

## Adopted Children with the Legal Status of Biological Children: Implications for Inheritance Rights

Eka Mahargiani,<sup>1</sup> Itsna Ummahatul Izza<sup>2\*</sup> Eko Sariyeki<sup>3</sup>

<sup>1</sup>INISNU Temanggung, Indonesia;

<sup>2</sup>INISNU Temanggung, Indonesia;

<sup>3</sup>INISNU Temanggung, Indonesia;

<sup>1</sup> mahargianieka@gmail.com <sup>2</sup> itsnaizza72@gmail.com; <sup>3</sup> ekosariyeki1986@gmail.com

\*Correspondent Author

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### ABSTRACT

In Islam, the tradition of adoption has been known since the pre-Islamic period and later regulated by Sharia to maintain the principles of justice and public interest. However, currently there are adopted children who hold the status of biological children, and this has become something that needs to be examined. The purpose of this research is to examine the status of adopted children who are treated like biological children in terms of inheritance, both based on positive law in Indonesia and according to Islamic law. The method used in this research employs a normative juridical approach. The research is descriptive qualitative and conducted through literature study. The data sources consist of primary data such as the Compilation of Islamic Law article 171 letter h, article 209 paragraph 2, scholars' opinions, as well as Law No. 35 of 2014 jo. Law No. 23 of 2002 and Government Regulation No. 54 of 2007. Data collection techniques include document review and literature study, while data analysis is carried out through the stages of collection, processing, analysis, and interpretation to obtain accurate conclusions. The results of this study explain that adopted children do not have the right to their adoptive parents' inheritance due to the absence of blood relation, but they can still receive part of the inheritance through gifts, wills, or obligatory wills with a maximum limit of one-third of the total inheritance. In Positive Law, according to Law No. 35 of 2014 concerning Child Protection, the inheritance issue of adopted children who have the status of biological children is not explained in detail, but it is stated that adopted children are treated like biological children and have equal rights to care, education, and protection.

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## Introduction

Adoption is often pursued by married couples as a means of realizing one of the primary objectives of marriage, namely building a harmonious and sustainable family. This is particularly significant for couples who have not yet been blessed with children, as the

presence of an adopted child can serve as a complement to their family life (Mardani, 2019). Generally, married couples hope for the presence of a child who will later become the successor of the family, a recipient of parental affection, and a unifying bond within the marriage.

In Indonesia, the phenomenon of child adoption has developed into a relatively common social need within society. Its existence has even been integrated into the family law system as a legally recognized and regulated institution (Usman, 2013). This is due to the existence of specific requirements that must be fulfilled in the process of adopting a child, which are governed by statutory regulations. Furthermore, adoption in Islam is also subject to particular religious rules and principles. This regulation is rooted in the historical fact that adoption has long existed as a social practice in Arab society. At that time, the prevailing custom was that when someone adopted a child, the child would be treated as a biological child and even attributed genealogically (*nasab*) to the adoptive parents, as exemplified by the case of the Prophet Muhammad SAW and Zaid ibn Harithah (Yudi Prayoga, 2024).

Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption provides the legal framework for adoption in Indonesia. It defines adoption as a legal process through which a child is transferred from the care of biological parents, lawful guardians, or other responsible parties to an adoptive family that intends to care for and raise the child fully. Under the care of the adoptive family, the child is expected to grow and develop as if he or she were their own biological child (Meliala, 2015).

The presence of children or descendants within a family is of great importance, particularly as successors to the family lineage and as potential heirs to parental property through inheritance. However, the situation becomes more complex when the child in question is an adopted child. There are distinct differences in the regulation of inheritance rights for adopted children under positive law and Islamic law. For instance, complications may arise when an adopted child has been legally recognized as a biological child and possesses authentic evidence, such as a birth certificate identifying the child as such. Such cases do occur in society. From the perspective of Islamic law, adopted children hold a different legal position from biological children, particularly in matters related to inheritance. Generally, inheritance rights are not automatically granted to adopted children, unless prior arrangements have been made through gifts (*hibah*) or a compulsory bequest (*wasiat wajibah*), as regulated by law (Abdillah, 2023).

## **Method**

This study employs a normative juridical approach, which examines law as a set of written norms found in statutory regulations, classical fiqh texts, and other legal documents.

This method is used to comprehensively analyze existing regulations within Islamic law and Indonesian positive law concerning inheritance rights and the legal status of adopted children. The research adopts a normative juridical method, viewing legal norms as the primary reference framework. The objective of this approach is to discover legal truth based on normative analysis and scholarly reasoning (Johnny, 2008).

## Results and Discussion

### 1. Analysis of the Compilation of Islamic Law (Kompilasi Hukum Islam)

In Islamic inheritance law, the primary principle is based on the existence of a nasab (blood relationship) or a marital bond. However, within the social reality of Indonesian society, the practice of child adoption has become common and widely accepted. In response to this social development, Islamic law in Indonesia, through the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), provides specific regulations regarding the inheritance rights of adopted children. Article 171 letter (h) of the KHI defines an adopted child as a child whose care, maintenance, and education are carried out based on a court decision. Nevertheless, the KHI explicitly states that an adopted child does not automatically qualify as a legitimate heir under Islamic law. Although adopted children do not inherit directly in the same manner as biological heirs, they may still obtain a portion of the adoptive parents' estate through the mechanism of wasiat wajibah (mandatory bequest). This provision is stipulated in Article 209 paragraph (2) of the KHI, which affirms that adopted children are not automatic heirs but may be granted inheritance rights through a compulsory bequest as a form of justice and recognition of the social relationship established during the period of care and upbringing. Article 209 of the KHI further emphasizes that adopted children may receive a portion of the adoptive parents' estate through wasiat wajibah, with a maximum limit of one-third of the total inheritance. If the deceased did not explicitly stipulate such a bequest, the court is authorized to determine the allocation of a mandatory bequest for the adopted child based on considerations of justice. This provision implicitly indicates that the legal position of adopted children in inheritance matters is not equivalent to that of biological children, as their entitlement does not arise automatically from nasab, but rather through an alternative and conditional legal mechanism.

Shaykh Mahmud Shaltut argues that, in a modern context, adopted children who have been nurtured and raised as biological children possess moral and social rights over the property left by their adoptive parents. He contends that, under certain circumstances, Islamic

law may grant inheritance rights to adopted children through the concept of wasiat wajibah, even though they are not considered legitimate heirs under classical Islamic jurisprudence (Shaltut, 2004, pp. 299–301). The majority of scholars from the four major Sunni schools of law Hanafi, Maliki, Shafi'i, and Hanbali agree that adopted children are not recognized as lawful heirs. This consensus is grounded in the principle that the primary conditions for inheritance in Islamic law are blood relations (nasab), marriage, or wala' (emancipation of slaves). Nevertheless, scholars permit the allocation of a bequest to adopted children, provided that it does not exceed one-third of the total estate. Such a bequest is regarded as a permissible act of benevolence, as long as it does not infringe upon the rights of the legitimate heirs (Wahbah al-Zuhayli, 1989). Accordingly, the KHI adopts a middle-ground approach by adhering to Islamic legal principles while accommodating the social realities of Indonesian society (Republic of Indonesia, 2018).

## **2. Analysis of Positive Law on the Inheritance Rights of Adopted Children**

Law Number 35 of 2014 stipulates that an adopted child is one whose care, maintenance, and education are assumed by adoptive parents after being legally transferred from biological parents or lawful guardians through a court decision (Khoidin, 2016). This law amends Law Number 23 of 2002 on Child Protection. The regulation of adoption under this legal framework encompasses various aspects, including procedures, objectives, and the legal implications for the child's status (Nur Rizka., n.d.).

Although, from a legal perspective, an adopted child becomes part of the adoptive family, it is important to note that the biological relationship with the child's biological parents remains intact. This principle is explicitly stated in Article 39 paragraph (1) of Law Number 35 of 2014, which affirms that the adoption process does not sever the nasab relationship between the adopted child and their biological parents, including matters related to inheritance rights (Khoidin, 2016, p. 91). This provision indicates that adopted children retain the right to inherit from their biological parents, even after being adopted by another family. Thus, Indonesian positive law recognizes blood relations as the primary basis for inheritance, meaning that adopted children do not inherit from their adoptive parents unless there is a valid grant (hibah) or will (wasiat) made by the deceased (Subekti, 2021).

The Child Protection Law places strong emphasis on the principle that adoption procedures must prioritize the best interests of the child. Article 13 letter (b) specifies that adoption must consider the child's mental, physical, social, and spiritual welfare. Furthermore,

adoption requires a court decision, the involvement of authorized institutions, and the consent of both the biological parents and the prospective adoptive parents. This framework demonstrates that adoption is carefully regulated to safeguard the rights of adopted children.

Although the law does not explicitly regulate inheritance rights for adopted children, the principle of the child's best interests provides legal space for granting rights through appropriate mechanisms, such as grants or wills. In practice, adopted children may receive assets from adoptive parents through hibah, wasiat, or wasiat wajibah, as stipulated in Article 209 of the KHI. Article 1666 of the Indonesian Civil Code defines a grant (hibah) as an agreement whereby the grantor, during their lifetime, freely and irrevocably transfers property to the recipient. Meanwhile, Article 875 of the Civil Code defines a will (wasiat) as a legal document containing a person's declaration of intent regarding the disposition of their property after death, which may be revoked during their lifetime. In this context, adoption does not automatically confer heir status upon adopted children due to the absence of a blood relationship. However, Indonesian law provides humane legal protection through the policy of wasiat wajibah as a middle path between legal certainty and humanitarian values. Furthermore, Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption provides additional clarity regarding the legal procedures for adoption. Article 1 paragraph (2) defines adoption as a legal act aimed at transferring responsibility for a child from biological parents, lawful guardians, or other responsible parties to adoptive parents who will assume full responsibility with care and affection. Importantly, subsequent provisions emphasize that adoption must preserve the child's original identity, and the birth certificate of an adopted child must not eliminate information regarding the child's origin. Consequently, while adopted children are socially raised by adoptive parents, the law does not alter their nasab status (Kuswanto, 2018). Article 13 of Government Regulation Number 54 of 2007 stipulates that adoption must be based on a court decision to ensure legal legitimacy and comprehensive protection for the child. Nevertheless, the issuance of a birth certificate does not replace the child's nasab status and cannot serve as an automatic basis for inheritance rights, as inheritance under Islamic law in Indonesia remains grounded in blood relations, marital ties, and wala' (Matuankotta, 2011).

Based on an analysis of Law Number 35 of 2014, Law Number 23 of 2002, and Government Regulation Number 54 of 2007, it can be concluded that adoption is legally recognized within the Indonesian positive legal system. However, such recognition does not automatically grant adopted children legal status equivalent to biological children, particularly concerning nasab and inheritance rights. Therefore, alternative mechanisms such as wasiat

wajibah are necessary to ensure that adopted children receive appropriate protection and justice without violating the fundamental principles of Islamic law or Indonesian positive law.

### **3. Harmonization between Islamic Law and Positive Law**

The fundamental difference between Islamic law and positive law concerning the inheritance rights of adopted children lies in the legal force of the wasiat wajibah (mandatory bequest). In classical Islamic law, a will is voluntary in nature and requires the consent of the legitimate heirs if it exceeds one-third of the total estate. However, within Indonesian positive law through the Compilation of Islamic Law (KHI), the court is authorized to grant inheritance rights to an adopted child through wasiat wajibah, even if the testator did not explicitly leave a will. This reflects a progressive legal approach adopted by Indonesian positive law in accommodating evolving social realities within society (Subiyanti & Jumadi Purwoatmodjo, 2019). Moreover, Indonesia has not yet established a unified national inheritance law. Instead, three inheritance systems continue to operate concurrently: Islamic inheritance law, customary inheritance law, and European civil inheritance law (Burgerlijk Wetboek/BW). This pluralistic legal condition originates from colonial legal policies implemented during the Dutch East Indies period. Nevertheless, the Compilation of Islamic Law can be regarded as part of the national legal system, supported by several factors. First, its constitutional and ideological foundations are Pancasila and the 1945 Constitution. Second, KHI was formally legalized through a Presidential Instruction and implemented via a Ministerial Decree of the Ministry of Religious Affairs. Third, KHI is derived from Islamic legal sources, namely the Qur'an and Sunnah. Fourth, its practical implementation is carried out through judicial decisions within the jurisdiction of the Religious Courts (Bisri, 1999).

In inheritance dispute cases, courts often consider both Islamic law and positive law in order to reach a fair decision. Despite this, adopted children may still receive a portion of the estate of their adoptive parents through alternative legal mechanisms such as grants (hibah) or wills (wasiat).

### **4. The Inheritance Status of Adopted Children Recorded as Biological Children under Islamic Law**

From the perspective of Islamic law, the status of an adopted child cannot be equated with that of a biological child, even if official documents such as a birth certificate record the child as a biological offspring. Such administrative recognition does not alter the legal reality

of lineage (*nasab*). Contemporary scholars such as Wahbah al-Zuhayli emphasize that the lineage of an adopted child remains attached to the biological parents and does not transfer to the adoptive parents, as adoption does not eliminate biological ties established under Islamic law. Wahbah al-Zuhayli distinguishes between two concepts related to adoption: *kafālah* and *tabannī*. *Kafālah* refers to the permissible practice of fostering or caring for a child who is not biologically related, without granting lineage affiliation, family name, or inheritance rights. This practice is more accurately understood as guardianship or foster care rather than adoption. In contrast, *tabannī* refers to attributing an adopted child to the adoptive parents in terms of lineage, similar to Western-style adoption. In Islamic law, *tabannī* is prohibited because it contradicts the principle of *ḥifẓ al-nasab* (the preservation of lineage).

The prohibition of *tabannī* is explicitly mentioned in Qur'an Surah al-Ahzab (33:4–5), which emphasizes the importance of maintaining clear lineage. These verses were revealed to correct the practice of attributing Zayd ibn Harithah to the Prophet Muhammad as “Zayd ibn Muhammad,” a custom rooted in pre-Islamic tradition. Islam abolished this practice to prevent confusion of lineage. Fundamentally, adoption in Islamic law is understood as a responsibility of care and upbringing rather than a transformation of lineage. Its primary objective is to ensure the protection and proper development of children, particularly those who are orphaned or neglected. Therefore, adoption does not transfer lineage to the adoptive parents but establishes a relationship of care and affection (Abidin & Kelib, 2018).

In matters of inheritance, adopted children are not equal to biological children. Even if an adopted child is recorded as a biological child in a birth certificate, Islamic law maintains that lineage remains with the biological parents. Since the fundamental causes of inheritance in Islamic law are lineage, marital ties, and *walā'* (emancipation of slaves), adopted children do not qualify as legal heirs. Nevertheless, in the interest of justice—especially for adopted children who have been raised and nurtured by adoptive parents—Islamic law provides an alternative mechanism through *wasiat wajibah*. This allows adopted children to receive a portion of the estate as recognition of emotional bonds and social responsibility, limited to a maximum of one-third of the total inheritance (Nadia & Nurinayah, 2021).

A *wasiat wajibah* may be granted during the lifetime of the testator. If the bequest exceeds one-third of the estate, the consent of all legal heirs is required. However, if the testator dies without leaving a will, the court may issue a ruling granting a *wasiat wajibah* to the adopted child in order to uphold justice (Aslah, 2017, p. 110). According to Wahbah al-Zuhayli,



this demonstrates that Islamic law considers not only lineage but also social and emotional aspects formed during the caregiving relationship (al-Zuhayli, n.d.).

Article 209 of the Compilation of Islamic Law stipulates that adopted children may receive a mandatory bequest of up to one-third of the adoptive parents' estate. If no will was made, the court has the authority to impose a *wasiat wajibah* based on considerations of fairness. This provision reflects legal recognition of emotional and social ties, even though adopted children are not structurally recognized as heirs under Islamic inheritance law (Aslah, 2017).

From an Islamic legal perspective, recording an adopted child as a biological child in a birth certificate holds no legal authority in determining lineage. While administratively permitted, such registration does not alter the fundamental legal status of lineage, which is strictly based on biological ties or lawful birth under Islamic law. Birth certificates function as state administrative documents, and ambiguity in lineage may lead to serious legal issues in inheritance and guardianship, particularly in marriage cases requiring a legitimate guardian (*wali*) (Ghofur & Saepuddin, 2023). Wahbah al-Zuhayli further asserts that Islam upholds truth and justice, including in lineage attribution. Claiming an adopted child as a biological child through legal documents contradicts Islamic principles and may cause long-term legal complications, especially in inheritance and marital guardianship. An individual who fosters or raises a foundling or orphan without claiming lineage is not entitled to inheritance rights. If the biological lineage is known, inheritance remains with the biological family; if unknown, the child may be acknowledged as a fellow Muslim without inheritance rights (al-Zuhayli, 2011). Preserving lineage is part of *ḥifẓ al-nasab* within the framework of *maqāṣid al-sharī'ah*. Clear lineage determination is essential for individuals, families, and society, particularly to prevent prohibited marital relationships. Therefore, Islam prohibits attributing an adopted child to adoptive parents. A child born within a lawful marriage is attributed to the father, whereas a child born outside lawful marriage is affiliated with the mother and her family (al-Zuhayli, 2011).

In conclusion, Islamic law does not equate adopted children with biological children in terms of lineage or inheritance rights, even if administrative records state otherwise. While inheritance rights are not structurally recognized, Islamic law provides humane solutions



through hibah, wasiat, and wasiat wajibah to ensure justice and moral responsibility toward adopted children.

### **5. The Inheritance Status of Adopted Children Recorded as Biological Children under Positive Law**

From the perspective of positive law, adopted children cannot legally be equated with biological children. This is affirmed in Article 55 of Law No. 1 of 1974, which states that a child's origin can only be proven through a valid birth certificate issued by authorized officials. Although adopted children may be socially raised within adoptive families, their legal status does not alter biological relationships that form the basis of lineage and civil rights (Satrio, 2000). Cases where adopted children are recorded as biological children in birth certificates often result from procedural violations, such as document falsification or data manipulation. This may involve cooperation between adoptive parents, biological parents, and unscrupulous officials to expedite administrative processes. Factors motivating such practices include the complexity and cost of legal adoption procedures, a desire to conceal biological origins from the child, or mutual agreements between biological and adoptive parents (Mustahdi, 2018). Under the Indonesian Civil Code (BW), adopted children do not have inheritance rights based on blood relations, as only consanguineous heirs are legally recognized. Consequently, adopted children do not automatically inherit from adoptive parents. Indonesian inheritance law recognizes three systems: Islamic law, civil law, and customary law. In accordance with Article 39(2) of Law No. 35 of 2014 and Government Regulation No. 54 of 2007, adoption does not terminate the biological relationship between the child and biological parents. Therefore, adopted children retain inheritance rights from biological parents but not from adoptive parents (Zuhdi, 1997). The Compilation of Islamic Law reiterates that adopted children are not legal heirs of adoptive parents based on blood relations. However, it provides an opportunity for adoptive parents to grant inheritance through wasiat wajibah, limited to one-third of the estate. Article 209 of KHI authorizes courts to impose such a bequest when necessary to ensure justice for adopted children (Zuhdi, 1997, p. 110). According to statutory inheritance law, inheritance rights may arise either by operation of law or through testamentary disposition. In this context, adopted children fall into the category of beneficiaries whose rights are regulated through wills rather than automatic inheritance (Krisnawati, 2006).

### **Conclusion**

It can therefore be firmly concluded that an adopted child who is administratively registered as a biological child does not possess inheritance rights over the estate of the

adoptive parents. In the science of *farā'id* (Islamic inheritance law), legal heirs are determined strictly by three causes: lineage (*nasab*), marital ties, and *walā'* (a legal bond arising from the emancipation of a slave). The status of an adopted child does not fall within any of these legally recognized causes and thus does not give rise to inheritance rights automatically. The four Sunni schools of Islamic jurisprudence—Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī—are in unanimous agreement that *tabannī* (adoption that entails the attribution of lineage) does not establish a legal inheritance relationship. This consensus is further supported by a historical precedent during the lifetime of the Prophet Muḥammad ﷺ, who adopted Zayd ibn Ḥārithah. Despite this adoption, no mutual inheritance existed between the Prophet and Zayd, and Zayd's estate was distributed to his heirs based on his biological lineage rather than to the Prophet as his adoptive father. Accordingly, both from a normative-theological and a juridical-fiqh perspective, the administrative designation of an adopted child as a biological child in official documents carries no legal implications with respect to inheritance rights. This principle affirms that adoption in Islam is understood as a responsibility of care and affection, not as a mechanism for altering lineage or establishing inheritance entitlements.

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