

## **Adoption Practices In The Gunungjaya Community And Their Relevance To Islamic Law (A Study In Gunungjaya Village, Pemalang Regency)**

Ahmad Mahrus

Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, Indonesia

Email: [ahmadmahrus1909@gmail.com](mailto:ahmadmahrus1909@gmail.com)

### **Abstract**

This research aims to determine how adoption practices occur in Gunungjaya Village, Belik District, Pemalang Regency, and how the adoption practices comply with Islamic law. This research will explain the dynamics of adoption in Gunungjaya Village. The research was conducted using a qualitative method with an empirical juridical approach. Data was obtained through direct interviews with residents who practise adoption in Gunungjaya Village. In addition, the author also obtained data from literature studies in the form of journals, articles, and books that could be used as a basis for this paper. The results show that in the adoption practices in Gunungjaya Village, there are some adoptive parents who do not know the boundaries with their adopted children, so they treat them like their own children. Furthermore, there are couples who want to assign their adopted children to their adoptive parents. On the other hand, there are also couples who adopt solely for the sake of the child. Through this study, it is hoped that adoption in Gunungjaya Village will be carried out in accordance with Islamic law.

Keywords: Adoption, Islamic Law, Relevance

### **Introduction**

There is a familiar saying among the community, "a family is incomplete without a child." For some people, children are a source of sustenance for the family. Therefore, there is also a saying that many children bring much fortune. However, not everyone is fortunate enough to have children. There are some couples who have been married for years but have not been blessed with children. The causes vary, usually due to biological reasons on the part of the wife or husband. Therefore, adoption is often chosen as an alternative for people who cannot have children naturally. This is done to fulfil the desire to have children. However, there are some people who adopt children even though they already have children. The motives for adoption vary, including like to encourage the wife to conceive quickly, which is common in rural areas, to become a foster child for a couple who are infertile, and others.(Bachrudin, 2021)

Since the Prophet Muhammad introduced Islam to his followers, adopting babies has been a custom in Arab society. For example, Khudzaifah adopted a child named Sahij, while al-Khattab adopted a child named Amr bin Rabi'ah. Before being appointed as the Messenger, the Prophet Muhammad also experienced this by adopting a child named Zayid bin Harithah. He was taken as spoils of war from one of the battles in Arabia when he was still a toddler and was previously a slave, so Zayid was taken to be Khadijah's slave. After marrying the Prophet, Khadijah

gave him to her husband, the Messenger of Allah (peace be upon him). This continued until the Prophet Muhammad was officially recognised as a prophet.

The Prophet sincerely offered Zayid the choice of staying with him or returning to his family when Zayid's uncle and biological parents came to see the Prophet. However, he chose to stay with the Prophet. Therefore, the Prophet announced to the community that Zayid was his adopted son, and he became known as Zayid bin Muhammad. The next question that arises is how Islam views adopted children, a practice that has been followed by Arab societies since the beginning of humanity. In this case, according to Islam, adopted children do not have the same lineage as their adoptive parents. Therefore, Islam prohibits giving certain privileges to adopted children, including attributing them to their adoptive parents. (Ichsan & Dewi, 2023)

Adoption also occurs in Gunungjaya Village, Belik District, Pemalang Regency. In practice, people who adopt prefer to do so according to local customs or traditions, rather than through the courts. What caught the author's attention was that in everyday life, there was no apparent difference between adopted children and biological children, especially in terms of restrictions on mahram and aurat. This is certainly not in accordance with Islamic law, which does not allow adopted children to be treated the same as biological children.

Based on this issue, the author is interested in discussing how adoptive parents interpret child adoption in Gunungjaya Village, Belik District, Pemalang Regency.

### **Methods**

This research was conducted using qualitative research methods, with an empirical juridical approach. It is said to be empirical because the author directly observed the practice of child adoption in Gunungjaya Village and used a juridical approach to find the legal consequences of this practice in relation to Islamic law.

Participants in this research were selected using purposive sampling (sample selection based on purpose) and snowball sampling (to find adoption cases). The main informants were families who had adopted or were in the process of adopting children.

This research procedure is divided into three main stages, namely the Pre-Field Stage, which includes a literature study on the concept of adoption in KHI and Islamic Fiqh, permit processing, determination of informant criteria, and preparation of research instruments (interview and observation guidelines). Then the Field Stage, this includes the collection of primary and secondary data in Gunungjaya Village. Primary data was collected through in-depth interviews with informants and observation of adoption practices. Secondary data was collected from village documents related to the status of children and customs. Finally, the Post-Field Stage: This stage involved transcribing all interview results, compiling data, categorizing empirical findings, and conducting a comparative analysis between the findings on adoption practices and the principles of Islamic law.

The data used in this study is primary and secondary data. Primary data was obtained through interviews with people who directly practise child adoption. In this case, the author interviewed three couples, namely Mr Tohir and Mrs Yatun,

Mr Kusnan and Mrs Vila, and Mr Kasmu and Mrs Titi. Secondary data was obtained through literature studies such as books, journals, and articles.

The data obtained was then analysed using descriptive analysis, namely by describing and elaborating on the data obtained through interviews and literature studies related to the issues being discussed.

## Results

### 1. Definition of Adoption

Adoption comes from the Dutch word *adoptie* or the English word *adoption*, which means taking in a child or raising a child. (Bachrudin, 2021) Terminologically, in the Big Indonesian Dictionary, adoption is taking in someone else's child to become your own child. Thus, adopting means legally taking in someone else's child to become your own child. In Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption article 1 verse (2), child adoption or adoption is defined as:

"A legal act that transfers a child from the environment of the parental authority, legal guardian, or other person responsible for the care, education, and upbringing of the child, into the family environment of the adoptive parents."

The regulation also explains that the purpose of adoption is for the best interests of the child in order to realise child welfare and protection, which is carried out based on local customs and regulations.

In Arabic, adoption is known as *tabanni* or *al tabanni*, which means to make someone one's child. In the *al Munawir* dictionary, *tabanni fulaan* means to take in a child or to adopt. (Munawir, 1984) Wahbah Zuhayli defines *tabanni* as taking in a child by attributing someone whose lineage is clear to oneself. (Sagita, 2020)

Based on what is quoted by Firdausiyah et al., Mahmud Syaltut argues that the adoption of a child has at least two meanings. First, the adoptive parents raise and educate another person's child with undivided love and attention, without giving them the status of a biological child; however, they treat them as their own child. Second, adopting someone else's child and treating them as if they were their own biological child, giving them the status of a biological child and giving them the right to inherit from each of their adoptive parents and use their lineage name (*nasab*), as well as other legal rights arising from the adoption agreement between the adoptive parents and the adopted child. (Firdausiyah et al., 2023)

### 2. Legal Consequences Arising from the Adoption Process

As adoption is defined as a legal act, there are certainly legal consequences arising from the adoption process, whether related to lineage, inheritance, or guardianship.

#### a. Lineage

Regarding the lineage of adopted children, the majority of scholars argue that adopted children cannot follow the lineage of their adoptive parents; they remain bound to the lineage of their biological parents. Article 171(h) of the KHI explains the definition of an adopted child as "a child whose daily care, education costs, and so on are transferred from the

responsibility of the biological parents to the adoptive parents based on a court decision".

Thus, adopted children in the KHI do not sever their lineage as defined in civil law. The definition of an adopted child is limited to the transfer of responsibility for the child's welfare. In this case, it does not include severing the lineage. The lineage of the adopted child remains with their biological parents.(Subiyanti et al., 2019)

The Qur'an explains that it is forbidden by Allah SWT to treat an adopted child as a biological child in terms of blood relations. This is explained in QS. Al-Ahzab verses 4-5. Based on this verse, there are two important points regarding the adoption of children, namely:

- 1) The status of an adopted child is not the same as that of a biological child.
- 2) The adopted child should be called by the name of his biological father, not his adoptive father.

This provision makes it very clear that adopting a child as a biological child is never permitted. And this is a principle in the institution of adoption because these things can change inheritance laws and eliminate the rights of the biological father. Muslims are encouraged to care for the weak, the poor, the neglected, and others. However, severing a person's rights and relationship with their biological parents is unacceptable. In accordance with the guidance, the adoption of children is done solely to worship Allah SWT.(Sumirat & Wahyudin, 2021)

b. Guardianship

The term guardianship comes from Arabic, from the root word waliya, wilayah or walayah. The word wilayah or walayah has several etymologies: help, al-sulthah (meaning ability or power), and mahabbah (meaning love). Al-sulthah refers to a person's leadership over something. This etymological interpretation allows guardianship to be considered a type of protection based on love and responsibility, which helps support someone who is unable to take legal action for themselves or their property.(Firdausiyah et al., 2023)

The guardianship bond between biological parents and adopted children cannot be severed through adoption according to Islamic law. Children obey their biological parents in accordance with Islamic law. Therefore, even after adoption, the biological father of a girl remains her guardian.

c. Inheritance

There is a significant difference in the inheritance rights of adopted children based on Islamic law and positive law. This is inseparable from the verses of the Qur'an, Surah al-Ahzab, verses 4-5, which prohibit equality between adopted children and biological children. Adopted children must remain affiliated with their biological parents, so that the inheritance rights of the adopted child automatically remain with the biological parents, not the adopted child.

Although adopted children cannot inherit property from their adoptive parents, Islamic law provides a way for people who want to distribute their inheritance to adopted children through gifts or wills. There is a provision in the giving of a will, namely that the property bequeathed may not exceed one-third of the total property if the testator has heirs. This is based on the consensus of the Ulama and in accordance with the hadith narrated by Abi Waqash, when he was about to make a will, he first asked the Prophet whether he should bequeath 1/3 (one third) or 1/2 (one half) of his wealth because he only had one daughter. (Ichsan & Dewi, 2023)

In the KHI, it has been stipulated that if the testator dies without leaving a will, a mandatory will may be applied to the adopted child. This is contained in Article 209, paragraphs 1 and 2, which reads:

- a) The estate of an adopted child is divided based on Articles 176 to 193 above, while adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of the estate of their adopted child.
  - b) An adopted child who does not receive a will is given a mandatory inheritance of up to 1/3 of the inheritance of their adoptive parents.
3. The Meaning of Adoptive Parents Regarding Adoption in Gunungjaya Village and Its Relevance to Islamic Law

From interviews with several members of the community who have adopted children in Gunungjaya, the following data was obtained:

- a. Mr Tohir and Mrs Yatun

The couple adopted a child named Sodikin. Sodikin is the biological son of Mr Dori and Mrs Sumyati, who is Mrs Yatun's younger sister. The adoption was carried out because Mrs Yatun's family was unable to have children. As Mrs Sumyati had five children, she willingly gave custody of Sodikin to Mrs Yatun's family.

Mrs Yatun considers adoption to be the act of raising someone else's child with the aim of making them your own. She hopes that Sodikin will become a child who can look after and maintain her family's property when they have passed away. From this explanation of ' ', the author concludes that Sodikin will become the sole heir of Mr Tohir and Mrs Yatun's family.

According to Islamic law, this is certainly not appropriate because in Islam, adoptive parents cannot leave an inheritance to their adopted children. Even if they want to give their adopted children their estate, it must be in the form of a gift or will, and the amount cannot exceed one-third of the total estate. Moreover, Mrs Yatun still has a sibling, Mrs Sumyati, who is more entitled to the inheritance.

The way for Mr Tohir and Mrs Yatun to give assets to Sodikin is certainly through a gift or will, not inheritance.

On the other hand, the closeness between Mrs Yatun and Sodikin is like that of a biological child. There are no boundaries between them, so it appears to be a biological relationship. However, even though Sodikin is an adopted child, he should be treated as a stranger, not as a member of the family.

- b. Mr Kusnan and Mrs Vila

In this case, both adoptive parents adopted the child when he was still a baby. Although the adoption was not carried out through the courts, the adopted child's administrative data is already in the name of his adoptive parents. Under Islamic law, this is clearly unacceptable because an adopted child cannot be attributed to their adoptive parents, but must remain with their biological parents. Furthermore, the adopted child must be informed of the identity of their biological parents. Nothing can be concealed in this regard.

c. Mr Kasmoo and Mrs Titi

The adoption of this child was based on Mrs Titi's sympathy for the biological family of her adopted child, Kanaya. When she adopted Kanaya, her biological mother was elderly and in poor health, so Mrs Titi took the initiative to take care of Kanaya. Kanaya's relationship with her adoptive parents was limited to a foster relationship, nothing more. This is what is expected in Islam, where adoption aims to provide a decent life for those in need. Unfortunately, when Kanaya's biological mother, passed away, Kanaya was requested to return by her biological family from her father's side. Since Mrs. Titi had only adopted Kanaya according to local customs or traditions, she was unable to maintain her relationship with Kanaya.

### Discussion

Adoption practices in Gunungjaya Village show a diversity of purposes and procedures that are largely based on customs and the emotional needs of the family, which often conflict with the basic principles of Islamic law (Fikih Muamalah and Munakahat).

The case of Mr. Tohir and Mrs. Yatun highlights the most significant contradiction. This couple adopted their nephew, Sodikin, with the hope that Sodikin would become the sole heir to their property. According to Islamic law, this intention is invalid, because adopted children are not entitled to inherit the property of their adoptive parents. The transfer of property can only be done through gifts or wills, with a maximum limit of one-third of the total property. Another contradiction arises in daily practice, where Mrs. Yatun and Sodikin do not maintain the boundaries of modesty, even though in Sharia law, adopted children (unless there is a breastfeeding relationship) are still considered *ajnabi* (strangers) and are required to maintain the boundaries of modesty.

Meanwhile, the case of Mr. Kusnan and Mrs. Vila shows a serious violation of the principle of *nasab* in Islam. Although the adoption took place when the child was an infant, the couple changed the administrative data (such as the birth certificate) of the adopted child to make it appear as if the child was their biological child. In Islamic law, deliberately attributing a child to adoptive parents is prohibited, and children are required to know the identity of their biological parents. This action can be considered falsification of lineage under Sharia law.

Unlike the two previous cases, the case of Mr. Kasmoo and Mrs. Titi is more in line with the spirit of *kafa'lah* (care) in Islam. Their adoption was purely based on sympathy and aimed to provide proper care for the child. The relationship was limited to caregiving, not the establishment of lineage or inheritance. However, this

practice shows weaknesses in terms of formal legality. Because the adoption was only carried out according to local customs and without a court ruling, Mrs. Titi ultimately had no legal power to retain custody of Kanaya when the biological family from the father's side demanded the child back after the biological mother died.

Overall, the findings in Gunungjaya show that local customs tend to prioritize family and inheritance over Sharia provisions regarding lineage, guardianship, and inheritance law, while also revealing legal vulnerabilities due to the lack of legal adoption through the courts.

### Conclusion

Adoption or fostering of children is permitted in Islam and regulated by the government. Fostering of children can be carried out based on customs and traditions and through the courts with due regard to existing regulations, as an effort to defend the rights inherent to foster children in the best interests of the child.

The legal consequences of child adoption vary depending on the circumstances. Adopted children have a different status from biological children as recognised in Islamic law. In certain circumstances, such as inheritance, adopted children still have obligations to their biological parents because they retain their biological lineage. Conversely, positive law states that adopted children have the same status as biological children. This means that adopted children have the same rights as biological children, including inheritance rights and lineage or nasab.

In the practice of adoption in Gunungjaya Village, there are still people who try to treat adopted children as biological children, as done by Mr Kusnan and Mrs Vila. This is not justified according to Islamic law. The adoption of children expected by Islamic law is as practised by Mr Kasmu and Mrs Titi, where the adoption focuses on the transfer of child custody rights in order to provide welfare for the adopted child.

### REFERENCES

- Bachrudin. (2021). *Kupas Tuntas Hukum Waris KUHPerduta* (cet. 1). PT. Kanisius.
- Firdausiyah, V., Islam, U., Hasan, Z., Probolinggo, G., Yunita, W., Universitas, A., Zainul, I., & Genggong, H. (2023). STATUS ANAK ANGKAT (ADOPSI) DAN AKIBAT HUKUMNYA : STUDI KOMPARASI HUKUM ISLAM DAN HUKUM POSITIF. *AL-MUQARANA*, 1(01), 2023. <https://www.lp3mzh.id/index.php/Jpmh/article/view/89>
- Ichsan, M., & Dewi, E. (2023). Reformulasi Hukum Wasiat Wajibah Di Indonesia Terhadap Kewarisan Anak Angkat Perspektif Hukum Islam. *MAQASID*, 12(1). <https://doi.org/10.30651/MQSD.V12I1.15885>
- Munawir, A. W. (1984). *Kamus al-Munawir Arab Indonesia Terlengkap*. Pustaka Progresif.
- Sagita, H. (2020). ADOPSI DALAM PANDANGAN AL-QUR'AN: KAJIAN TAFSIR IJTIMA'I. *PERADA*, 3(2), 115–115. <https://doi.org/10.35961/PERADA.V3I2.58>
- Subiyanti, S., Santoso, B., & Purwoatmodjo, J. (2019). IMPLEMENTASI

WASIAT WAJIBAH UNTUK ANAK ANGKAT MENURUT KOMPILASI HUKUM ISLAM (KHI). *Notarius*, 12(1), 313–320. <https://doi.org/10.14710/NTS.V12I1.26971>

Sumirat, I. R., & Wahyudin, M. (2021). Hukum Anak Angkat dalam Perspektif Islam dan Hukum Positif. *Jurnal Studi Gender Dan Anak*, 8(02), 168–194. <https://doi.org/10.32678/JSGA.V8I02.5507>