

Overview Of Islamic Law On Practice Appointment Of Children Out Of Marriage To Meet The Welfare Of Children (Case Study No. 82/Pdt.P/2021 Religious Court of Ambarawa, Semarang Regency)

Muhammad Masykur^{*)}

^{*)}Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract

The purpose of this research to find out and analyze the process of implementing Islamic law child adoption, to find out and analyze the legal consequences of the adoption process and to find out and analyze the review of Islamic law on child adoption (adoption) outside of marriage. The research problem was analyzed with the theory of the operation of law in society and the theory of justice. The approach method used is the normative juridical and sociological juridical method, the specifications in the research are analytical descriptive, the population and sampling method are all objects or all symptoms or all events or all units to be studied, data collection techniques using library research and interviews, data analysis used is qualitative. In the analysis of the problem using the theory of the workings of law in society and the theory of justice. Research result: The enactment of Law Number 3 of 2006 concerning Religious Courts has brought fundamental changes to the authority of the Religious Courts. One of the changes is the case of adoption, including the new authority of the religious court as stipulated in the Elucidation of Article 49 Letter a number 20. This affirmation, on the one hand, shows the recognition from the state of the existence of the institution of adoption in the perspective of Islamic law. On the other hand, at the same time dismissing the doubts of the Muslim community and practitioners of the Religious Courts law to take advantage of the institution. Based on the Islamic concept, the adoption of a child should not break the lineage between the child and his biological parents. This later relates to the inheritance and marriage system. The review of Islamic law on child adoption (adoption) outside of marriage is that Islam allows adoption of children by prioritizing the welfare of children, especially neglected children, that in Islam adoption of children is to transfer responsibility for maintenance of living expenses, education, religious guidance and so on from other people. original parents to adoptive parents without having to cut off nasab relations with the original parents and that for children whose parents are Muslim, adoption can only be carried out by people who are Muslim as well as the fatwa of the Indonesian Ulema Council Number U-335/MUI/VI/ 1982 dated 18 Sha'ban 1402 H coincided with June 10, 1982.

Keywords: Islamic Law, Adoption, Children, Out of Wedlock

1. Introduction

Humans as social beings certainly have the desire to live life together with other humans. One way to do this is to form a family starting with a marriage. In Indonesian, marriage comes from the word "marry" which according to the language means forming a family with the opposite sex, having sex or having sex.

The purpose of marriage is to form a household and obtain offspring who are the successors. Marriage is expected to be validly formed as the basis for building a sense of happiness, security and prosperity.

Marriage is a commandment of Allah SWT for Muslims. This is stated in both the

Qur'an and the Hadith brought by the Prophet Muhammad. In the Qur'an, there are many verses that describe marriage, such as the QS. An Nisa verse¹ :

"O mankind, fear your Lord, who created you from a single person, and from him Allah created his wife; and from them Allah brought forth many males and females. And fear Allah who by (using) His name you ask one another, and (maintain) friendly relations. Verily, Allah is always watching over you and watching over you." (Ministry of Religion).²

In Article 1 of Law Number 1 of 1974, it is stated that:

"Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".

The definition of marriage as stated in Article 1 of Law Number 1 of 1974 needs to be fully understood by the community, because it is the main basis of further marriage law rules, both contained in Law Number 1 of 1974 and in other regulations. which regulates marriage. According to Abdul Ghofur Anshori, from this understanding it is clear that in a marriage there are two closely related aspects, namely:³

- 1) Formal (Legal) aspects, this is stated in the phrase "bond physically and mentally", meaning that in addition to having the value of an outward bond, it also has an inner bond that can be felt especially by the person concerned and this inner bond is the essence of the marriage.
- 2) Socio-religious aspects, with the mention of "forming a happy and eternal family" and based on "God Almighty", meaning that marriage has a very close relationship with spirituality, so that not only physical elements but spiritual elements play a very important role in forming a happy household. the world and the hereafter.

According to Sayuti Talib, in short, the meaning of marriage is:

"The holy covenant forms a family between a man and a woman." The element of the agreement is here to show the intentional aspect of a marriage and its appearance to the public. While the sacred designation for the revelation of the religious aspect of a marriage, other elements are placed in the description of the intent, purpose or wisdom of a marriage. ⁴

The purpose of marriage itself is to form a family that is closely related to offspring, besides that which is also the purpose of marriage, maintenance and education costs are the rights and obligations of parents. ⁵

Every marriage will certainly have legal consequences, as a result of the marriage, among others, the emergence of rights and obligations of husband and wife, the legitimacy of children/offspring, as well as assets arising from marriage. One of the main purposes of marriage is to produce children for both husband and wife. So important is

¹ Alfia, *Perspektif Hukum Adat Kawin Lari (Sillayang) Suku Bajau Di Desa La Gasa Kabupaten Muna*, Jurnal Hukum, Unissula, Vo. 37 No 1, Mei, 2021

² Ahmad Ulil Afwa, *Nikah Siri Ditinjau Dari Segi Kemaslahatannya Menurut Kyai Pondok Pesantren di Bugen*, Jurnal daulat hukum, Universitas Islam Sultan Agung Semarang, ISSN. 2720-9148, 2019

³ Hilman Hadikusuma, *Hukum Perkawinan Indonesia*, Bandung, Mandar Maju, 2007, hlm.6

⁴ Sayuti Thalib, *Hukum Kekeluargaan Indonesia*, Jakarta, UI Press, 2009, hlm.47

⁵ Sudarsono, *Hukum Perkawinan Nasional*, Jakarta, Rineka Cipta, 2010, hlm.9

descent in family life, so families who do not or are blessed with children will try to get offspring. Adoption of a child is one of the legal events in obtaining offspring.

The reason for adopting a child is to maintain the integrity of the marriage bond and for humanity and also to preserve offspring. Adoption of children is done because of concerns about the occurrence of disharmony in a marriage and a family because of descendants.

The family is said to be harmonious and complete whose members consist of father, mother and children. Children are essentially a gift from God Almighty and are priceless children of their parents and become the next generation of their parents. In general, a marriage will not be complete if there are no children, so various efforts are made to obtain them.

Children are the nation's assets, as part of the younger generation, children play a very strategic role as successors of a nation. In the context of Indonesia, children are the successors to the ideals of a nation's struggle. In addition, children are the hope of parents, the hope of the nation and the state who will continue the baton of development and have a strategic role, have special characteristics or characteristics that will ensure the continuity of the existence of the nation and state in the future. Therefore, every child must get coaching from an early age, children need to get the widest opportunity to be able to grow and develop optimally, both physically, mentally and socially. Moreover, childhood is a period of formation of character, personality and character of a human being.⁶

Adoption is one of the efforts to have children, take and care for children to become independent adults so that there is a domestic relationship between the adoptive father and mother on the one hand and the adopted child on the other.

The definition of adopted child in the Compilation of Islamic Law when compared with the definition of adopted child in Law Number 23 of 2002 concerning Child Protection, has the same substance. Article 1 point 9 states that:

"Adopted child is a child whose rights are transferred from the family environment of parents, legal guardians, or other people who are responsible for the care, education, and rearing of the child, into the family environment of his adoptive parents based on a court decision or decision".⁷

The important thing that needs to be underlined is that the adoption of a child must be carried out through a legal process with the product of a court order. If the law functions as a guardian of order and as social engineering, then the adoption of a child that must be carried out through a court order is progress towards controlling the legal practice of adopting a child who lives in the midst of society, so that the adoption event in the future has legal certainty both for adopted children as well as for adoptive parents. The practice of adopting children through these courts has developed both within the State Courts and in the Religious Courts for those who are Muslim.⁸

⁶ Fiska Ananda, *Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*, Jurnal Daulat Hukum Vol. 1. No. 1 Maret 2018

⁷ Undang-Undang No 23 Tahun 2002 Tentang Perlindungan Anak (Jakarta: Visi Media, 2007), hlm. 5

⁸ Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2008), hlm. 12.

Based on the above background, the researcher took the title of the thesis on: "REVIEW OF ISLAMIC LAW ON THE PRACTICE OF APPOINTMENT OF CHILDREN OUT OF MARRIAGE TO MEET CHILDREN'S WELFARE (Case Study No. 82/Pdt.P/2021 Ambarawa Religious Court, Semarang Regency)".

The formulation of the problem in writing this thesis are: How is the process of implementing Islamic law child adoption? What are the legal consequences of the adoption process? How does Islamic law review the adoption of children out of wedlock?

2. Methods

The approach method used is Juridical Empirical, which is a way to solve research problems by examining secondary data first and then continuing research on primary data in the field. Research Specifications are descriptive analysis by focusing on the problem then processed and analyzed to draw conclusions.⁹ The types of data are primary data and secondary data. The data sources are interviews and literature studies.

The data collection method used is Primary data by conducting interviews. Secondary Data: relevant literature studies, either in the form of theories or opinions from experts documented in the literature¹⁰. Data Analysis Method is qualitative analysis by describing data in the form of regular, logical and effective sentences¹¹

3. Results and Discussion

3.1. The process of implementing child adoption (adoption) according to Islamic law

Adopting children today is a natural thing for everyone to do. Both for those who have not been blessed with offspring or those who have been blessed with offspring. Because this is allowed by law and has been regulated in legal provisions. Adoption of children has been carried out since ancient times, even before Indonesia's independence. Although at this time the implementation of child adoption has developed far. This can be seen from the purpose of implementing child adoption which has developed from the original purpose of holding child adoption. However, if it is considered from any aspect, basically adoption has the same goal, namely to produce offspring.

Muslims who want to adopt a child in accordance with their views and legal awareness, namely based on Islamic law, begin to apply to the religious court. Several religious courts have granted their request by granting adoption decisions. The requests continued to increase both in quantity and quality. Therefore, in accordance with the development of the legal needs of the community, the Law of the Republic of Indonesia Number 3 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 7 of 1989 concerning the Religious Courts is also regulated regarding the adoption of children. based on Islamic law as the authority of the religious court, which is contained in the explanation of article 49 letter a number 20.

⁹Saifuddin Azwar, *Research Methods*, Student Library, Yogyakarta, 2014, p. 7

The requirements for adoption are contained in Article 13 of Government Regulation No. 54 of 2007: 12

- a. Physically and mentally healthy;
- b. the minimum age is 30 years and the highest is 55 years
- c. religion is the same as the religion of the prospective adopted child
- d. behave well and have never been punished for committing an act crime
- e. married status for at least 5 years;
- f. not a same-sex couple;
- g. do not or have not had children or have only one child;
- h. in a state of economic and social ability;
- i. obtain the child's consent and written permission from the child's parent or guardian;
 - 1) make a written statement that adoption is for the sake of the best interests of the child, the welfare and protection of the child;
 - 2) the existence of social reports from local social workers
 - 3) has taken care of prospective adopted children for a minimum of 6 months, since the permit care given
 - 4) obtain a child adoption permit from the Minister of Social Affairs for determined in court.

Based on two cases, namely those registered with the Registrar of the Ambarawa Religious Court with Number: 82/Pdt.P/2021/PA.Amb. on 15 February 2021 and the Ambarawa Religious Court number 145/Pdt.P/2021/PA.Amb on 24 March 2021.

In the case of adoption of a child out of wedlock, it is granted by the Judge but does not decide or change the lineage of the child as stated in letter 33 paragraph 4-5 and that the adoptive parents and adopted child have a civil relationship and do not inherit each other, but the will is mandatory based on the provisions of Article 209 of the Compilation of Islamic Law. In accordance with the results of interviews that the author conducted with the Ambarawa Religious Court Judge Siti Juwariyah, stated that:

“The bottom line is that it is allowed by religion/Islam and positive law in adopting children out of wedlock. Usually people cloud a negative view because it will be out of wedlock, people still pay attention to weight, seeds, bebet. It's a pity for the child because later the child will develop and the child will have their own rights, such as the right to love, the right to education and the right to be non-discriminatory (no child wants to be born as a child out of wedlock). What can't be is that if there is no black and white, the conditions for adopting a child must be met by the person who wants to adopt the child. Because if there is no black and white, the adoption can be annulled, if one day the parents have children or the conditions for adopting a child out of wedlock are not fulfilled.”

3.2.. Legal consequences of the adoption process

As for the legal consequences arising from the adoption of a child are as follows:

1. The shifting of responsibility for maintenance for daily life, education costs and so

on from the original parents to other people adoptive parents (Article 171 letter (h) Compilation of Islamic Law). This matter doesn't mean that biological parents can't help child care just can't be sued for it.

2. Adoption of a child does not break blood or lineage with their biological parents and family, so that between them still apply mahram relationship and mutual inheritance relationship.

3.3. Review of Islamic law on adoption of children out of wedlock

Adoption of a child in Islam is allowed but only because he wants to help in terms of the welfare of the child and also provides protection without making him a child. The law of adopting a child can also be circumcision with a reason to help abandoned children or children who live in poverty. Raising orphans, abandoned children is highly recommended as long as they do not decide their rights with their biological parents, and give birth to rights with adoptive parents such as rights with biological parents. Due to the adoption of children who get guardianship rights and The right to inherit is prohibited by Islamic law.

As contained in the word of Allah in the letter Al-Ma'idah verse 2 which reads:

It means: "And please help you in (doing) righteousness and piety, and do not help in sinning and transgression" (Al-Maidah54).

This verse explains that Islam strongly encourages an attitude of help helping each other, both helping in a general sense as well as in the sense of providing assistance to the poor and orphans.

The review of Islamic law on child adoption (adoption) outside of marriage is that Islam allows adoption of children by prioritizing the welfare of children, especially neglected children, that in Islam adoption of children is to transfer the responsibility for maintaining living expenses, education, guidance on religious teachings and so on from other people. parents of origin to adoptive parents without having to break the kinship relationship with the original parents and that for children whose parents are Muslim, adoption can only be carried out by people who are Muslim as well as the fatwa of the Indonesian Ulema Council Number U-335/MUI/VI/ 1982 dated 18 Sha'ban 1402 H coincided with June 10, 1982.

4. Closing

- a) How is the process of implementing Islamic law child adoption?

The enactment of Law Number 3 of 2006 concerning Changes Law Number 7 of 1989 concerning the Religious Courts has brought about a fundamental change to the authority of the Religious Courts. One of the changes is the case of adoption, including the new authority of the religious court as stipulated in the Elucidation of Article 49 Letter a number 20. This affirmation, on the one hand, shows the recognition from the state of the existence of the institution of adoption in the perspective of Islamic law. On the other hand, at the same time dismissing the doubts of the Muslim community and practitioners of the Religious Courts law to take advantage of the institution

- b) What are the legal consequences of the adoption process? Based on the Islamic concept, the adoption of a child should not break the lineage between the child and his biological parents. This later relates to the inheritance and marriage system. In marriage, for example, the priority of the lineage guardian for a daughter is her own biological father. In inheritance, adopted children are not included in the heirs. Adoption of children based on Islamic law is the adoption of children based on the Qur'an and sunnah as well as the results of ijtihad that apply in Indonesia which are formulated in various products of Islamic legal thought, both in the form of fiqh, fatwas, court decisions, and laws and regulations. including the Compilation of Islamic Law (KHI).
- c) The review of Islamic law on adoption of children out of wedlock is that Islam allows adoption of children by prioritizing the interests of children's welfare, especially neglected children, that in Islam adoption of children is to transfer the responsibility for maintaining living expenses, education, religious teachings guidance and so on from parents of origin to children. adoptive parents without having to break the lineage relationship with the original parents and that for children whose parents are Muslim, the adoption of children can only be carried out by people who are Muslim as well as the fatwa of the Indonesian Ulema Council Number U-335/MUI/VI/1982 dated 18 Sha'ban 1402 H coincided with June 10, 1982.

Based on the description above it is suggested that

1. The birth of the Compilation of Islamic Law (KHI) as a material legal guideline for religious courts recognizes the existence of an adoption institution by regulating adopted children in the formulation of Article 171 letter h and Article 209. The Religious Court as one of the actors of judicial power for the people seeking justice who is Muslim consistently oversees the application of the law so that it has a positive effect on the awareness of the Muslim community to adopt children based on Islamic law.
2. Government agencies related to the issue of child adoption, namely the Religious Courts, Social Service, Population and Civil Registry Offices in order to further improve the human resources in it to further increase the socialization of the latest statutory products regarding child adoption. socialization, there will be mastery of material regarding child adoption with all the complexity of the problems that exist in it. With the mastery of the material regarding child adoption, the problems that will arise can be minimized and the solution given is fast, best and appropriate.

5. Reference

- [1] Ahmad Ulil Afwa, Siri Marriage in terms of Benefits According to Kyai Pondok Pesantren in Bugen, *Journal of Sovereignty of Law*, Sultan Agung Islamic University Semarang, ISSN. 2720-9148, 2019
- [2] Alfia, Perspective of the Customary Law of Marriage and Lari (Sillayang) of the Bajau Tribe in La Gasa Village, Muna Regency, *Legal Journal*, Unissula, Vo. 37 No. 1, May, 2021
- [3] Bambang Waluyo, *Legal Research in Practice*, Sinar Graphic, Jakarta, 2002

- [4] Fiska Ananda, The Application of Diversion as an Effort to Protect the Law against Children Perpetrators of Criminal Acts, *Jurnal Daulat Hukum* Vol. 1. No. March 1, 2018
- [5] *Government Regulation on the implementation of child adoption*, PP Number 54 of 2007
- [6] Hilman Hadikusuma, *Indonesian Marriage Law*, Bandung, Mandar Maju, 2007
- [7] Kamil and M. Fauzan, *Child Protection and Adoption Law in Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2008)
- [8] Law No. 23 of 2002 concerning Child Protection (Jakarta: Visi Media, 2007)
- [9] Saifuddin Azwar, *Research Methods*, Student Library, Yogyakarta, 2014
- [10] Sayuti Thalib, *Indonesian Family Law*, Jakarta, UI Press, 2009
- [11] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Overview*, Raja Grafindopersada, Jakarta, 1985
- [12] Sudarsono, *National Marriage Law*, Jakarta, Rineka Cipta, 2010