

The Law of Adopting Children in Islamic Fiqh and the Compilation of Islamic Law

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Abstract

This research aims to understand the law of adopting children in Islamic Jurisprudence and the law of adopting children in the Compilation of Islamic Law. This type of research is library research with a qualitative approach. The primary data sources used in this research are Islamic jurisprudence books and the Compilation of Islamic Law (KHI). Meanwhile, secondary data sources are books, journals and textbooks that are related to what the author discusses. The data collection technique in this research is documentation. Then analyzed using content analysis techniques. The results of this research are that adoption in Islamic jurisprudence is prohibited if the adopted child's lineage is attributed to his or her adoptive parents. Because Islamic jurisprudence scholars agree that a child's fate is determined by three things, namely a valid marriage, a fasid marriage, and wathi' syubah. However, adopting a child with the aim of caring for, nurturing and educating with love without changing the child's lineage is a commendable act and is a pious deed recommended by the Islamic religion. In Islamic jurisprudence, adopted children do not inherit from their adoptive parents, but can only obtain property from their parents through a gift or will and their adoptive parents cannot act as guardians for their marriage. Apart from that, adopted children are not mahram to their adoptive parents, so they must pay attention to the boundaries in interacting between the two. As for the adoption of children in the Compilation of Islamic Law, it is permissible, provided it is limited to transferring responsibility from the child's parents to the adoptive parents. This transfer of responsibility includes paying for daily living, caring for him with love and fulfilling all his needs, without changing the child's fate. Apart from that, adopted children do not become heirs of their adoptive parents, but have the right to obtain a mandatory will as regulated in article 209 and adoptive parents do not have the right to become marriage guardians for their adopted children.

Keywords: Adoption; Adopted Children; Compilation of Islamic Law.

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Introduction

Basically, humans cannot live alone without a companion in navigating life in this world, because humans are created in a state of tendency to gather. Therefore, Islam descends in His sharia with the command to carry out marriage, because with this marriage Allah SWT breeds human beings and gives peace in carrying out their lives. As Allah SWT says in QS al-Rum/30:20-21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ إِذَا أَنْتُمْ بَشَرٌ
تَنْشُرُونَ ﴿٢٠﴾ وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ
أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً
وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

Translation:

Among His signs (greatness and power) is that He created you (the ancestors) from the ground, then suddenly you (became) scattered people. Among His signs is that He created spouses for you out of your own (kind) so that you may feel at peace with him..¹

In a marriage, the presence of a child is something that is desired. Family happiness and harmony are marked by the birth of a child, because one of the purposes of marriage is to

pass on the offspring. As Allah SWT. said in QS al-Nahl/16:72.

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ
لَكُمْ مِنْ أَزْوَاجِكُمْ بَيْنَ وَحَفْدَةً وَرَزَقَكُمْ مِنْ
الطَّيِّبَاتِ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ
يَكْفُرُونَ ﴿٧٢﴾

Translation:

Allah has made for you a spouse (husband or wife) of your own kind, made for you from your spouse children and grandchildren, and bestowed upon you a good sustenance. Why do they believe in the unrighteous, while they deny the favor of Allah?²

Children are a mandate and a gift from Allah Swt. that must be well guarded. Because inherent in him are Human Rights (HAM) which is a patent that every human being owns and cannot be interfered with by others. In the review of the life of the nation and state, children are the spearhead of a nation, children have the right to live, grow, develop, and be protected from discriminatory treatment. Because children are the next generation of the nation after.³

But sometimes in marriage it is possible not to have children or offspring, it can be caused by infertility or other factors, which Of course, all of them are provisions of

¹Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab* (Jakarta: PT Insan Media Pustaka, 2012), h. 406.

²Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 274.

³Tim Legality, *Undang-Undang Perlindungan Anak Berdasarkan UU No. 23 Tahun 2002*, h.46

Allah SWT. In order to achieve a happy family with the presence of a child, many couples make efforts to have children and become heirs in a family, one of which is adoption.⁴

This is in line with the opinion expressed by Soerjono Soekanto who said that "child adoption is another alternative to save marriage or to achieve domestic happiness, because the purpose of marriage is basically to obtain offspring, namely children. This matter of descent (child) is so important, that it gives rise to various legal events due to the absence of offspring, such as divorce, polygamy, and adoption (child adoption). The high frequency of divorce, polygamy, and adoption (child adoption) that occurs in society may be the result of marriage that does not produce offspring, so the goal of marriage is not achieved."⁵

In Government Regulation Number 54 of 2007, it is stated that: "Adoption of a child is a legal act that transfers a child from the environment of parental authority, legal guardians, or other persons responsible for the care, education and raising of the child, into the family environment of the adoptive parents."⁶

Meanwhile, what is meant by adopted children is: "Children whose rights are transferred from the family environment of the legal guardian's

parents, or other persons responsible for the care, education, and raising of the child, into the family environment of their adoptive parents based on a court decision or determination." With the existence of these regulations, the adoption of children is carried out in accordance with the law so that it can prevent deviations that occur in the community over the adoption of the child, such as the adoption of children without clear procedures, falsification of data and so on.

In principle, adoption is a legal act by taking someone else's child who is not his offspring to be raised and treated like his own child. Some of the factors that background a person in adopting a child (adoption) are sometimes due to the desire to ease the burden of their adopted biological parents who are minimal, either because of a mediocre life or because they have many children. As a result, this factor is the cause of a lack of attention to health, education, care, maintenance, and nurturing to lead them to adulthood. Children's growth and development requires serious attention, especially during their sensitive times. Similarly, children's psychological development also goes through phases that have different characteristics.⁷ In addition to these factors, there are also factors that make a person take t The act of

⁴Wahyu Wibisana, "Pernikahan Dalam Islam", *Pendidikan Agama Islam*, vol. 14, no. 2 (2016), h. 191. http://jurnal.upi.edu/file/05_PERNIKAHAN_DALAM_ISLAM_-_Wahyu.pdf (Diakses 19 Juli 2023).

⁵Soerjono Soekanto dan Soleman B. Takeko, *Hukum Adat Indonesia* (Jakarta: Rajawali,1983), h. 275.

⁶Pasal 1 ayat (2) Peraturan Pemerintah Nomor 54 Tahun 2007 tentang Pelaksanaan Pengangkatan Anak.

⁷Mufidah Ch., *Psikologi Keluarga Islam Berwawasan Gender* (Malang: UIN Malang Press, 2008), h. 302.

adoption is as a sense of compassion for abandoned children and also for orphans.⁸

In Islam, adoption is not a new thing, because adoption has occurred since the time of ignorance. In fact, the Prophet Muhammad once practiced adoption, namely by appointing Zaid bin Haritsah as his biological son, and giving Zaid to him, so that Zaid's name changed to Zaid bin Muhammad. However, after the Prophet Muhammad PBUH was appointed as an apostle, a verse came down that explained the prohibition. as He said in QS. al-Ahzab/33:4.

وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ

Translation:

He did not make your adopted child your own child.⁹

In Indonesia, child adoption is not a new problem, but it has been done for a long time. Even since ancient times, child adoption has been carried out in different ways and motivations, according to the legal system that applies in each region. If a person does not have a child even though he has been married for many years and he wants to have a child, then in such a state he takes another person's child to be his own child, either by severing the relationship between the child and his biological parents or not. Some parents believe that by raising a child someone else will have a biological child. So the adoption of a child is considered a

trigger for the birth of a biological child. In addition to severing the relationship between the child and his biological parents, some people also equate the adopted child with the biological child so that they do not care about the boundaries of the mahram, there are also those who consider the adopted child entitled to inheritance from his adoptive parents, and other religious violations.¹⁰

From these things, it is interesting to study to find out how Islam and the Compilation of Islamic Law views the effort to adopt children, with the formulation of the problem, namely how is the law of adopting children in Islamic jurisprudence? how is the law of adopting a child in the Compilation of Islamic Law?

From the formulation of the problem to be researched above, the purpose of this study is to find out how the law of adopting children in fiqh.

Methods

This type of research is library research. The data sources used in this study are primary data sources derived from fiqh books, KHI and secondary data sources from books, literature studies, reading books, articles, legal journals, and from various previous researches. The data collection technique uses the documentation method by collecting data that is the research needs of the various existing documents, whether in the form of books, articles, journals, magazines, or other sources that

⁸M. Budiarto, *Pengangkatan Anak Ditinjau Dari Segi Hukum* (Jakarta: Akademika Pressindo, 1985), h. 10.

⁹Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 418.

¹⁰M. Anshary, *Kedudukan Anak dalam Perspektif Hukum Islam dan Hukum Nasional* (Bandung: Sumpersari Indah, 2014), h. 178.

various existing documents, whether in the form of books, articles, journals, magazines, or other sources that can be used and related to the problems studied in this study. The data analysis techniques used are content analysis using deductive and inductive techniques.

Result and Discussion

The Law of Adopting Children in Islamic Fiqh

Wahbah al-Zuhaili in his book *Fiqhul Islami wa Adillatuhu* defines adoption/*tabbani* as the adoption of a child or the taking of a child by a person for a child whose destiny is clear, then the child is given to him. In another sense, *tabanni* is a person, both male and female, who deliberately gives a child to him even though the child already has a clear destiny for his biological parents. The adoption of a child in such a sense is clearly contrary to Islamic Fiqh, so the element of giving a child to someone else who is not his destiny must be canceled.

Islamic sharia prohibits the adoption of children which used to apply during the time of ignorance. The Prophet PBUH himself before being sent to be a Prophet, once adopted Zaid bin Haritsah so that his nickname was Zaid bin Muhammad. However, this adoption was canceled after Allah SWT. Said:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِي جَوْفِهِۦ وَمَا جَعَلَ
أَزْوَاجَكُمْ أَلْيَٰ تَنْظُرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ

أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَشْعُرُ
الْحَقُّ وَهُوَ يَهْدِي السَّبِيلَ ﴿٤﴾ أَدْعُوهُمْ لِأَبَائِهِمْ
هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَّمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ
فِي الدِّينِ وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا
أَخْطَأْتُمْ بِهِ وَلَكِنْ مَّا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ
غَفُورًا رَّحِيمًا ﴿٥﴾

Translation:

Allah did not make for a man two hearts in his cavity; and he did not make your wives your wives your mothers, and he did not make your adopted children your own children. That is just the words in your mouth. Allah tells the truth and He shows the way. Call them by the names of their fathers; that is just in the sight of Allah, and if you do not know their father, then call them your brothers and sisters of your religion and your elders. And there is no sin on you if you are wrong about it, but what your heart wills. Allah is Forgiving, Most Merciful.¹¹

Imam Qurthubi in his commentary said, "The mufassirs have agreed that this verse is down to explain the matter of the adoption of Zaid bin Haritsah." The Imams narrated that Ibn Umar said, "We never called Zaid bin Haritsah because we called him Zaid bin Muhammad so Allah said, 'Call them (the adopted children) by the names of the fathers they. That is what is more just on the side of God.'¹²

¹¹Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 418.

¹²Wahbah az-Zuhaili, *Fiqh Islam wa Adillatuhu*, terj. Abdul Hayyie al-Kattani dkk, jilid 10 (Jakarta: Gema Insani 2011), h. 23.

The same thing is also explained in the tafsir *Fi Zilalil Qur'an* explained that Allah SWT. commanded to call the adopted children by referring to their biological father, unless it is not known who the biological father is, it is advisable to call the adopted child by the name of my brother of the same religion or your mother. With such a call, it is indeed justice to call the child by the name of his biological father, just for a father who has a blood relationship with him, and just for a child who maintains the honor of his biological father.¹³

Imam al-Alusi said that it is unlawful for a person who deliberately gives a child to someone who is not his father, as happened and was done by the ignorant community. As for if someone calls a child by the name of my son "ibni" which shows one's affection for the child who is called, then it is not forbidden. The matters related to adopted children are explained as follows.

Nasab (Descendants)

Nasab is one of the strong foundations that supports the establishment of a family, because nasab binds family members by blood ties. A child is part of his father and the father is part of his child. The relationship of destiny is a family bond that is not easy to break because it is a great blessing that Allah gives to humans. Without nasab, A family's ties will easily be broken and broken. Therefore, Allah gives great grace to

humans in the form of nasab. Allah SWT. said in QS. al-Furqon verse 54.

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا
وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا

Translation:

And He created man out of water, and made man offspring and musharahah and your Lord is the Almighty..¹⁴

And He created man out of water, and He made man (has) offspring. In this case, the Prophet PBUH said and musharahah and your Lord is the Almighty.

أَيُّمَا امْرَأَةً أَدْخَلْتَ عَلَى قَوْمٍ مِنْ لَيْسَ مِنْهُمْ فَكَيْسَتْ
مِنَ اللَّهِ فِي شَيْءٍ وَلَنْ يُدْخِلَهَا اللَّهُ جَنَّتهُ، وَأَيُّمَا رَجُلًا
جَحَدَ وَلَدَهُ وَهُوَ يَنْظُرُ إِلَيْهِ احْتَجَبَ اللَّهُ مِنْهُ
وَفَضَحَهُ عَلَى رُءُوسِ الْأَوَّلِينَ وَالْآخِرِينَ

Means:

Any woman who adds someone to a family, but is not actually a member of that family, then God will not include her in Heaven. And whoever denies his own son, even though he knows it, will be hindered by Allah later on the Day of Resurrection, and Allah will humiliate him in front of the multitude.

Islamic law also prohibits children from relying on nasab other than their own parents. The Prophet Rasulullah said.

¹³Sayyid Quthb, *Tafsir Fi Zilalil Qur'an*, terj. As'ad Yasin, (Jakarta: Gema Insani Press, 2004), h. 220-221.

¹⁴ Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 364.

مَنْ ادَّعَىٰ إِلَىٰ غَيْرِ أَبِيهِ وَهُوَ يَعْلَمُ أَنَّهُ غَيْرُ أَبِيهِ
فَالجِنَّةُ عَلَيْهِ حَرَامٌ

Means:

Whoever claims to be a father other than his own father, even though he knows it, it is haram for him to enter heaven.

In another hadith, the Prophet Rasululllah said

مَنْ ادَّعَىٰ إِلَىٰ غَيْرِ أَبِيهِ أَوْ انْتَمَىٰ إِلَىٰ غَيْرِ مَوَالِيهِ
فَعَلَيْهِ لَعْنَةُ اللَّهِ الْمُتَتَابِعَةُ إِلَىٰ يَوْمِ الْقِيَامَةِ

Means:

Whoever claims to be a father other than his own father and is intimate with someone other than his master, then the curse of Allah will continue to follow him until the Day of Resurrection.

More emphatically, that there was no nasab relationship in tabanni when the Prophet PBUH was ordered to marry the widow or ex-wife of Zaid bin Haritsah named Zainab bint Jahsy. Allah SWT says in QS. al-Ahzab verse 37.

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ
أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ وَخُفِيَ فِي نَفْسِكَ
مَا اللَّهُ مُبْدِيهِ وَخَشِيَ النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ
فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ

عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا
مِنْهُنَّ وَطَرًا وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا ﴿٣٧﴾

Means:

And when you say to the person whom Allah has bestowed favor on and you have given him favor, "Hold on to your wife and fear Allah," you are hiding in your hearts what Allah will reveal to you, and you are afraid of man, and Allah is the one you have more right to fear. So when Zaid has ended his need for his wife, We will marry you to him so that there will be no objection for the believers to take the wives of their adopted children, when the adopted children have fulfilled their needs from his wife. And it is the decree of Allah that it must happen.¹⁵

The marriage of the Prophet Muhammad PBUH with his adopted son's ex-wife emphasized that the existence of a child adoption relationship does not necessarily create a nasab relationship which results in his status being the same as his biological child, because marrying the former wife of the adopted child is permissible, while marrying the former wife of a biological child is forbidden forever.¹⁶

Wahbah al-Zuhaili spoke about adopted children by explaining how Islam is a religion of justice and upholding the truth. Therefore, one of the ways to uphold the truth is to give

¹⁵Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 423.

¹⁶M. Ali Hasan, *Masail Fiqhiyyah al-Haditsah pada Masalah-Masalah Kontemporer*, (Raja Grafindo Persada: Jakarta, 1997), h. 108.

(connect) the child to his real father by remembering the words of the Prophet PBUH who said, "The child is connected to a man who is naked with his mother" thus the adopted child should not be given to someone who is not actually his father."¹⁷

In Islamic Fiqh, Ulama have determined that there are three reasons for determining the nasab from the father's side, namely:

a) Valid marriage

The jurists agree that a child born from a woman's womb by a valid or legitimate marriage is returned to the woman's husband. The evidence of the hadith of the Prophet (peace and blessings of Allaah be upon him)

الْوَالِدُ لِلْفِرَاشِ

Means:

The fate of a child is attributed to his parents who have intercourse in a valid marriage.

The meaning of the word al-firasy in the hadith is the wife who is associated.¹⁸

b) Fasid Marriage

The inclusion of children in a fasid marriage is the same as in a valid marriage because the determination of the nasab can maintain the survival of the child himself.¹⁹

Wathi' Syubat

What is meant by wathi syubhat is a relationship of intercourse other than adultery, but also not in the frame of a valid marriage or fasid. For example, a bride who is taken to the groom's house without looking first, then it is said that the woman is his wife and then is dukhul. Or a husband who associates with a woman who is on his bed and the woman is mistaken for his wife but it turns out that he is not. Or marrying a wife who has been divorced three times during the iddah period because he thinks it is permissible.²⁰

Inheritance

Adopted children are closely related to inheritance. Islamic jurisprudence has regulated inheritance, which has been explained in QS. al-Nisa verses 7 and 11.

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ
نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ
كَثُرٌ نَّصِيبًا مِّمَّا قَرَضُوا

Translation:

For men, there is a right to a share of the inheritance of both parents and their relatives and for women there is a right to a share of the inheritance of both parents and relatives, either a

¹⁷Wahbah az-Zuhaili, *Fiqh Islam wa Adillatuhu*, h. 23.

¹⁸Wahbah az-Zuhaili, *Fiqh Islam wa Adillatuhu*, h. 31.

¹⁹Wahbah az-Zuhaili, *Fiqh Islam wa Adillatuhu*, h. 35

²⁰Wahbah az-Zuhaili, *Fiqh Islam wa Adillatuhu*, h. 37.

little or a lot according to the predetermined portion.²¹

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّاتِ
فَإِنَّ كُنَّ نِسَاءً فَوْقَ أُمَّتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ
كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ
مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ
لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ
فَلَأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ
ءَابَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا
فَرِيضَةً مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

Translation:

Allah has decreed for you about the distribution of your children. That is: the share of one son is equal to the share of two daughters; and if the children are all more than two women, then to them two-thirds of the treasure left behind; If the daughter is alone, then she gets half the wealth. And for two mothers, for each one of the sixths of the property left behind, if the deceased has children; if the deceased has no children and he is inherited by his parents (only), then his mother gets one-third; If the deceased had several brothers, then his mother would get a sixth. (The above divisions) after the fulfillment of the will he makes or (and) after the

payment of his debt. (About your parents and your children, you don't know who among them.²²

Allah SWT commands His servants to inherit the inheritance from the deceased heirs to their heirs. Inheritance can be obtained if the heirs and heirs have a blood or descent relationship, be it a son or a woman. Allah SWT determines male heirs and female heirs with a ratio of 2:1. However, the words of Allah in the Qur'an Surah al-Nisa do not mention in detail that the adopted child will receive an inheritance from his parents.

The law of inheritance in Islam regarding the adoption of children does not have any influence on the inheritance status of the child because there is no relationship of destiny between the two. The classical Fiqh scholars also in the Islamic Fiqh of the four schools do not know that adopted children are entitled to inheritance from their adoptive parents. Because Islamic Fiqh there are only four factors that cause a person to be able to receive inheritance from someone who has died. The four relationships are as follows:²³

a. Familial relationship (*al-qarabah*)

Family relationships are divided into two, namely true or (essential) kinship and hukmi (kinship caused by the emancipation of slaves).

²¹ Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 78.

²² Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 11.

²³Sayyid Sabiq, *Fiqh Sunnah*, Jilid 3, (Beirut: Dar al-Fikr, tth), h. 426.

- b. Marriage relationship, the postulates of the word of Allah in QS. an-Nisa/4:12 which means: "And for you (husbands) one half of the wealth left by your wives....."
- c. Religious relations (fellow Muslims) The evidence of the hadith of the Prophet Muhammad PBUH: "Muslims do not inherit infidels, nor do infidels inherit Muslims." (HR. Jama'ah). If a deceased person has no heirs, then his inheritance is handed over to Baitul Mal for Muslims as an inheritance. The Prophet PBUH said: "I am the heir of a person who has no heirs." (HR. Ahmad dan Abu Daud).
- d. Relationship wala' (Cause of Freeing Slaves)
That is, the master inherits to his slave whom he has freed, not the other way around. This relationship is no longer valid, because after Islam came, slavery was abolished by Islam, because it was contrary to Islamic law.

The law of inheritance in Islam regarding the adoption of a child does not have any influence on the inheritance status of the child because there is no nasab relationship between the two, but they are still the heirs of the biological father and mother. Although the adopted child is not the heir of his adoptive parents, he can obtain a grant or will from his adoptive parents.

Marriage Guardian

Legal evidence that requires a guardian in marriage is included in QS. al-Nur/18:32

وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ
وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُعْزِهِمُ اللَّهُ مِنْ فَضْلِهِ
وَاللَّهُ وَاسِعٌ عَلِيمٌ

Translation:

And marry those who are alone among you and those who are worthy of marrying from their male servants and their female servants, if they are poor Allah will enable them with His bounty. And Allah is Vast and Knowing..²⁴

The problem of marriage guardianship for adopted children is that the child who is taken care of has the right not to be attributed to his destiny. The person who takes care of and has the right to the child in custody only and does not have the right to guardianship in his marriage. Even though the biological family has given everything up, even though they have made a will to marry their children. As qoul jadid Imam Shafi'i:

"And if it is mentioned by Allah that it will be a wali and the Messenger of Allah said: "Any woman who marries without the permission of her guardian will have her marriage invalid. And there is no dispute that the guardians are ashabah. That the brothers and sisters of the male mothers, they are not guardians

²⁴Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 354.

if they are not ushbah, then it is clear from their words that there is no guardianship for washi if he is from ushbah, because the guardianship resembles that he is appointed as ushbah. Because he feels ashamed of them, and if the washi feels ashamed of him, on what happens to others from shameful things. It is the same as the washi of the father with the biker women and the women of tsayib and washi who are not washi of the father. So there is no guardianship for washi at the marriage in any way. Thus it is that washi is not a deputy wali and does not become a wali."²⁵

The right of the adopted father only has the right to provide a better life for the child, not as the parent or guardian of the adopted child. In another description of the adoptive father (wali washi).

"And if the deceased has bequeathed to marry daughters to a person, then if the person is the guardian of the daughters who are present above him (the one who receives the will), then the person marries them with the guardianship of nasab (offspring) or the guardian without a will, then it is permissible and if he is not the guardian of the daughters, then it is not permissible to marry them."²⁶

If in the care of the child there are still biological parents, then the person who has the right to be the guardian of the marriage is the

biological parents. The people who are legally guardians in marriage according to Imam Shafi'i are: biological father, paternal grandfather, biological brother, half-brother, son of half-brother, uncle (father's brother), son of a male uncle, Mu'tiq.²⁷

And for a child who does not have parents or relatives, perhaps because he finds it on the street or somewhere, then he is classified as a person who does not have a guardian of marriage, so he is handed over to the sultan (the ruler of the area). And if there is no relative on the father's side, and there are some washi on him, then the washi cannot be the guardian of the marriage and also not the guardian of the heir.²⁸

Mahram

Adopted children are not mahrams, so it is obligatory for their adoptive parents and their biological children to wear a hijab that covers the awrah in front of the adopted child, as when they are in front of other people who are not mahrams, different from the custom in the time of jahiliyah. Adopted children who have grown up and reached puberty, they automatically do not become mahram for the family that takes care of them. Therefore, it should not be alone, touching, interacting freely like fathers and daughters or mothers and

²⁵Imam Syafi'i, *Al-Umm*, Vol 5 (Beirut: Dar al-Kutub al-Ilmiyah, 2014), h. 21.

²⁶Imam Syafii, *al-umm*, Vol 4, (Beirut: Dar al-Kutub al-Ilmiyah, 2014), h. 127.

²⁷Muhammad Jawad al-Mughniyah, *Fiqh Lima Mazhab*, (Jakarta: Lentera, 2011), h. 222.

²⁸Imam Syafi'i, *Al-Umm*, Vol 4 (Beirut: Dar al-Kutub al-Ilmiyah, 2014), h. 95.

sons. In this matter, there are at least two ways, namely:²⁹

- a. Taking an adopted child from a family that still has a kinship relationship.
- b. If there are indeed no children from the family who can be adopted, then you can ask the family, for example, female siblings to breastfeed their young adopted children. As a result, he also became a mahram through the dairy route. The Prophet PBUH said:

يَحْرُمُ مِنَ الرَّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ.

Means:

Breastfeeding causes a mahram relationship as well as offspring.

The conditions for a person to become a mahram on the basis of breastfeeding according to the strongest opinion are:³⁰

- a. The child's age is at least or not more than 2 years old. If it is more than that, then there is no mahram because of milk. The Prophet peace be upon him said:

لَا رَضَاعَ إِلَّا فِي حَوْلَيْنِ

Means:

There is no lactation (which makes a mahram) except at the age of two years.

- b. At least 5 times of milk until the baby is full and take off the milk

yourself. A'isha (may Allah be pleased with her) narrated:

كَانَ فِيْمَا أُنْزِلَ مِنَ الْقُرْآنِ عَشْرُ رَضَعَاتٍ مَعْلُومَاتٍ يُحْرَمَنَّ ثُمَّ نُسِخْنَ بِخَمْسٍ مَعْلُومَاتٍ فَتُؤَيِّبُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالْأَمْرُ عَلَى ذَلِكَ.

Means:

"Previously, it was revealed in the Qur'an that ten times of milk caused mahram intercourse, then it was abolished to five times of milking. Then the Prophet (peace and blessings of Allaah be upon him) died and his condition remained the same.

The jurists agree that Islamic law prohibits the practice of child adoption that has juridical implications such as child adoption carried out by Western law/secular law and the practice of ignorant society; namely the adoption of a child who makes the adopted child a biological child, the adopted child is severed from the legal relationship with his biological parents, the adopted child has the same inheritance rights as the biological child's inheritance rights, the adopted parent becomes the absolute guardian of the adopted child. Islamic law only recognizes the adoption of children in the sense of shifting the obligation to provide for themselves in daily life, educating, nurturing, and others in the context of worshipping Allah SWT.³¹

²⁹Raehanul Bahraen, Fiqih Kontemporer Kesehatan Wanita, (Jakarta: Pustaka Imam Syafi'i, 2017), h. 218.

³⁰Raehanul Bahraen, Fiqih Kontemporer Kesehatan Wanita, h. 219.

³¹Andi Syamsu Alam, *Hukum Pengangkatan Anak Perspektif Islam*, (Jakarta: Kencana, 2008), h. 44.

Islamic law has outlined that the legal relationship between adoptive parents and adopted children is limited as the relationship between foster parents and foster children is extended, and does not create a nasab relationship at all. The juridical consequence of the adoption of children in Islam is only the creation of a relationship of love and responsibility between human beings. Because there is no nasab relationship, another juridical consequence is that between the adoptive parents and the adopted child must maintain the mahram, because there is no nasab relationship, then the two can get married. The Prophet PBUH was ordered to marry his adopted daughter Zaid bin Haritsah, this shows that between the Prophet Muhammad and Zaid bin Haritsah there is no relationship of destiny, except for the affectionate relationship as an adoptive parent with his adopted child.³²

Islam only recognizes childcare, not adoption, which can lead to different relationships. In the sense that the adoption of a child who does not break the blood or nasab ties with his parents. Child adoption only aims to maintain children so that life, Its growth and education are more assured of its development as evidence of social awareness and solidarity. The words of Allah SWT in QS. al-Maun verses 1-2:

أَرَأَيْتَ الَّذِي يُكَذِّبُ بِالدِّينِ ﴿١﴾ فَذَلِكَ الَّذِي
يَدْعُ الْيَتِيمَ ﴿٢﴾

Means :

“Do you know people who deny religion? So that's the person who educates orphans.”³³

Ahmad al-Bari said that taking a child and taking care of an abandoned child without having to cut off the fate of his biological parents is a legal obligation that is a collective responsibility, or carried out by several people as a kifayah obligation. But the law can turn into fardlu 'ain if a person finds an abandoned child or an abandoned child in a place that is very dangerous to the child's life.³⁴

The same thing was also expressed by Yusuf Qardhawi who said that adoption can be justified if the person who performs it does not have a family, then he intends to take care of the child by providing him with protection, education, affection, and sufficient clothing and food needs like his own biological child. As for the nasab, the child's nasab remains with his biological father because between the adopted child and the adoptive parents there is no nasab relationship at all that can have the same rights as the biological child.³⁵

The 1984 national working meeting of the Indonesian Ulema Council which took place at the end of

³²Mahjuddin, *Masailul Fiqhiyyah*, (Jakarta: Kalam Mulia, 2003), h. 87.

³³Departemen Kementerian Agama, *Al-Fatih Mushaf Al-Qur'an Tafsir perkata Kode Arab*, h. 602.

³⁴Zakaria Ahmad Al-Bari, *Hukum Anak-Anak dalam Islam*, terj. Chadijah

Nasution (Jakarta: Bulan Bintang, 1977), h. 35

³⁵Yusuf Qardhawi, *Halal dan Haram dalam Islam*, (Surakarta: Era Intermedia, 2005), h. 319.

Jumadil 1404 H / March 1984 issued a fatwa on the adoption as follows:

1. Islam recognizes legitimate offspring (nasab), which are children born from marriage (marriage).
2. Appointing (adoption) with the understanding that the child is severed from the descent relationship (nasab) with his biological father and mother is contrary to Islamic law.
3. 2. Adopt with the understanding that the child is severed from the descent relationship (nasab) with the father and mother of the child³. As for the adoption of children without changing their status and religion, it is carried out of a sense of social responsibility to nurture, nurture, and educate them with affection, such as the children themselves are commendable deeds and include pious deeds recommended by Islam.
4. 4. The appointment of Indonesian children by foreign nationals, in addition to being contrary to the 1945 Constitution article 34, also degrades the dignity of the nation.³⁶

Therefore, according to Islamic law, the adoption of a child can only be justified if it meets the following conditions:

1. Not to sever the blood relationship between the adopted

child and his biological parents and his family.

2. The adopted child does not have the position of heir of the adoptive parent, but the heir of the biological parent, and vice versa, the adoptive parent does not become the heir of the adopted child.
3. Adopted children are not allowed to use the names of their adoptive parents (the nickname of adopted children) directly except as identification/address.
4. Adoptive parents cannot act as guardians in marriage to their adopted children.³⁷

The Law of Adopting Children in the Compilation of Islamic Law

In Indonesia, child adoption is better known as adoption. Adoption is an act of taking another person's child to be raised and cared for as one's own biological child, based on agreed and legally valid provisions that apply in the local community.³⁸ The practice of adoption in people's lives has been institutionalized and become part of the culture that lives in the midst of Indonesian society. Since ancient times, the Indonesian people have adopted them with different purposes, in accordance with the cultural system that developed in the area concerned.

The Compilation of Islamic Law as a guideline for material law of religious justice provides the definition of an adopted child in

³⁶Ma'ruf Amin Dkk, *Himpunan Fatwa Majelis Ulama Indonesia Bidang Sosial dan Budaya* (Erlangga,2015), h.56.

³⁷Muderis Zaini, *Adopsi ditinjau dari Tiga Sistem Hukum*, (Jakarta : Sinar Grafika, 1995), h. 54.

³⁸Masyhur, "Kedudukan Anak Angkat Dalam Kewarisan Menurut Kompilasi Hukum Islam," *Jurnal Ilmiah Rinjani* Vol. 6, No. 2, (Tahun 2018), h. 167.

Article 171 letter h that 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. From this understanding, we can review it from various aspects as follows:

Nasab

Regarding the fate of adopted children, the Compilation of Islamic Law does not explain clearly. However, in article 99 letter a it is stated that: "a legitimate child is a child born in or as a result of a valid marriage". Furthermore, in article 100 it is also stated that children born out of wedlock only have a nasab relationship with their mother and her mother's family.³⁹ Meanwhile, in Article 171 the letter states that 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 parent to his adoptive parents based on a court decision.⁴⁰

From these articles, it can be understood that the destiny of a child is determined only through a valid marriage between a husband and wife, and if the child born is not from a valid marriage, then the child only has a nasab relationship with his mother and his mother's leave. In Article 171, the letter h is only mentioned that the

adoption of a child has legal consequences, there is a transfer of responsibility for several matters related to the interests of the child, and does not mention the problem of the child's nasab relationship with his biological parents and adoptive parents. Therefore, the adoption of a child only has a legal effect on the transfer of responsibility for the interests of the child as stated in the article, from the biological parents to the adoptive parents. Meanwhile, the relationship between the child's destiny and his biological parents is fixed and uninterrupted.⁴¹ We know that an adopted child is the child of someone else, who may not even have any family relationship. Therefore, adopted children are not given to their adoptive parents but are still given to their biological fathers.

The position of an adopted child according to the Compilation of Islamic Law remains as a legitimate child based on a court decision by not severing the nasab/blood relationship with his biological parents, because the principle of adoption according to the Compilation of Islamic Law is a manifestation of faith that carries a humanitarian mission that is manifested in the form of nurturing others as children and is child-rearing by nurturing in their growth and development with all His needs.⁴²

³⁹Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 30.

⁴⁰Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 51.

⁴¹M. Anshary, *Kedudukan Anak Angkat dalam Perspektif Hukum Islam dan Hukum Nasional*, (Bandung: Sumber Sari Indah, 2014), h. 172.

⁴²Hafid, "Wali Nikah Anak Angkat dalam Perkawinan yang Tidak diketahui Orang Tuanya: Studi Komparatif Fiqh Syafi'i dan Kompilasi Hukum Islam", Vol 1, No. 2 (Juni 2022), h. 8. <https://ejournal.stismu.ac.id/ojs/index.php/alqadlaway/article/view/607>, (Diakses pada 23 April 2024)

Inheritance

In the law of inheritance based on the Compilation of Islamic Law, there are three main elements, namely:

1. Heir is a person who, at the time of his death or who is declared dead based on the decision of the Islamic Religious Court, leaves heirs and inheritance.
2. An heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law to become an heir.
3. Heritage property is property left by the heirs, both in the form of objects they own and their rights.⁴³

The groups of heirs are further explained, in Article 174 which reads:

- (1) The group of heirs of the:
 - a. According to blood relations:
 - Male groups consist of: fathers, sons, brothers, uncles, and grandfathers.
 - The female group consists of: mothers, daughters, sisters of grandmothers.
 - b. According to the marital relationship, it consists of widows or widows.

⁴³Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 51.

⁴⁴Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 52.

- (2) If all heirs exist, then those who are entitled to inheritance only: children, fathers, mothers, widows or widowers.⁴⁴

From these two articles, it can be understood that an adopted child is not entitled to inheritance from his adoptive parents, because the adopted child is not one relative or one descendant with his adoptive parents, and is not born from a legal marriage of his adoptive parents. The right of mutual inheritance only applies between an adopted child and his biological parents on blood relations (al-qarabah).⁴⁵ The Compilation of Islamic Law emphasizes that there is no inheritance relationship between an adopted child and his adoptive parents, but in recognition of the goodness of the child's adoption institution, the relationship between the adopted child and his adoptive parents is confirmed through the mediation of a will or a mandatory will. To distinguish it from the position of heirs, this arrangement of adopted children is regulated in Chapter V on wills.⁴⁶ To overcome the prohibition on mutual inheritance, Article 209 of the Compilation of Islamic Law provides a solution for those who live longer in order to obtain a share of the inheritance of the heirs, not through the inheritance, but through the compulsory testamentary institution, it is stated that:

- (1) The inheritance of the adopted child is divided based on

⁴⁵Musthofa Sy, *Pengangkatan Anak Kewenangan Pengadilan Agama*, (Jakarta: Kencana, 2008), h. 130.

⁴⁶Musthofa Sy, *Pengangkatan Anak Kewenangan Pengadilan Agama*, (Jakarta: Kencana, 2008), h. 131.

Articles 176 to 193 mentioned above, while the adoptive parents who do not receive the will are given a mandatory will of up to 1/3 of the inheritance of the adopted child. The inheritance of the adopted child is divided based on Articles 176 to 193 mentioned above, while the adoptive parents who do not receive the will are given a mandatory will of up to 1/3 of the inheritance of the adopted child.

- (2) For adopted children who do not receive a will, they shall be given a compulsory will of up to 1/3 of the inheritance of their adoptive parents.⁴⁷

A mandatory will is an action taken by the ruler or judge as a state apparatus to coerce, or give a mandatory judgment of a will for a deceased person, which is given to a certain person under certain circumstances at a certain time. It is called a mandatory will because:⁴⁸

1. Loss of the element of effort for the testator and the emergence of obligations through laws and regulations or court decisions without depending on the willpower of the testator and the consent of the testator.
2. There is a similarity with the provisions for the distribution of inheritance in the receipt of 2 (two) times the share of women.

Ibn Hazmin explained that if a will is not made by the heir to the relative

who does not get the property, then the judge must act as the heir who gives part of the heir's inheritance to the relative who does not get the property, in the form of a mandatory will.

Ibn Hazmin explained that if a will is not made by the heir to the relative who does not get the property, then the judge must act as the heir who gives part of the heir's inheritance to the relative who does not get the property, in the form of a mandatory will.

First, it can be done with a grant institution, as long as the donated property is the property of the donor, as stipulated in Article 210 of the Compilation of Islamic Law, the implementation of the grant must be carried out when the donor is still alive, which amounts to a maximum of 1/3 of the donor's property.

Second, it can be done through a testamentary institution, as stipulated in Articles 194 to 208 of the Compilation of Islamic Law. A person can bequeath his property to another person as much as 1/3 of the testator's property, which is carried out after the testator dies. Similarly, adoptive parents can make a will to their adopted child while he is still alive, the implementation of which is carried out after the testator dies. And on the other hand, adopted children, can make a will to their adoptive parents while they are still alive.

Ketiga, through a mandatory will, as described above.

From the provisions of this article, it is clear that for adoptive parents who do not receive grants or

⁴⁷Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 61.

⁴⁸Musthofa Sy, *Pengangkatan Anak Kewenangan Pengadilan Agama*, h. 132.

wills from their adopted children or vice versa, a compulsory will is carried out. This provision is imperative, that is, it is a must, because the article does not use the term 'can'. The word 'can' shows a facultative meaning, namely it is an encouragement.⁴⁹

Based on the explanation above, it can be understood that an adopted child has the right to obtain property from his adoptive parents after his adoptive parents die, namely in the form of a mandatory will given to the adopted child as a solution to overcome the problem of inheritance of adopted children contained in article 209 of the Compilation of Islamic Law.

Marriage Guardian

Regarding the guardian of marriage in carrying out marriages, the Compilation of Islamic Law has stipulated in article 20 paragraph:⁵⁰

- (1) The person who acts as the guardian of the marriage is a man who meets the requirements of Islamic law, namely Muslims, aqil, and puberty.
- (2) The marriage guardian consists of:
 1. Wali nasab
 2. Guardian judge.

The explanation related to the guardian of the nasab is further explained in article 21 paragraph:⁵¹

The guardian of the nasab consists of four groups in order of position, one group takes precedence and the other group according to the close kinship with the prospective bride.

First, the group of male relatives in a straight line upwards, namely father, grandfather, paternal side and so on.

Second, the group of relatives of biological brothers or half-brothers, and their male descendants.

Third, the group of uncles' relatives, namely their father's biological brothers, father's brothers

Fourth, the group of grandfather's biological brothers, half-brothers, and their male descendants., and their male descendants.

As explained in the first point, that the adopted child does not have a nasab relationship with the adoptive parent, it can be understood that the adoptive child's parents cannot or do not have the right to become the guardian of the marriage for the adopted child, because in the matter of guardianship in the marriage contract, it must be based on the nasab of the adopted daughter. And if there is an adopted child whose guardian does not know, then the guardian of the judge will act in resolving the problem. It is also stated in Article 23 paragraph (1) that the guardian of the new judge can act as the guardian of the marriage if the guardian of the nasab does not exist or does not exist whether to present it or not know where he lives

⁴⁹M. Anshary, *Kedudukan Anak Angkat dalam Perspektif Hukum Islam dan Hukum Nasional*, (Bandung: Sumber Sari Indah, 2014), h. 184.

⁵⁰Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 6.

⁵¹Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 7.

or is supernatural or adlal or reluctant.⁵² The adoptive father is not included in the order of priority of the marriage guardian, because he is not a mahram. So if an adopted child who is the guardian of his marriage is his adoptive father, then he has been married by an incompetent person, the result of which is that the marriage is invalid or null and void. Even if the bride's household is continued, then the biological relationship she carries out is included in the category of adultery and the child born is an illegitimate child.⁵³

Therefore, the issue of guardianship in marriage is something that must be paid close attention to, because this will determine the validity of a marriage in Islam and to avoid things that will cause new problems.

Maintenance

Adopted children have the same position as biological children in maintenance problems. Because in the article it is stated that there is a transfer of responsibility from the original parents to their adoptive parents in terms of maintenance for daily life, education costs and so on based on court decisions. This was emphasized in the National Meeting of the Supreme Court of the Republic of Indonesia with the Court of Appeal throughout Indonesia which was held in Manado on October 29 to 31, 2012, Commission II for Religious Justice in

the results of its discussion formulated: "The obligation of maintenance to the adopted child is the same as the obligation of maintenance to the biological child, therefore if the husband and wife have divorced, the obligation of maintenance to the adopted child remains the obligation of the adoptive father as long as he is able to fulfill maintenance obligation, but if the adoptive father is unable to do so, the court can determine that the adoptive mother is obliged to fulfill the child's alimony."⁵⁴

The Compilation of Islamic Law as a guideline for material law of religious justice provides the definition of an adopted child in Article 171 letter h that 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 provisions of the article implicitly affirm that the adoption of a child results in the transfer of responsibility from the original parents to the adoptive parents in terms of maintenance for daily life, education costs and so on, while the relationship of nasab, guardian of marriage for adopted children, and the right to mutual inheritance with their biological parents is not interrupted.⁵⁵

The Compilation of Islamic Law Article 171 letter h is the basis for

⁵²Tim Redaksi Nuansa Aulia, *Kompilasi Hukum Islam*, h. 8.

⁵³M. Anshary, *Kedudukan Anak Angkat dalam Perspektif Hukum Islam dan Hukum Nasional*, h. 183.

⁵⁴M. Anshary MK, *Kedudukan Anak dalam Perspektif Hukum Islam dan Hukum Nasional*, (Bandung: CV. Mandar Maju, 2014), h. 188.

⁵⁵Musthofa Sy, *Pengangkatan Anak Kewenangan Pengadilan Agama*, (Jakarta: Kencana, 2008), h. 32.

allowing the adoption of children in Indonesia, especially the Islamic community, but only limited to the right of maintenance for daily life, education costs, health costs and the transfer of responsibility from the biological father to the parents who adopt him based on a court decision. If observed, the article shows that the legal relationship that occurs between the adoptive parents and the adopted child is only limited to the responsibility with expenses for their daily life such as education costs, health, and treatment costs which are based on the determination of the court with permanent and definite legal force. Thus, the legal relationship established between the adoptive father and the adopted child does not inherit the adoptive father.⁵⁶

According to Mu'thi' Artho from the perspective of the Compilation of Islamic Law, adopting a child can result in the law, namely:⁵⁷

1. The transfer of responsibility for daily life maintenance, education costs and so on from the original parents to the adoptive parents.
2. Adopting a child does not break the blood or destiny relationship between the adopted child and his biological parents so that the mahram relationship remains valid and the two are mutually inherited.

3. Adopting a child does not cause a blood or destiny relationship between the adopted child and his adoptive parents.
4. Adopting a child creates a legal relationship in the form of rights and obligations between adoptive parents and adopted children.
5. Adopting a child gives rise to the right of a mandatory will between the adoptive parents and the adopted child.

Therefore, from the explanation above, it can be concluded that the law of adopting a child in the Compilation of Islamic Law is permissible, provided that it is only limited to the transfer of responsibility from the child's parents to the adoptive parents. The transfer of responsibility is like financing daily life, caring for him with love and meeting all his needs, without changing the destiny of the adopted child. The adopted child is still given to his biological father, as contained in KHI articles 99 and 100. Adopted children do not become heirs from their adoptive parents, but only from their biological parents. However, in the KHI, the adopted child is entitled to obtain a mandatory will of up to 1/3 of the inheritance of his adopted parents, according to what is contained in Article 209 paragraph 2. As for the marriage

⁵⁶Abd. Halim, "Wasiat Wajibah dan Perkembangan Penerapannya dalam Putusan Mahkamah", *Al-Mazaahib* (Jurnal Perbandingan Hukum), Vol. 6, No. 2, (Desember 2018), h. 157. <https://ejournal.uin-suka.ac.id/syariah/almazahib/article/view/1555/pdf> (Diakses pada 27 April 2024).

⁵⁷Ahmad Hafid Safrudin, "Status Harta Waris Terhadap Anak Angkat Perspektif Adat Jawa dan KHI", *Jurnal El-Faqih*, Vol. 1, No. 2, (Juni 2022), h. 56-57. <https://ejournal.iaifa.ac.id/index.php/faqih/article/view/70> (Diakses pada 27 April 2024).

guardian, the adoptive parents are not entitled to be the marriage guardian of their adopted child as contained in Article 20.

Conclusion

Based on the results of the research conducted by the author related to the law of adopting children in Islamic jurisprudence and the Compilation of Islamic Law based on two problem formulations, the following conclusions can be drawn:

Adoption in Islamic Fiqh is prohibited if the fate of an adopted child is passed on to his adoptive parents. Because jurisprudence scholars agree, a child's destiny is determined by three things, namely a valid marriage, a fasid marriage, and wathi' syubah. However, adopting a child with the aim of nurturing, nurturing, and educating with affection without changing the child's destiny is a commendable act and includes a pious deed recommended by Islam. In Islamic jurisprudence, an adopted child does not obtain an inheritance from his adoptive parents, but can only obtain property from his parents through grants or wills and his adoptive parents are not allowed to act as guardians of his marriage. In addition, adopted children are not mahram for their adoptive parents, so they must pay attention to the limits in interacting between the two.

The compilation of Islamic Law allows the adoption of a child, provided that it is only limited to the transfer of responsibility from the child's parents to the adoptive parents. The transfer of responsibility is like financing daily life, caring for him with love and satisfying all his

needs, without changing the child's destiny. In addition, the adopted child does not become the heir of his adoptive parents, but is entitled to obtain a compulsory will as stipulated in article 209 and the adoptive parents do not have the right to be the guardian of the marriage for their adopted child.

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