providing sustenance, protection, and proper education for the child. Additionally, adoptive parents must maintain the child's relationship with their biological family and provide opportunities for the child to learn about Islam. Under Kafalah law, adoptive parents are not allowed to change the child's name and identity, and the adopted child retains their relationship with their biological family. Kafalah also affirms that the inheritance rights of the child's biological family are preserved, and the adopted child does not have inheritance rights from their adoptive family. In practice, Kafalah is important in Islam because it provides an alternative to adoption, which is prohibited in Islamic law. Under Kafalah, adoptive parents are responsible for the protection, care, and education of the child, but the child maintains their relationship with their biological family and the rights recognized by Islamic law.

Adoption is a process in which a child who does not have biological parents to care for them is placed into a foster family. Adoption has emotional and psychological impacts on the adoptee, adoptive parents, and biological parents. Here are some emotional and psychological impacts that may occur:

**Emotional and Psychological Impact on the Adoptee** The adoptee may experience mixed feelings after being adopted. They may feel happy, joyful, and grateful for being placed into a caring and loving family. However, they may also feel sad, confused, and angry for being abandoned by their biological parents. This may lead to poor identity and feeling unloved.

**Emotional and Psychological Impact on Adoptive Parents** Adoptive parents also experience emotional and psychological impacts after adopting a child. They may feel scared, anxious, and worried whether they can provide enough needs for the adopted child. They may also feel strong love and affection for their adoptive child, as well as a sense of loss if the child decides to search for their biological parents.

**Emotional and Psychological Impact on Biological Parents** Biological parents may feel sad and lost after giving up their child for adoption. They may also feel inadequate to care for their child biologically, and may experience guilt and sadness for the decision. However, in some cases, biological parents may feel relieved if they know that their child will be adopted by a family that can provide better care.

In facing the emotional and psychological impacts that arise in adoption, all parties involved need to pay attention to and respond to each other's feelings and needs with care and empathy. Psychological assistance and support can help adoptees, adoptive parents, and biological parents to cope with the feelings and challenges associated with the adoption process.

#### IV. CONCLUSION

The conclusions drawn from the foregoing discussion lead to the understanding that adopted children are not given the same inheritance or genealogical rights as biological children, and that according to Islamic law, the role of adoptive parents is limited to fulfilling parental responsibilities and paying for education, not borne by biological parents. This rules out the possibility of an adopted child inheriting from his or her adoptive parents. The difference in inheritance rights granted to adopted children is one example of how customary law differs from one place to another. There are also differences in legal requirements due to challenges related to inheritance. The right to inheritance is governed by a number of different rules. When a child is adopted, the biological parent-child inheritance relationship is broken, and a new parent-child inheritance bond is formed between the adoptive parents and the adopted child. Adoption is a one-time act that serves many purposes but does not provide legal inheritance. Strictly speaking, adoption not only maintains the pre-existing inheritance relationship between the adopted child and his biological parents, but also establishes a new inheritance relationship between them. According to the Perspective of Islamic Law, there is no obligation for adoptive parents to provide maintenance for adopted children. This is the case even if the child is adopted internationally. Adopting a child is only permissible for welfare according to Islamic law. This includes protecting adopted children from mistreatment and maintaining the relationship between adopted children and their biological parents. According to Article 209 of the Compilation of Islamic Law, adopted children who do not receive a will from their biological parents have the right on the will of his adoptive parents. Likewise, adoptive parents who do not receive a will are entitled to a will of one-third of the adopted child's inheritance. As an added bonus, the will of the adopted child is provided for by the estate of the adoptive parents if no will has been presented to them. Adoption is a process in which a child who does not have biological parents to care for them is placed into a foster family. Adoption has emotional and psychological impacts on the adoptee, adoptive parents, and biological parents. Here are some emotional and psychological impacts that may occur:

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In the context of inheritance law concerning adopted children, there are differences in the rules governing the status and inheritance rights of adopted children in customary law and Islamic law. Here is a more detailed explanation of these differences:

**Customary Law:** Under customary law, an adopted child does not automatically have inheritance rights from their adoptive family. The inheritance rights of an adopted child depend on the customary policy in the local community. Some customary communities may recognize adopted children as heirs and grant them equal inheritance rights as biological children, while others may not recognize adopted children as heirs or grant them fewer inheritance rights.

**Islamic Law:** In Islamic law, adopted children have the same inheritance rights as biological children as long as the adoption process is carried out legally and in accordance with the requirements set by Islam. In Islam, the adoption of a child is done through the process of *ta'zir*, by providing protection, care, and affection to the child.

**Requirements for Adoption of an Adopted Child:** Under customary law, the requirements for the adoption of an adopted child may vary depending on the customary policy in the local community. In Islamic law, there are specific requirements that must be met for the adoption of an adopted child, such as the child must still be a child, should not be related to the adoptive family by haram blood relationships, and there must be intention and agreement from both parties.

**Difference in Adopted Child Status:** Under customary law, an adopted child does not have the same status as a biological child and can be considered a less respected member of the family. In Islamic law, adopted children have the same status as biological children and are considered heirs who have equal rights in the division of inheritance.

These differences indicate that inheritance law concerning adopted children in customary law and Islamic law differs in terms of inheritance rights, adoption requirements, and the status of adopted children. In Islamic law, an adopted child has inheritance rights equal to that of a biological child if the adoption process is carried out legally and in accordance with the requirements set by Islam. Meanwhile, under customary law, the inheritance rights of an adopted child depend on the customary policy in the local community. The conflict of foster parents in adat law and Islamic law can be explained as follows:

**Adat Law:** In adat law, conflict between foster parents may arise due to inheritance issues or adoption that is not recognized by the child's biological family. This conflict can affect the status of the adopted child within the foster family and can result in injustice in the distribution of inheritance. However, the way to resolve this conflict varies depending on the adat policy in the local community.

**Islamic Law:** In Islamic law, conflict between foster parents is not encouraged and should be avoided as it can damage relationships among human beings. Islam encourages foster parents to treat adopted children well and fairly like their biological children, and provide them with equal rights in all aspects, including inheritance rights. However, if conflict arises, Islam encourages resolving the issue through consultation and mediation.

Thus, although adat law and Islamic law have different views on the conflict of foster parents, both encourage solving the problem fairly and with consultation to maintain good relationships among family members.

International adoption is regulated under Law No. 23 of 2002 on Child Protection in Indonesia. According to the law, international adoption can only be carried out if no suitable family is found to care for and raise the child in Indonesia. International adoption must also adhere to the principles of child protection and welfare, and ensure that the best interests and rights of the child are prioritized.

International adoption must go through a adoption process regulated by the Indonesian government and the countries of destination for adoption. The international adoption procedure includes approval from relevant parties, such as birth parents, adoptive parents, and the adopted child (if old enough). International adoption must also go through the court system and obtain approval from the Minister of Social Affairs. In addition, international adoption must also consider the origin and cultural identity of the adopted child. The adoptive parents must provide access for the child to learn and maintain their original identity and culture. The adopted child must also be given the opportunity to learn their language, customs, and original culture. However, international adoption in Indonesia is often considered controversial and invites debate. This is due to several cases that indicate the abuse of international adoption, such as child trafficking, abuse, or sexual exploitation. Therefore, the Indonesian government is also striving to increase surveillance and law enforcement against international adoption carried out both domestically and internationally.

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