



# The Concept of Child Adoption from a Legal Perspective in Indonesia

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## Abstract

Adoption is a legal act that transfers the custody of a child from biological parents or legal guardians to adoptive parents. In Indonesia, adoption is regulated by laws and regulations that provide a clear legal basis for the procedures, requirements, and legal implications of adoption. This study aims to examine the concept of adoption in Indonesian positive law, its adoption procedures, and the legal implications for the rights and obligations of adopted children. The method used in this study is a descriptive-analytical normative research method, by analyzing various related laws and regulations, such as Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, and other related regulations. Based on this analysis, it was found that the adoption process in Indonesia involves strict administrative and social stages, which ensure the protection and welfare of children. In addition, adoption provides equal rights to biological children in terms of care, education, and protection, although the child's lineage and inheritance rights remain affected by applicable law. The legal implications of adoption in Indonesia emphasize the obligations of adoptive parents to provide good care and fulfill the rights of adopted children in accordance with existing legal provisions.

## I. INTRODUCTION

Marriage is a crucial moment in a person's life, and it is hoped that it will lead to the formation of a happy family and the birth of children. The presence of children in a family serves various purposes, one of which is to carry on the legacy, whether in the form of a family tree, treasure, efforts, characteristics, and aspirations of parents. (Afiati et al., 2022) Furthermore, children are also considered guardians and caregivers for parents in their old age. Therefore, having children is often seen as an important part of building happiness and family continuity.

However, not all couples are able to have children due to various factors, particularly health issues such as fertility issues. In these circumstances, many couples seek alternative ways to have children, one of which is adoption. This adoption process offers hope for couples who are unable to have children biologically, allowing them to still experience the joy of parenthood. Having children in their lives. Adoption is also a solution for those who want to provide love and attention to children in need.

Adoption is the process of adopting a child, which has significant legal implications. The adopted child will have the legal status of the adoptive parents' biological child, even though they are not their biological child. This adoption process is regulated by Indonesian positive law, specifically Law Number 23 of 2002 concerning Child Protection, which provides the legal basis for legal adoption through a court decision. This adoption relates not only to emotional aspects but also to the rights and obligations that govern the relationship between the adopted child and the adoptive parents. (Kurniasih & Djajaputra, 2024)

In practice, child adoption in Indonesia can involve various legal sources, including civil law, Islamic law, and customary law. This is important because there are differences in the regulation of rights and obligations that arise after a child is adopted, particularly regarding inheritance. Under civil law, adopted children are considered part of the adoptive family and are entitled to the same rights as biological children, including inheritance rights. Meanwhile, under Islamic law, adoption regulations are more complex because they do not recognize the concept of adoption as

in civil law, thus affecting the rights of adopted children, particularly regarding inheritance rights.

Although adoption is a legal option under Indonesian law, adoption practices are often influenced by prevailing cultural and social norms. Indonesian society, which largely adheres to religious and customary teachings, often has differing views regarding the concept of adoption. (Turyani et al., 2024) Adoption carried out in a manner that complies with local religious and customary laws presents its own challenges, both in terms of legal recognition and in practice. Therefore, it is important to understand how adoption is regulated in positive law in Indonesia, in order to minimize differences in interpretation that occur in society.

The purpose of this study is to delve deeper into the regulation of child adoption under positive law in Indonesia, from both civil law and Islamic law perspectives. By understanding the various applicable provisions, it is hoped that solutions can be found to address the various problems that frequently arise in the adoption process, particularly those related to the rights of adopted children and the obligations of adoptive parents. This study also aims to provide a clearer understanding of the differences between civil law and Islamic law in regulating child adoption, as well as their implications for the legal status and inheritance rights of adopted children in Indonesia.

## II. RESEARCH METHODS

This study adopted a library research method, which involves collecting data from various library sources. This method encompasses a series of activities aimed at gathering information from relevant literature. (Adlini et al., 2022) Furthermore, this study also applies a normative legal approach, which, according to Soerjono Soekanto and Sri Mamudji, primarily focuses on the analysis of library materials or secondary data. This approach includes a study of legal principles, legal systematics, the harmony of positive law, comparative law, and the development of legal history. (Soekanto & Mamudji, 2010)

## III. RESULTS AND DISCUSSION

### A. The Concept of Adoption in Indonesian Positive Law

Adoption is a legal act that transfers a child from the care of his or her biological parents, legal

guardian, or other party responsible for the child's care and education, into the care of a foster family. In Indonesia, regulations regarding adoption are regulated by several laws and regulations, which include relevant legal bases, including:

1. Article 21 of the Convention on the Rights of the Child
2. Law Number 35 of 2014 concerning Child Protection
3. Law Number 12 of 2006 concerning Citizenship
4. Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption (Kefianto et al., 2024)

Indonesian law defines a child as an individual under 18 years of age and unmarried, including fetuses if it is in the child's best interest. This is explained in Law No. 35 of 2014 concerning Child Protection and Law No. 39 of 1999 concerning Human Rights. One of the fundamental rights of children is the right to care, which is also affirmed in the Universal Declaration of Human Rights, which states that children have the right to special care and assistance.

According to Article 12 of Government Regulation No. 54 of 2007, several requirements must be met for adoption in Indonesia. These requirements fall into two main categories: those for the child to be adopted and those for the prospective adoptive parents.

1. Requirements for Children to be Adopted:
  - a) Children under 18 years of age
  - b) The child must come from a neglected or abandoned background.
  - c) Children are in the care of families or childcare institutions
  - d) Children need special protection
2. Age of Child to be Adopted:
  - a) Children under 6 years of age are the top priority
  - b) Children aged 6 to 12 years can be adopted if there is an urgent reason.
  - c) Children aged 12 to 18 years can be adopted if they require special protection.
3. Requirements for Prospective Adoptive Parents:
  - a) Physically and mentally healthy
  - b) Aged between 30 to 55 years
  - c) Have the same religion as the child to be adopted
  - d) Have a good track record and never been convicted of a crime
  - e) Have been married for at least 5 years

- f) Not a same-sex couple
- g) Have adequate economic and social capabilities
- h) Must obtain the child's consent and written permission from the child's parent or guardian.
- i) Make a written statement that the adoption is in the best interests of the child (Mahmudah, 2019)

Furthermore, the adoption procedure in Indonesia is regulated by Government Regulation Number 54 of 2007, which outlines the steps for submitting an application for adoption. This procedure encompasses various administrative and social steps that prospective adoptive parents must complete. These include submitting an application to a social agency, attaching relevant documents, and obtaining permission and recommendations from the relevant authorities.

Some of the documents required include:

- a) Letter of handover of child from parent or guardian to social agency
- b) Letter of approval from the prospective adoptive parents' family
- c) Photocopy of birth certificate and marriage certificate of prospective adoptive parents
- d) Certificate of physical and mental health from a government doctor and psychiatrist
- e) Income certificate of prospective adoptive parents

Once all the documents are complete, the next step is a feasibility study by social services, a hearing by the adoption approval committee, and finally, a petition to the district court for legal confirmation as adoptive parents. This procedure ensures that the adoption is carried out with the child's best interests and the prospective adoptive parents' suitability in mind.

Adoption, under Indonesian positive law, is a legal act that transfers the care of a child from the biological parents or other responsible parties to the care of the adoptive family. This process is regulated by various laws and regulations, such as the Child Protection Law and the Government Regulation on the Implementation of Adoption, which stipulate requirements for both the child being adopted and the prospective adoptive parents.

The main requirements for adopting a child include being under 18 years of age, being neglected, and requiring special protection. Prospective adoptive parents must meet physical,

age, and religious requirements, as well as possess a good track record, sufficient financial capacity, and obtain the child's consent and permission from the authorities.

The adoption procedure also involves various administrative and social steps to ensure that the adoption is carried out in the child's best interests. This includes submitting an application to a social agency, conducting an eligibility assessment, and then issuing a court order to validate the adoptive parent's status. This process reflects Indonesia's efforts to provide adequate legal protection for children in need of care and to ensure their future well-being. (Thamrin, 2024)

## **B. The Legal Process of Child Adoption: Civil Law and Islamic Law Perspectives**

### **1. Legal Process of Child Adoption from a Civil Law Perspective**

Adoption under Indonesian civil law is a legal act involving a change in a child's legal status, whereby the child's rights and obligations are transferred from the biological parents or those with legal obligations to the adoptive parents, who are responsible for the child's care, education, and welfare. In principle, adoption under Indonesian civil law aims to protect and fulfill the child's rights, as well as to ensure the child's growth and development in a safe family environment.

In the Indonesian legal system, adoption is regulated by several laws and regulations, both national and international. Some of the legal bases for adoption in Indonesian civil law include: (Kefianto et al., 2024)

#### **a. Law Number 1 of 1974 concerning Marriage**

This law regulates the basics of marriage, as well as the status of children in a legal marriage, including adoption.

#### **b. Law Number 35 of 2014 concerning Child Protection**

This law affirms children's rights and explains the obligations of the state, family and society to protect children, including in the case of adoption.

#### **c. Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption**

This regulation provides technical instructions regarding the procedures and conditions that must be met in adopting a child.

The adoption process under Indonesian civil law consists of several stages that must be completed by the prospective adoptive parents

and the child to be adopted. These stages ensure that the adoption meets strict administrative and social requirements. The procedures for adoption under civil law are as follows:

a. Application for Adoption

Applications for adoption are submitted by prospective adoptive parents to the relevant social agency, either at the district/city or provincial level. In this application, prospective adoptive parents must include various important documents, such as a letter of surrender of the child, a letter of consent from the child's parents or guardian, photocopies of identity documents, and a health certificate.

b. Feasibility Study by Social Agencies

Once the application is received, the social services agency will conduct a suitability assessment of the prospective adoptive parents. This assessment includes an assessment of the prospective adoptive parents' physical and mental health, as well as their socioeconomic status. The purpose of this assessment is to ensure that the prospective adoptive parents have the ability to provide adequate care for the child.

c. Child Adoption Permit Consideration Team (PIPA) Meeting

Once the eligibility assessment is complete, the PIPA team will hold a hearing to determine whether the prospective adoptive parents are suitable to adopt the child. The PIPA team consists of various stakeholders, including social workers, court officials, and representatives from social agencies.

d. District Court Determination

If the PIPA team approves the adoption application, it will be submitted to the District Court for legal approval. The District Court will review the submitted documents and conduct further investigations to ensure that the adoption complies with applicable regulations and is in the child's best interests.

e. Implementation of Court Decisions

Once the court issues a decree regarding adoption, the child officially becomes part of the adoptive parents' family. The adopted child's rights, including inheritance rights and other rights, will be transferred to the adoptive parents in accordance with applicable law. (Tristiana & Dwikowati, 2023)

Once the adoption is approved by the court, the rights and obligations of both parties, both adoptive parents and adopted child, become clear and recognized by Indonesian civil law. Adoptive parents are obligated to provide adequate

education, protection, and care for the adopted child. They also have the right to manage the adopted child's legal administration, including the right to determine the child's residence, education, and healthcare.

On the other hand, adopted children have the right to protection, care, and education from their adoptive parents. Adopted children also have the right to equal status with biological children in their adoptive parents' families, including inheritance rights.

The legal process for child adoption, from the perspective of Indonesian civil law, involves a series of strict procedures to ensure that the adoption is carried out in the child's best interests and meets applicable legal requirements. Adoption not only provides protection and care for the child, but also legally transfers the rights and obligations of the biological parents to the adoptive parents. These procedures aim to ensure that the adoption is carried out responsibly and in accordance with the principles of legal justice.

## **2. The Legal Process of Child Adoption from an Islamic Legal Perspective**

In Islamic law, adoption is known as *tabanni* or *kafalah*, the act of accepting a non-biological child into the family and providing them with appropriate protection, care, and education. Adoption in Islam primarily aims to safeguard children's rights and provide them with proper care without changing their original status as children of their biological parents.

In principle, adoption in Islamic law does not change the relationship between the child's lineage and his biological parents, but rather provides care and protection for children in need. (Mardani, 2019)

Adoption in Islamic law is not directly regulated in the Quran, but its principles are found in several verses and hadiths that provide guidance on the need to care for orphans or abandoned children. Some of the legal bases in Islamic law regarding adoption include:

- a. Al-Qur'an Surah Al-Ahzab (33:4) This verse confirms that adoption in Islam does not change the child's hereditary status. "And Allah does not make your adopted children your biological children. That is only what you say with your mouth. And Allah says what is right, and He shows you the straight path." This verse shows that even though a child can be adopted, he still cannot be

considered a biological child in terms of lineage.

- b. Hadith of the Prophet Muhammad (peace be upon him) In a hadith, the Prophet Muhammad (peace be upon him) stated that those who care for orphans or abandoned children will receive great rewards. The Prophet Muhammad (peace be upon him) said: "I and the one who cares for an orphan will be like these two in Paradise" (Narrated by Bukhari). This demonstrates the importance of caring for children in need of care in Islamic law.
- c. Islamic Fiqh (Opinion of Scholars) Scholars agree that adoption in Islam does not provide inheritance rights to the adoptive parents, unless determined through a special will that is validated by Islamic law.(Alim, 2023)

Although Islamic law does not regulate the procedures for child adoption in detail as in positive law, several practical steps in child adoption based on Islamic principles can be seen through the practice of kafalah or child care, which involves several stages, including:

- a. Selection of Children to be Abandoned or Abandoned by Parents In Islam, adoption can be carried out for orphans or children who are abandoned and have no parents who can care for them. These children can be selected to be given care by families who need or can provide good care.
- b. Kafalah or Child Custody Agreements The process of adopting a child in Islamic law is usually carried out by agreement between the guardian (kafa'il) and the child to be adopted. This agreement is not always formal as in positive law, but rather a moral and religious agreement to care for and care for the child.
- c. Conveying Rights and Obligations: Adopters have an obligation to care for, educate, and provide for the child's needs. However, as explained in the Quran and Hadith, adoption in Islam does not transfer the child's lineage or inheritance rights from the biological parents to the adoptive parents. Adopted children cannot inherit the adoptive parents' property.
- d. Lineage Status: In Islamic law, lineage status remains unchanged after a child is adopted by adoptive parents. This means that an adopted child retains the right to inherit from their biological parents. Therefore, the lineage relationship with their biological

parents must be maintained and not severed.(Rohmah, 2023)

Although adoption in Islam does not change the relationship of lineage or descent, there are rights and obligations that must be fulfilled by parents.foster care. Some of these rights and obligations include:

- a. Children's Rights
  - 1) Protection and Education: Adopted children have the right to receive physical and psychological protection, as well as proper education from their adoptive parents.
  - 2) Welfare: Adopted children have the right to have their living needs met, including food, clothing, shelter and health.
- b. Obligations of Adoptive Parents
  - 1) Providing Good Care: Adoptive parents are obliged to look after and care for the child as if it were their own biological child, ensuring the child's healthy and happy growth and development.
  - 2) No Change in Child's Lineage: Adoptive parents do not have the right to change the lineage or lineage of the adopted child. Therefore, the child's inheritance rights remain with the biological parents.(Fajarwati, 2024)

Adoption under Islamic law, known as kafalah, or foster care, does not alter the child's lineage or kinship with their biological parents. However, Islamic law emphasizes the importance of providing adequate care, protection, and education to children in need. While adoption in Islam is more moral and consensual than a formal procedure, the principles of foster care still emphasize the child's best interests, without altering the child's inheritance rights or kinship status.

### **C. Legal Implications of Adoption on the Rights and Obligations of Adopted Children in Positive Law**

Adoption under Indonesian positive law is clearly regulated in several applicable laws and regulations. Adoption is a legal act that removes a child from the care of their biological parents or legal guardians, and is then cared for and recognized by adoptive parents as their legal child. This process has broad legal implications for both the adopted child and the adoptive parents, and is crucial for protecting the rights of the adopted child.

Once the adoption is legalized, the adopted child receives a number of rights equal to those of a biological child. These rights include:

1. **The Right to Care and Education** Adopted children have the right to receive proper care from their adoptive parents, including education, protection, and the fulfillment of other basic needs. These rights are guaranteed in Law Number 35 of 2014 concerning Child Protection, specifically Article 14, which states that children have the right to receive education and care that can optimally develop their potential.
2. **Rights to Inheritance** One of the implications of adoption is the adopted child's right to inherit property from their adoptive parents. However, this right to inheritance can only be granted through a will or written agreement from the adoptive parents in accordance with the provisions of Indonesian positive law. Based on the Civil Code (KUHPerdata), an adopted child does not automatically inherit the adoptive parents' property without a will stating so (Article 832 of the Civil Code).
3. **Right to a Family Name** In some cases, adopted children can use the adoptive parents' family name, but this does not change the adopted child's lineage status, which remains governed by Islamic law and customary law. Article 1 number 3 of Law Number 12 of 2006 concerning Citizenship also clarifies that adoption does not affect the adopted child's citizenship status. (Rahmadhanty et al., 2018)

In addition to the rights that adopted children receive, adoptive parents also have legal obligations towards their adopted children, which include:

1. **Obligation to Provide Care and Education** Adoptive parents are required to provide care that meets the child's needs, including the right to housing, education, health, and emotional care. This is regulated in Law Number 35 of 2014 concerning Child Protection, Article 14, which emphasizes the obligation of adoptive parents to fulfill the child's right to good care.
2. **Obligations in Inheritance** Adoptive parents also have an obligation to prepare

a written statement regarding the inheritance of the adopted child, which must be validated through a will or legal agreement. As stipulated in Article 832 of the Civil Code, if adoptive parents wish to provide an inheritance to the adopted child, this must be regulated in a will or legal agreement.

3. **Obligation to Register Child Adoption** The child adoption process must be registered through a legal procedure, starting with an application to the relevant agency, as explained in Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption. Article 12 of PP No. 54 of 2007 regulates the requirements that must be met for child adoption, including the approval of the adoptive parents, the suitability of the adoptive family, and permission from the relevant social agency. (Fajarwati, 2024)

Adoption can affect the adopted child's citizenship status, particularly regarding Indonesian citizenship. Under Law No. 12 of 2006 concerning Citizenship, children adopted by Indonesian citizens are entitled to Indonesian citizenship if they meet the requirements stipulated in the law. Article 4 of Law No. 12 of 2006 stipulates that children adopted by Indonesian citizens will obtain Indonesian citizenship, either through domestic or international adoption, provided they meet the stipulated requirements.

Adoption affects the adopted child's legal status in several aspects, including family relationships, social rights, and citizenship. Although adopted children may have the same rights as biological children in terms of social protection and education, the child's lineage remains governed by applicable law, particularly inheritance and descent laws. Indonesian positive law, including the Civil Code, guarantees an adopted child's right to inheritance only if there is a will from the adoptive parents stating so. Furthermore, in terms of inheritance, adopted children still cannot inherit their biological parents' assets.

The legal implications of adoption under Indonesian positive law include recognition of the rights of adopted children to receive care, education, and protection equivalent to those of biological children. Adopted children also have inheritance rights, which can be granted through a will from the adoptive parents. However,

adoption does not change the child's lineage or descent, and descent remains a primary factor in inheritance matters under Islamic and customary law. Adoptive parents are obligated to provide appropriate care, treatment, and rights to their adopted children, following the procedures established by Indonesian positive law.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

Adoption in Indonesian positive law has a clear basis in applicable laws and regulations, such as Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007 concerning the Implementation of Adoption, and other regulations. The adoption process has a significant legal impact on the rights and obligations of adopted children, both in terms of care, education, inheritance rights, and citizenship. In addition, adoption also affects the legal relationship between adopted children and their adoptive parents, which essentially provides equal rights to biological children in several legal aspects, including in terms of child protection. However, the status of descendants in terms of inheritance remains regulated by applicable law and does not automatically change the lineage of adopted children.

##### B. Suggestion

To ensure optimal legal protection for adopted children, it is hoped that the public will better understand the legal procedures for adoption and the rights of adopted children. The government needs to continue to educate the public about the legal and fair adoption process and ensure that every adoption meets the requirements and procedures stipulated in positive law. Furthermore, adjustments and updates to Indonesian positive law, particularly regarding the inheritance rights of adopted children, are needed to better reflect the principles of justice and child welfare.

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