

The Law of Adoption of a Child in the Womb and Its Status

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Abstrak

There is a significant lack of research that specifically addresses the legal and social implications of adopting children while they are still in the womb, particularly within the intersection of Islamic Law, positive Law, and local customs in Indonesia. This study explores the Law of adoption of children in the womb and their status. Researchers conducted research in the Sei Merbau District, where there is a phenomenon of adoption of children in the womb in several communities. The method used in this study is a qualitative method using an interview approach with the research respondents. The findings of this study are that there has been adoption and change in the status of children in the womb in Sei Merbau District, Tanjungbalai. In the analysis of Islamic Law, inconsistencies were found, where the adoptive parents mixed up the nasab by using their names as the biological parents of the adopted child. This activity is prohibited because it can change the Law from the adoption of a child who was originally “mubah” to “haram” due to the emphasis on the integrity of nasab. Meanwhile, in Positive Law, it was found that the adoption process did not go through a valid court and that there was an unauthorised change in civil status documents. This research highlights the urgent need for a clear and integrated legal framework to regulate the adoption of unborn children, ensuring the protection of the child’s rights and the consistency of legal practices with religious and national laws. This study reveals legal loopholes in the adoption of children in the womb and the importance of integrating Islamic law, positive law, and customary law in Indonesia.

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1. Introduction

Having offspring is a big dream in the world of marriage because it is included in one of the functions of marriage. Couples who have entered into a marriage that is valid in religion and the state have the legality to have biological relations. Therefore, the child born from this relationship will be determined as a biological child who is legally valid. A couple that has committed to having offspring must have prepared everything mentally, physically, and financially. However, it should also be noted that the journey in a marriage is not always as smooth as most people expect. In the context of having offspring, for example, not all married couples are blessed with biological children, even though they really want them. On the contrary, some couples are biologically capable of producing offspring, but they are unable to support them. In this context, the couple may have economic problems, given that the economy is one of the most discussed problems in the household.¹

The difference between these two realities creates a problem in social life. The problem that researchers are referring to is child adoption. Couples who have financial advantages but cannot have biological children, but really want a child, feel moved to adopt a child.

As is well known, a written rule, including child adoption, regulates every issue that occurs in society. These rules come from both state law and religious Law. In state law, the adoption of children is also called child adoption, which is regulated in Law No. 23 of 2002, which was later amended in Law No. 35 of 2014. Also, Law No. 54 of 2007 concerning Child Protection, which is referred to as adopted children based on Articles 1-10, is a child whose rights are transferred from the family power environment of parents, legal guardians, or other people who are responsible for the care, education and upbringing of children.² The next paragraph explains that child adoption is a legal action that transfers a child from the sphere of authority of parents, legal guardians, or other persons responsible for the care, education, and upbringing of the child into the sphere of the adoptive parents.³

¹ Norma Fitria, "Pengaruh Kemapanan Ekonomi Terhadap Kelanggengan Suatu Rumah Tangga," *Al-Rasikh: Jurnal Hukum Islam* 11, No. 2 (1 Oktober 2022): 133–44, <https://doi.org/10.38073/Rasikh.V11i2.866>.

² Indonesia, "Pelaksanaan Pengangkatan Anak," Pub. L. No. Peraturan Pemerintah (Pp) Nomor 54 Tahun 2007, Pasal 1 Ayat 1 (2007).

³ Indonesia.

In the case studies in Sei Merbau Village, Tanjungbalai City, researchers found the adoption of children in the womb. In the first case study, researchers found a pregnant woman who decided to give her fetus to another couple without going through a positive legal adoption process. The agreement was only based on deliberation from both parties. In addition, there was also a discrepancy in terms of religion, namely that the adopting couple legalised their names as the biological parents of the child. The act of adopting a child in the womb in Kel. Sei Merbau did not only happen once. In two other sources, researchers also found similar problems, where there were couples who adopted children and used their names as biological parents of the adopted children.

This action confuses us as to who is actually entitled to custody and responsibility of the child. In addition, the child's lineage status becomes unclear because there is no official recognition from the legal authorities between the child and the adoptive parents. The legal inconsistency and mixing of lineages in this case raises serious issues, especially in the context of Islamic family law and other legal systems that strongly emphasise the importance of maintaining legal lineages and legal procedures. This case study demonstrates that the adoption of a child in the womb without proper legal procedures can result in the child losing their right to know their biological origin and identity.

From this case study, it can be concluded that the adoption of children in the womb is a practice that requires comprehensive and detailed legal regulation. Without adequate regulation, this practice can lead to serious problems. The legal framework should be developed to create a legal framework that is able to protect the interests of all parties, especially the child, as the most vulnerable party in this case study. Discussions on the Law of adoption of children in the womb and their status need to continue to be developed to create a legal framework that is able to protect the interests of all parties, especially the child, as the most vulnerable party in this case study.

Research on the adoption of children in the womb is an interesting study, considering that, from what is known, child adoption is usually carried out when the child is born into the world. Previous studies have provided evidence that the phenomenon of child adoption has become a reality in society.

One of them comes from research conducted by Lukman Santoso entitled "Patterns of Fulfillment of Child Custody Rights in the Family of Indonesian Migrant

Workers: An Maqashid Shariah Perspective" The implementation of the fulfilment of child custody rights in the families of Indonesian migrant workers in the village of Madusari Ponorogo is partly implemented and partly not implemented properly, the implementation of the fulfilment of child custody rights in the families of Indonesian Migrant Workers in Madusari Ponorogo Village in general is still not all fulfilled. One of them comes from research conducted by Lukman Santoso entitled "Patterns of Fulfillment of Child Custody Rights in the Family of Indonesian Migrant Workers: An Maqashid Shariah Perspective" The implementation of the fulfilment of child custody rights in the families of Indonesian migrant workers in the village of Madusari Ponorogo is partly implemented and partly not implemented properly, the implementation of the fulfilment of child custody rights in the families of Indonesian Migrant Workers in Madusari Ponorogo Village in general is still not all fulfilled.

Research conducted by Dwita A'idillah entitled "An Analytical Study of Islamic Law and Positive Law on the Adoption of Children in the Womb (Case Study in Karangrejo Village, Ujungpangkah District, Gresik Regency)" explains that the process of adopting children in Karangrejo village is carried out based on local customary Law. So, all actions can be said to be correct if the agreed conditions have been met and both parties agree to it, even though the process does not involve legal officials or local civil servants through a legal court process.⁴

The research gap in the study of child adoption lies in the absence of studies that specifically and in-depth discuss the practice of child adoption from the womb. Most previous studies only focus on the adoption of children after birth or normatively, without touching on social practices and the legal consequences of mixing nasab and ignoring legal procedures. The novelty of this research is in the empirical exploration of the practice of child adoption in the womb through a case study in Sei Merbau Village.

The research objectives include identifying and analysing the practice of adoption of children in the womb that occurs in Sei Merbau Village, Tanjungbalai City. Analysing the Law of child adoption based on Islamic Law and Positive Law, and knowing the legal consequences of adopting children in the womb and their status.

⁴ Dwita A'idillah Fitri, Dzufikar Rodafi, Dan Faridatus Sa'adah, "Studi Analisis Hukum Islam Dan Hukum Positif Tentang Pengangkatan Anak Dalam Kandungan (Studi Kasus Di Desa Karangrejo Kecamatan Ujungpangkah Kab.Gresik)," *Hikmatina: Jurnal Hukum Keluarga Islam* 5, No. 3 (2023): 330, <https://jim.unisma.ac.id/index.php/jh/article/view/22338>.

2. Methods

The research method used is a qualitative method with a descriptive approach that emphasises an in-depth understanding of the issue of the adoption of children in the womb. The type of research conducted is empirical research, which observes phenomena through direct observation. The research location is in Sei Merbau Village, Tanjungbalai City, North Sumatra Province. The type of research is empirical because it examines the laws that live and develop in society through direct observation and interviews. The case study is used as the main design because the focus of this research is on a specific phenomenon that occurs in one particular area. The research procedure began with determining the location and relevant resource persons, namely, biological parents who gave up their children in the womb, adoptive parents, as well as religious leaders such as MUI and local community leaders. Data were collected through in-depth interviews to explore the personal narratives and legal perceptions of the parties, direct observation to understand the social context, and documentation to review administrative evidence such as birth certificates and family cards. Data analysis of Miles and Huberman's theory was conducted through data reduction, data presentation, and conclusion drawing.

3. Results and Discussion

a. Adoption of a child in the womb in Sei Merbau Village, Tanjungbalai

Based on the findings of the researchers, it is known that the process of adopting a child in the womb in Sei Merbau Village, Tanjungbalai, occurs because of the economic background of the biological parents, and the process is carried out through deliberation between the two parties. Interestingly, from the researcher's findings, the process of adopting a child also changes the status of the child.

In the first case, it was found that the procedure of adopting a child from the womb had taken place. Based on information from the informants, there are various reasons for this decision, including personal, social and economic reasons. This reason led to the procedure of adopting a child from the womb. Based on the interview with T(27):

*"He (prospective foster parents) is willing to adopt my child, and I ask for the cost of delivery later, he will bear it and give me compensation money for my health recovery period for 2 months."*⁵

⁵ Ibu T, Wawancara Salah Satu Ibu Kandung Yang Telah Berniat Untuk Menitipkan Anaknya Apabila Sudah Lahir Nanti, 2024.

From the results of the interview above, it is known that the interviewee had intended to give the child up for adoption from the womb. Then, the child adoption procedure is carried out when the child is born and through deliberation from both parties without court proceedings. In this case, the biological parents receive payment or compensation for the transfer of custody of the child.

Then in the second case, namely the transfer of the child's status. Based on the findings of the research, two informants were found to have carried out the status transfer process in the child adoption activity. According to information from two informants who are adoptive parents of children, the process of adoption has been planned by biological parents since pregnancy, such as the statement of R (56):

“When I was 8 months pregnant, I offered (do) ondak (want) brother to take (take) my child? “When you give birth, you take good care of him too”⁶.

A similar incident also happened to M(44), who had been planned as a prospective adoptive parent of a neighbour's child:

“She was 9 months pregnant and already in labour. She offered me her child, and I said that I was willing to take care of her”⁷.

In the second case, the researchers found indications of a transfer of status for the adopted child, where in the civil registration document, the adoptive father's name was placed behind the child's name as the biological parent. As in the statement of R (56):

“I took care of his birth certificate and entered it into the KK when he was 6 years old. I made the deed, but the KK was already old. I put it in the KK when he was still a baby, so on the deed, I made the bin in my name”. Similar information was also provided by M(44): “So I made the deed in (her) bin in my husband's name and in my mother's family card I made the child from us”⁸.

From the two child adoption models above, researchers also found a similarity, namely that neither went through a legal court process in process. The appointment process is only through deliberation between the two parties from close families, and even in the absence of intervention from local village officials.

The transfer (adoption) of a child in utero is a process in which a person takes the responsibility and right to raise and care for a child still in the womb from another

⁶ Bapak R, Wawancara Dengan Orang Tua Angkat, 2024.

⁷ Bapak M, Wawancara Dengan orang Tua Angkat, 2024.

⁸ Bapak M.

person when the child is born. The transfer of custody of a child in utero is a complex issue and requires careful handling. All relevant parties, including the government, legal institutions, communities and families, must work together to provide the best protection for children.

In Islamic Law, certain conditions must be met to adopt a child still in the womb. First, prospective adoptive parents must have good intentions and be responsible in caring for the child. Secondly, the process of adopting a child must be done fairly and follow applicable legal procedures, including obtaining the consent of the biological parents if they are still alive. Third, the person who adopts the child must give the child a good Islamic name. Under Islamic Law, an adopted child in the womb has the same rights as a biological child.⁹

In Indonesian legislation, the discussion of child adoption is set out in Law No.23 of 2002 on Child Protection. More specifically, this matter has been regulated in Article 39, paragraph 1 of the Law. It states that "Child adoptions must be carried out in the best interests of the child and be carried out based on local customs and the provisions of the applicable laws and regulations."¹⁰

In terms of inheritance rights, Islamic Law emphasises that the child's nasab will not transfer to his or her adoptive parents, so he or she is not entitled to inheritance from both parents. Meanwhile, in positive Indonesian Law, the rights obtained by adopted children are the same as biological children, so this allows adopted children to obtain the right to inheritance from their adoptive parents. The regulation of child adoption aims to ensure the interests, clarity and welfare of adopted children.

Several substances have been determined by legislation regarding child adoption. These include the following:

1. The process of adopting a child in the womb and its status must be carried out in accordance with applicable laws and regulations and must be in the best interests of the child.
2. The act of adoption does not sever the blood ties between the child and their biological parents.

⁹ Tatia Septia Fadila, "Analisis Pengalihan Hak Asuh Anak Dibawah Umur Dari Ibu Ke Ayah (Studi Putusan Nomor 685/Pdt.G/2022/Pa.Lt)" (Skripsi, Mataram, Universitas Mataram, 2023). Hal. 4

¹⁰ Citra Rosa Budiman, "Aspek Hukum Pengangkatan Anak Di Indonesia," *Binamulia Hukum* 6, No. 2 (2023): 141–48, <https://doi.org/10.37893/Jbh.V6i2.289>.

3. If the origins of the adopted child are unknown, then the prospective adoptive parents must be of the same religion as the majority in the vicinity.
4. For foreign countries, child adoption can only be done as a last resort.
5. The adoptive parents must inform the adopted child of their origins and, of course, consider the child's readiness.
6. The government and the community must work together to guide and supervise these child adoption activities¹¹.

b. Adoption of Children in The Womb from the Perspective of Islamic Law

Adoption of a child in the womb is a phenomenon that does occur in modern society today, as in Kel. Sei Merbau, the process is still based on the customs of the local community, so it is still considered correct. However, this issue cannot be separated from the perspective of Islamic Law.

According to the perspective of Islamic Law, there is no specific explanation of the legal issues of the adoption of children in the womb and also their status in the Al-Quran and Sunnah of the Prophet Muhammad SAW. However, this issue is a qiyas of child adoption. Qiyas itself has the definition of returning a branch to its tree¹². According to Imam Syafii, qiyas is a search with arguments for the suitability of existing information from the book or sunnah because these two things are the source of truth that must be sought.¹³ In the opinion of the researcher, qiyas is equating a case that is not explained in the Al-Quran and Sunnah with a case that has a clear source.

So, in this case, the researcher concludes that the adoption of children in the womb and their status is a qiyas of child adoption, which has been explained in the word of Allah SWT in Surah Al-Ahzab verses 4-5:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قُلُوبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ (4) ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (5)

¹¹ Dimas Prayoga Pangestu, Murendah Tjahyani, Dan Mutiarany, "Kedudukan Pengangkatan Anak Berdasarkan Itikad Baik Tanpa Penetapan Pengadilan Di Kampung Kebon Sayur, Kota Bekasi," *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 5, No. 2 (28 Juli 2023): 153–70, <https://doi.org/10.37893/Krisnalaw.V5i2.219>.

¹² Imam Haromain, *Kunci Memahami Ushul Fiqih: Terjemahan Lengkap Syarah Waroqot Rujukan Pondok Pesantren* (Surabaya, 2006). Hal. 73

¹³ Imam Syafi'i, *Ar-Risala: Buku Pertama Dalam Bidang Ushul Fikih* (Yogyakarta: Penerbit Buku Pustaka Islam Rahmatan, 2019). Hal. 143

"Allah does not make for a man two hearts in his heart, nor does He make your wives whom you have fornicated your mothers, nor does He make your adopted sons your own. All that is but the words of your mouth. Allah says what is right, and He shows the way(4). Call them by their fathers' names. That is what is just in the sight of Allah. If you do not know their fathers, call them your brothers in religion and your forefathers. If you do not know their fathers, call them your brothers in religion and your forefathers. There is no sin on you if you are mistaken about that, but what your hearts are intentional about. Allah is forgiving and merciful (5).

The reason for the revelation of the above verse is the story of the Prophet, who appointed Zaid bin Harithah, as stated in the following saheeh hadith. ¹⁴:

حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ، حَدَّثَنَا سُفْيَانُ، عَنْ إِسْمَاعِيلَ، عَنْ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -
قَالَتْ: "لَمَّا أُنْزِلَتْ (ادْعُوهُمْ لِآبَائِهِمْ) فِي زَيْدِ بْنِ حَارِثَةَ."

"From Abdullah bin Umar bin Khatthab Ra. Verily, he said: "We did not call Zaid bin Harithah but Zaid bin Muhammad until the verse of the Qur'an was revealed: Call them by their father's name, that is more just in the sight of Allah". (HR Bukhari. No: 4782).

From the explanation of the two legal sources above, the researcher concludes that child adoption is allowed if it fulfils several conditions, including:

1. There is consent from both parties
2. Not mixing up lineages, in this case, making the adoptive father's name the biological father.
3. It does not break the blood relationship between the adopted child and their biological parents.

As the Prophet Muhammad SAW has said, "Whoever claims to be other than his father or serves other than his master, then he gets the curse of Allah, angels, and all people" (HR. Abu Dawud).

According to the Shafii school of thought, the condition for adopting a child is that the child must be of the same religion. Other schools of thought do not require this, but according to Hanafi scholars, the right of custody can be waived if the parent responsible for the right of custody has apostatised or left Islam. When it comes to inheritance, the adopted child is not entitled to inherit the property of the adoptive parents according to Islamic Law but can receive a will with a maximum of one-third of the property.

¹⁴ Muhammad Jawad Mughniyah, *Fiqh Lima Mahzab* (Jakarta: Lentera., 2011). Hal. 318

According to Imam Syafii, regarding the care of children in succession who are entitled to custody are the mother, mother's mother, and so on up to the top on the condition that all of them are the heirs of the child then after that is the father, the mother of the father, the mother of the mother of the father, and so on up to the top on the condition that they are also the heirs. Then, the relatives on the mother's side, followed by the relatives on the father's side.¹⁵

Then, custody is also given to men who are not related to mahrams, such as the children of uncles. However, it should also be noted that it is not permissible to hand over the care of older girls to men. This principle is done to avoid being alone together, which is a prohibited act. However, according to Imam Syafii, the child may be transferred to a man who can be trusted and also recommended by the person who has the right to care for him, because care is his right.¹⁶ So, from the opinion of Imam Syafii, the researcher concludes that child adoption is permitted but needs to pay attention to several provisions, such as prioritising close relatives of the mother then the father. If it is not possible, it can be delegated to other people who are appointed and have been trusted. Imam Syafii also emphasised that adoption does not change the child's nasab status.

Besides quoting sources from Al-Quran, Sunnah, and fiqh scholars, the researcher also had the opportunity to interview local authorities who have the authority to determine a case. In this case, the researcher interviewed the chairman and secretary of MUI Tanjungbalai City.

Chairman of MUI Tanjungbalai City, Hajrul Aswadi, explained that the appointment of children is a matter that is allowed as long as it pays attention to the following two things:

1. Do not let mukholitun nasab (mixing of nasab) occur because nasab returns to the origin, not to the one who raised it. Nasab cannot be bought and transferred. Nasab goes back to the biological father unless the child is out of wedlock, then the Nasab goes back to the biological mother.
2. Try not to adopt from someone else. For example, if the one who is adopted comes from another family, if the child is a girl when she reaches puberty, she meets in that house someone who is not Mahram; if it is prolonged, it is haram. So, try to

¹⁵ Muhammad Jawab, *Fiqh Lima Mahzab*. Hlm.448

¹⁶ Mughniyah, *Fiqh Lima Mahzab*. Hal. 418

make this custody-related Nasab. So that when the child grows up, it does not affect anyone.”¹⁷

Secretary MUI Abdullah Rahim added that it is Child adoption is permissible in Islam; after birth, it is to include the adopted child in the KK (Family Card), but still include the name of the biological parents. It is not permissible to replace the name of the biological parents with the name of the parents who adopted the child. For example, the Prophet SAW made the name of his adopted son Zaid Bin Muhammad, received a rebuke from Allah SWT, and then changed it to Zaid Bin Haritsah (the name of Zaid's biological parents).¹⁸

From the explanation of the Islamic legal perspective above, a strong foothold has been obtained on the Law of the transfer of custody and the status of children in the womb. Which, in its implementation, must be in line with the things above.

However, based on the findings of researchers in the field, the adoption of children in the womb in Kel. Sei Merbau is still far from being in line with Islamic Law, which in its implementation is indeed through the results of deliberation and agreement from both parties. And even in the process of adopting the child, custody is not first handed over to the biological family of the child's parents. In practice, in the status of the child in the womb, it was found that the informant mixed the nasab. In the process of adopting the child, his status becomes a biological child by entering the name of the adoptive father (bin/binti), even in the process of adopting the child. They also include them in their civil registration documents so that they are like biological children.

Of course, this is not in accordance with the legal provisions that have been described through various sources above. In the practice of transferring a child's status, the most important thing to emphasise is the issue of nasab so that there will be no mistakes in the future. The issue of nasab is still emphasised in the case of child adoption, even if an agreement has been made in the form of payment in the process of transferring the status of the child.

c. Analysis of Positive Law in Adopting Children in the Womb

As is well known, child adoption in Indonesia has several regulations, all of which vary by region. Although, in essence, child adoption is regulated by the Law and other

¹⁷ Hajarul Aswadi, Wawancara Dengan Ketua Mui Tanjung Balai, 2024.

¹⁸ Abdullah Rahim, Wawancara Dengan Sekretaris Mui Tanjung Balai, 2024.

regulations under it. In the Law, the adoption of children is not clearly explained, but it is regulated in other regulations.¹⁹.

Adopting a child in the womb is a complex issue that requires further discussion. However, in normative juridical civil Law, it is expressly regulated as stated in Article 2 of the Civil Code, which reads, "The child in the womb of a woman is considered to have been born, if also the interests of the child require it. When he is born, it is considered that he never existed". The meaning of Article 2 is that even though a child is still in the womb, it is considered born. The affirmation of the article means that even though it has not been born and is still in the womb of its mother, the child will not lose rights related to its interests. However, it should be noted that a fetus that is still in the womb does not yet have the status of a child full legal person. In the context of the adoption of a child in the womb, this raises the question of whether a fetus can be considered a legal subject that can be adopted.²⁰.

Researchers feel that it is important first to know the legal status of a child who is still in the womb. Based on positive Law in Indonesia, children in the womb are categorised as children (legal subjects) who have rights and obligations, so they must receive legal protection. Therefore, the regulation of child adoption based on positive Law is regulated starting from the 1945 Constitution, Law No. 39 of 1999 on Human Rights, Law No. 23 of 2002 on Child Protection, and Law No. 4 of 1979 on Child Welfare. Article 28a and Article 53 of the 1945 Constitution and Law No. 39/1999 on Human Rights: "Every person, from the moment he or she enters the womb, has the right to live, to defend his or her life and livelihood, and to improve his or her standard of living"²¹.

Although there is a legal explanation for adopting a child in the womb, technically, the adoption process can only take effect when the child is born. In line with the adoption process in Indonesia, it is strictly regulated based on Government Regulation No. 54/2007 article (1) paragraph 1, "In the process of adopting a child, a social worker who has the

¹⁹ Henna Kurniasih Dan Gunawan Djajaputra, "Analisis Hukum Terhadap Pelaksanaan Adopsi Anak Dalam Sudut Pandang Hukum Positif Pada Putusan Nomor 29/Pdt.P/2021/Pa.Dbs," *Unes Law Review* 6, No. 4 (2024): 10204–18.

²⁰ Auliya Ghazna Nizami, "Hak-Hak Keperdataan Janin Dalam Hukum Islam Dan Peraturan Perundang-Undangan Di Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 52, No. 1 (T.T.): 75–101, <https://doi.org/10.14421/Ajish.V52i1.458>.

²¹ Natania Djesika Wongkar, Donald A. Rumokoy, Dan Lendy Siar, "Pelaksanaan Hak Untuk Hidup Berdasarkan Pasal 28a Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Lex Administratum* 11, No. 3 (2023).

definition of a civil servant or a person appointed by a foster care institution who has social work competence in child adoption must be present".

However, based on the researcher's findings in the field, there was no information that social workers or authorities were present during the child adoption process.

Then, down to the next article, Article (6) paragraph 1, it is explained that "adoptive parents are obliged to notify their adopted child of their origins and biological parents". Paragraph (2) explains, "the notification of origins and biological parents as referred to in paragraph (1) shall be made with due regard to the readiness of the child concerned".

Based on the provisions of the above Law, the interviewees' testimonies show that they did not inform their adopted children about their origins, stating that the children were not mentally ready. The validity of adopting a child in the womb according to positive Law is based on the 1945 Constitution, Law No. 39 of 1999 on Human Rights, Law No. 23 of 2002 on Child Protection, and Law No. 4 of 1979 on Child Welfare.

d. Legal Consequences of Adoption of a Child in the Womb and Its Status in Kel.

Sei Merbau

In Islamic Law, the issue of transferring child custody is set out in Surah Al-Ahzab (33) verses 4-5:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قُلُوبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ (4) ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (5)

*"Allah does not make for a man two hearts in his heart, nor does He make your wives whom you share your mothers, nor does He make your adopted sons your own. All that is but the words of your mouth. Allah says what is right, and He shows the way. Call them by their father's name. That is what is just in the sight of Allah. If you do not know their fathers, call them your brothers in religion and your forefathers. If you do not know their fathers, call them your brothers in religion and your forefathers. There is no sin on you if you are mistaken about that, but what your hearts are intentional about. Allah is Forgiving, Merciful"*²²

²² Departemen Agama Republik Indonesia, *Alquran Dan Terjemah* (Jakarta: Pustaka Al-Kautsar, 2020).

The verse explains that Islam also allows the adoption of children. However, there are several provisions in it, such as: first, the child still has a nasab relationship with his biological parents and can inherit their property. Second, the name of the biological father is still used on the adopted child. Third, there is no blood or inheritance relationship between the adoptive parents and the adopted child. Fourth, adoptive parents cannot be marriage guardians for adopted children.²³. The significant difference between Islamic Law and Positive Law is in the concept of implementation, which in Positive Law turns out to be stricter due to the existence of an eligibility test for prospective foster parents.

The legal consequences arising from the analysis of Islamic Law, if there is a violation of the provisions that have been contained in the Al-Quran, Sunnah, and the views of scholars, then child adoption becomes haram. The legal implication is that the adopted child must remain attributed to their biological parents, not to the adoptive parents. This regulation is a final and binding decision in Islam, which prohibits the disruption of lineage through adoption. .

By implication of positive Law, the adoption of a child in the womb cannot be considered legally valid until the child is born alive. After birth, the child can only be adopted through applicable legal procedures, as regulated in Government Regulation No. 54/2007 on the Implementation of Child Adoption. In addition, it can interfere with civil registration and citizenship, which is regulated in Law No. 23 of 2006 concerning population administration, which states that every birth must be officially recorded. The status of the child must be clear, both from the biological parents and the adoptive parents.

3. Conclusion

Based on the results of the above research, the researcher concludes that the Law of adoption of children in the womb and their status is permissible. But what happens in Kel? Sei Merbau, Tanjungbalai, the process is still carried out based on the customs of the local community, which in the process is only through deliberation between the two parties, who then agree on the requirements in the form of financing the delivery and recovery of the biological mother of the adopted child. The child adoption process in In the analysis of positive Law in Indonesia, the researcher found an indication of a legal discrepancy because in the process, the people of Kel. Sei Merbau, Tanjungbalai, only

²³ Mardani, "Pengangkatan Anak Dalam Perspektif Hukum Islam," *Binamulia Hukum* 8, No. 2 (2023): 117–34, <https://doi.org/10.37893/Jbh.V8i2.344>.

went through deliberation and not a legal state court. In the analysis of positive Law in Indonesia, researchers found indications of legal discrepancies because, in the process, the people of Kel. Sei Merbau, Tanjungbalai, is only through deliberation and not a legal state court.

This research is limited to one study area and only uses a qualitative approach, without a formal legal analysis of national regulations as a whole. In the future, it can be used as a reference for subsequent authors.

Bibliography

- Aswadi, Hajarul. Wawancara Dengan Ketua Mui Tanjung Balai, 2024.
- Bapak M. Wawancara Dengan orang Tua Angkat, 2024.
- Bapak R. Wawancara Dengan Orang Tua Angkat, 2024.
- Budiman, Citra Rosa. "Aspek Hukum Pengangkatan Anak Di Indonesia." *Binamulia Hukum* 6, No. 2 (2023): 141–48. <https://doi.org/10.37893/Jbh.V6i2.289>.
- Dimas Prayoga Pangestu, Murendah Tjahyani, Dan Mutiarany. "Kedudukan Pengangkatan Anak Berdasarkan Itikad Baik Tanpa Penetapan Pengadilan Di Kampung Kebon Sayur, Kota Bekasi." *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 5, No. 2 (28 Juli 2023): 153–70. <https://doi.org/10.37893/Krisnalaw.V5i2.219>.
- Fadila, Tatia Septia. "Analisis Pengalihan Hak Asuh Anak Dibawah Umur Dari Ibu Ke Ayah (Studi Putusan Nomor 685/Pdt.G/2022/Pa.Lt)." Skripsi, Universitas Mataram, 2023.
- Fitri, Dwita A'idillah, Dzufikar Rodafi, Dan Faridatus Sa'adah. "Studi Analisis Hukum Islam Dan Hukum Positif Tentang Pengangkatan Anak Dalam Kandungan (Studi Kasus Di Desa Karangrejo Kecamatan Ujungpangkah Kab.Gresik)." *Hikmatina: Jurnal Hukum Keluarga Islam* 5, No. 3 (2023): 330. <https://jim.unisma.ac.id/index.php/Jh/Article/View/22338>.
- Fitria, Norma. "Pengaruh Kemapanan Ekonomi Terhadap Kelanggengan Suatu Rumah Tangga." *Al-Rasikh: Jurnal Hukum Islam* 11, No. 2 (1 Oktober 2022): 133–44. <https://doi.org/10.38073/Rasikh.V11i2.866>.
- Harahap, M. Yahya. *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2018.

- Haromain, Imam. *Kunci Memahami Ushul Fiqih: Terjemahan Lengkap Syarah Waroqot Rujukan Pondok Pesantren*. Surabaya, 2006.
- Ibu T. Wawancara Salah Satu Ibu Kandung Yang Telah Berniat Untuk Menitipkan Anaknya Apabila Sudah Lahir Nanti, 2024.
- Indonesia. Pelaksanaan Pengangkatan Anak, Pub. L. No. Peraturan Pemerintah (Pp) Nomor 54 Tahun 2007, Pasal 1 Ayat 1 (2007).
- Kefianto K, Agil Masyhur Akbar. “Sistem Pengangkatan Anak Ditinjau Berdasarkan Hukum Positif Dan Hukum Islam Di Indonesia.” *Media Hukum Indonesia (Mhi)* 2, No. 2 (16 Juni 2024): 415–25. <https://doi.org/10.5281/Zenodo.11839771>.
- Kurniasih, Henna, Dan Gunawan Djajaputra. “Analisis Hukum Terhadap Pelaksanaan Adopsi Anak Dalam Sudut Pandang Hukum Positif Pada Putusan Nomor 29/Pdt.P/2021/Pa.Dbs.” *Unes Law Review* 6, No. 4 (2024): 10204–18. <https://doi.org/10.31933/Unesrev.V6i4.1996>.
- Mardani. “Pengangkatan Anak Dalam Perspektif Hukum Islam.” *Binamulia Hukum* 8, No. 2 (2023): 117–34. <https://doi.org/10.37893/Jbh.V8i2.344>.
- Mufarohah, Ana Nafisatul, Dan Abdullah Arief Cholil. “Akibat Hukum Pengangkatan Anak Yang Tidak Diketahui Orang Tua Kandungnya.” *Prosiding Seminar Nasional Kontelasi Ilmiah Mahasiswa Unissula Klaster Humaniora* Oktober (2019). <https://jurnal.unissula.ac.id/index.php/kimuhum/article/view/8229>.
- Mughniyah, Muhammad Jawad. *Fiqih Lima Mahzab*. Jakarta: Lentera., 2011.
- Nizami, Auliya Ghazna. “Hak-Hak Keperdataan Janin Dalam Hukum Islam Dan Peraturan Perundang-Undangan Di Indonesia.” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 52, No. 1 (T.T.): 75–101. <https://doi.org/10.14421/Ajish.V52i1.458>.
- Rahim, Abdullah. Wawancara Dengan Sekretaris Mui Tanjung Balai, 2024.
- Rais, Muhammad. “Kedudukan Anak Angkat Dalam Perspektif Hukum Islam, Hukum Adat Dan Hukum Perdata (Analisis Komparatif).” *Diktum: Jurnal Syariah Dan Hukum* 14, No. 2 (2016): 183–200. <https://doi.org/10.35905/Diktum.V14i2.232>.
- Republik Indonesia, Departemen Agama. *Alquran Dan Terjemah*. Jakarta: Pustaka Al-Kautsar, 2020.
- Santoso, Lukman, Dan Dawam Abror. “Pola Pemenuhan Hak Asuh Anak Pada Keluarga Buruh Migran Indonesia: An Maqashid Shariah Perspective.” *Al-Syakhsiiyyah*:

- Journal Of Law & Family Studies* 2, No. 1 (10 Juni 2020): 56–73.
<https://doi.org/10.21154/Syakhsiyyah.V2i1.2160>.
- Subeitan, Syahrul Mubarak, Nurlaila Isima, Dan Muhamad Sauki Alhabsyi. “Dinamika Pengangkatan Anak Di Indonesia.” *Al-Mujtahid: Journal Of Islamic Family Law* 1, No. 1 (24 November 2021): 59. <https://doi.org/10.30984/Jifl.V1i1.1617>.
- Syafi’i, Imam. *Ar-Risala: Buku Pertama Dalam Bidang Ushul Fikih*. Yogyakarta: Penerbit Buku Pustaka Islam Rahmatan, 2019.
- Tandilangi, Imanuel, Musakkir -, Dan Muhammad Basri. “Status Hukum Pengangkatan Anak Bagi Orang Tua Angkat Yang Belum Terikat Tali Perkawinan.” *Ilmu Hukum Prima (Ihp)* 5, No. 2 (31 Oktober 2022): 180–90.
<https://doi.org/10.34012/Jihp.V5i2.2768>.
- Wongkar, Natania Djesika, Donald A. Rumokoy, Dan Lendy Siar. “Pelaksanaan Hak Untuk Hidup Berdasarkan Pasal 28a Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.” *Lex Administratum* 11, No. 3 (2023).
- Yanto, Oliviani. “Janin Sebagai Subjek Hukum: Perspektif Hukum Perdata.” *Jurnal Ilmu Hukum: Alethea* 8, No. 1 (30 Agustus 2024): 1–17.
<https://doi.org/10.24246/Alethea.Vol8.No1.P1-17>.