Child Adoption Model in Islamic Law: A Case in Central Java Indonesia

Qurrota A’yun
UIN K.H. Abdurrahman Wahid Pekalongan, Indonesia
qurrota.ayun@uingusdur.ac.id

Nur Meilani
UIN K.H. Abdurrahman Wahid Pekalongan, Indonesia
nurmeilani405@gmail.com

Dewi Rahmawati
UIN K.H. Abdurrahman Wahid Pekalongan, Indonesia
dewi.rahmawati@mhs.uingusdur.ac.id

Abstract

This study aims to analyze the model of child adoption practices and the legal consequences of adopted child status in Islamic Law. This research is a field study with a juridical-empirical approach, which is descriptive and analytical in nature. Data on child adoption practices were analyzed using Friedman's legal system theory, which views the legal system as consisting of interconnected subsystems, including legal rules, enforcement, and the legal culture of the community. The effectiveness and success of law enforcement are measured through three elements of the legal system: the structure of the law, the substance of the law, and the legal culture. The research findings indicate that the model of child adoption practices in Batang District, Central Java is highly diverse. These models are observed in several villages within Batang District, such as Lebo, Pesaren, Banjiran, and Kalipucang Wetan. According to Indonesian legal regulations regarding child adoption, the reality is that the first model of child adoption does not comply with Indonesian legal rules, while the second model follows a familial approach. Several variations of these models present legal issues that have significant implications, particularly in terms of lineage, inheritance rights, and mahram relationships.

Keywords: Adopted child, child adoption, child status, Islamic law, legal culture


Received: 09-08-2023  Revised: 07-11-2023  Accepted: 03-12-2023
Introduction

Child adoption is an act that changes the child's caregiving pattern from their biological or adoptive parents to another individual to meet their needs (Article 2 of Government Regulation No. 54 of 2007 on Child Adoption Implementation, 2002). Every Indonesian citizen who adopts a child is obligated to register the adoption on the birth certificate (Child Protection Law, Article 39, Paragraph 2a, No. 35 of 2014, n.d.). Individuals who adopt a child have various motives and objectives. With the evolving times, the presence of child welfare laws reflects a shift in focus, emphasizing the best interests of the child (Sari & Cahyaningsih, 2018). This aligns with the goal of child protection, which is to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in line with human dignity and receive protection from violence and discrimination. This is to create high-quality, morally upright, and prosperous Indonesian children (Article 3 of the Republic of Indonesia Law No. 23 of 2002 on Child Protection, 2002).

Children need legal protection to ensure that their rights are safeguarded, fulfilled, and free from discrimination (Royani, n.d.). The birth certificate is a vital component of a child's identity, inseparable from their civil and political rights as a citizen. A child without a birth certificate risks losing their rights as a citizen. Article 5 of the Child Protection Law explicitly addresses an individual's right to identity, further regulated in Article 27, Paragraphs (1) and (2), as well as Article 39, Paragraph 2a of the Child Protection Law. The state guarantees citizenship status for every citizen, including children, as stated in the 1945 Constitution, article 28D, Paragraph (4), which grants the right to citizenship status. Additionally, the registration of birth certificates is governed by the Population Administration Law, outlining the obligation for citizens to register births through an active Population Registry system (Syahrani, 2006, p. 34).

Child adoption falls under the category of significant events that must be recorded in the civil registration ledger (Article 1, Number 17, Law No. 23 of 2006 on Population Administration, 2006). Similar to birth registration, from a legal perspective, the obligation of citizens who adopt a child to register the adoption is a way to protect the child. Child adoption is an opportunity given to those who are capable of caring for a child. Adoption is only allowed to meet the child's needs and must comply with existing formal legal regulations and not contradict customary practices in society.

Deviation from the regulations in the field occurs in the practice of registering the birth certificates of adopted children that do not follow the proper procedure, bypassing the court's determination, but instead involve the falsification of identities by local village authorities. It often begins at the village level, where birth certificates for adopted children are created in the names of the adoptive parents as the biological mother and father. In some cases, even adoptive parents who have familial relationships with the prospective adopted child, such as being a grandparent or uncle, are recorded as the biological parents. This violation of practice is carried out by the community in Batang District, and it is motivated by various reasons, including a lack of awareness about the legal regulations regarding the registration of birth certificates for adopted children and a desire to avoid what some consider to be cumbersome administrative procedures. As a result, shortcuts are taken by adopting a child by falsely acknowledging the prospective adopted child as a biological child to simplify the population administration process (Khalawati, 2022).
In the realm of child adoption in Batang District, two distinct societal models can be observed. Firstly, there is a model where the community understands child adoption without being concerned about the legal administrative aspects, effectively making it an "informal" adoption. In this informal context, the community in Batang District engages in child adoption by providing care, offering a good upbringing, education, and assisting with the responsibilities of the biological parents of the adopted child. The legal status of the adopted child is not a primary concern for the community (Sutrisno, 2023). Secondly, for those facing difficulties in meeting the requirements for legal proceedings, people tend to avoid the administrative process due to issues like the unavailability of witnesses in court, financial limitations, and the prerequisites imposed on prospective adoptive parents (Wulansih, 2023). The implementation of child adoption within Batang District does not align with safeguarding children's rights under Indonesian law.

Child adoption is carried out in accordance with legal regulations to protect the rights of adopted children. When adoption is solely based on customs and traditions without following legal procedures, there is a concern that the rights of the child may be neglected and left unprotected. Another crucial principle is articulated in Article 39, Paragraph (2), which states that adoption does not sever the blood relationship between the adopted child and their biological parents. This differs from traditional adoption practices where some communities might sever the blood ties between the adopted child and their biological parents, treating the adopted child as if they were their biological offspring. Article 39, Paragraph (2a) emphasizes that adoption must be recorded in the birth certificate without erasing the child's original identity. This underscores that the child's original identity should not be erased even if the child has been adopted by someone else.

Child adoption in customary law and positive law has different motivations (Junaidi, 2020). In customary law, the most common motivation is often due to a lack of biological offspring and various other reasons. In Indonesian law, the primary motivation for child adoption is the best interests of the child as part of child protection efforts. According to Islamic principles, in addition to the caregiving aspect, Islam does not allow attributing the adopted child to the adoptive parents as if they were the biological parents. The Indonesian Council of Ulama (Majelis Ulama Indonesia or MUI) explains that Islam recognizes legitimate lineage (nasab), which pertains to children born within a legal marriage; Adopting a child to sever their biological lineage (nasab) with their biological parents is contrary to Islamic law; However, adopting a child without altering their lineage or religion, done out of social responsibility to nurture, raise, and educate them with love and care as one's child, is a commendable act and falls under the virtuous deeds recommended by Islam; The adoption of Indonesian children by foreign citizens is not only in violation of Article 34 of the 1945 Constitution but also diminishes the dignity of the nation (Indonesian Ulama Council (hereinafter: MUI) Fatwa on Adoption (Child Adoption) Enacted on March 7, 1984, 1984).

Child adoption that is prohibited in Islamic teachings and legal regulations is adoption that leads to the severance of the legal relationship between the adopted child and their biological parents, including in terms of lineage (nasab). This is consistent with the customs of the community, as explained earlier. The convergence of legal regulations, religious law, and customary law underscores that child adoption in societal...
reality should be harmoniously accepted, rather than creating contradictions, which can lead to misunderstandings within society. Researchers find this kind of community phenomenon intriguing to study, both from the perspective of legal system theory by exploring the various practices that occur and also in understanding the legal consequences of the issues that arise from such cases.

Method

This research focuses on uncovering the empirical legal reality of child adoption practices in Batang District, Central Java. Primary data was collected directly from the field through a series of in-depth interviews with key informants, including individuals involved in child adoption (adoptive parents, families, and relevant government officials), as well as observations. To delve into child adoption practices, the analysis was conducted using the legal system theory proposed by Friedman. Law, in its narrow sense, is defined as the material or substantive aspect of legal rules. In the broader context of legal system theory, it comprises interconnected subsystems, including legal rules, their enforcement, and the legal culture of the community. Effective law enforcement depends on the interplay of three components within the legal system: legal structure, legal substance, and legal culture. Data obtained from respondent interviews were then classified according to these components proposed by Friedman, revealing the background of the child adoption models observed in Batang District. Subsequently, legal consequences were identified concerning the status of adopted children in Islamic law, such as issues related to lineage, inheritance rights, and mahram relationships.

The research was conducted in several villages within Batang District, including Lebo, Kalipucang Wetan, Banjiran, and Pesaren. These locations were selected due to the presence of various and distinct child adoption models, making them interesting subjects for in-depth analysis. In these selected villages, cases of child adoption deviating from the legal procedures in Indonesia were identified, based on information provided by the village authorities. Data collected from interviews aimed to reveal the actual practices within the Batang District community. Ethical considerations were taken into account, and the consent of respondents was sought during the information-gathering process. The data analysis process was based on the principle of ongoing analysis, meaning that data analysis was integrated into the data collection process and inherent in it. The research employed descriptive analytical techniques.

Result and Discussion

Child Adoption in Indonesian Law

Article 1, paragraph (1) of Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption explains that an adopted child is a child whose rights are transferred from the legal authority of the parents, lawful guardians, or other individuals responsible for their care, education, and upbringing to the adoptive family based on a decision or court ruling. An adopted child's status in Indonesia is part of God's trust and gift, wherein their inherent dignity and humanity are preserved. The Compilation of Islamic Law defines an adopted child, in Article 171, letter h, as a child whose daily care, educational expenses, and more are the responsibility of the adoptive parents, based on a court decision.
The goal of child protection in Indonesia, including for adopted children, is to ensure that their rights are upheld so they can live, grow, develop, and participate optimally in line with their inherent dignity and humanity. They should also be protected from violence and discrimination, to create a high-quality, morally upright, and prosperous generation of Indonesians. The laws from Article 2 to Article 9 of Law Number 23 of 2002 concerning Child Welfare outline the following welfare rights: Receiving welfare, care, guidance, and nurturing based on affection to grow and develop naturally; Receiving services to develop their abilities and social lives; Receiving care and protection, both during pregnancy and after birth; Receiving protection from an environment that could endanger or hinder their natural growth and development; Disabled children have the right to receive special services to reach their full potential within their capabilities (Law of the Republic of Indonesia No. 4 of 1979 Concerning Child Welfare, 1979).

Child adoption in Indonesian society has been a recurring issue. Throughout history, child adoption has been conducted with various methods and motivations, in alignment with the evolving legal systems and societal norms. The goals of child adoption have included continuing one’s lineage when biological offspring are not possible within a marriage, offering an incentive to adopt (e.g., in Javanese culture, by adopting a child, a family can have a biological child of their own), and adopting a male child to carry out the cremation rites of one’s parents or to preserve their ashes. Some believed that the extinction of a tribe or community was imminent if the tribal leader did not have a male child. In these beliefs, the adoption of a male child was highly desirable. Additionally, adoption has also been driven by compassion for orphaned children or the inability of biological parents to provide for their children (Soeroso, 2005, p. 177).

Law Number 4 of 1979 on Child Welfare is considered a legal provision that prioritizes child protection because the needs of children are at the forefront. Therefore, the legal provisions regarding child adoption in Indonesia need to be understood to what extent they can protect the interests of children. Child adoption has gradually shifted, originally being primarily for the benefit of the adoptive parents but later becoming focused on the well-being of the adopted child (Pandika, 2012, p. 106).

Child adoption practices in Indonesia have traditionally been conducted under customary law and civil law (Burgerlijk Wetboek), predominantly by Muslim communities. Civil law adoption is carried out in the District Court, known as adoption. In pre-Islamic Arab customary law, there was also the practice of child adoption. In pre-Islamic customary law, adopted children were treated the same as biological children by their adoptive parents, leading to one of the reasons for inheritance rights and the severance of the legal relationship between the adopted child and their biological parents. The legal consequences of child adoption in pre-Islamic customary law, Indonesian customary law, and civil law adoption are as follows: 1. Severance of civil/legal and lineage (nasab) ties between the adopted child and their biological parents; 2. Civil/legal relationships and kinship/nasab of the adopted child shift to the adoptive parents, and the adopted child takes on the name of the adoptive parents; 3. The legal status of the adopted child is equal to that of a biological child, with all associated rights and obligations; 4. The position of the adopted child in inheritance is the same as a biological child (Anshary, 2010, p. 113).
Child adoption in Islam is known as "tabbani." The term "tabbani" has been a tradition among the majority of Arab communities for a long time. It was also practiced by the Prophet Muhammad, who adopted Zaid bin Haritsah. The term "tabbani" is derived from the word "al-Tabannî," which means taking, adopting, or adoption (Munawwir, 1997, p. 111). In Surah Al-Ahzab, verses 4 and 5 of the Quran, verse 4 clarifies that an adopted child is not a biological child, emphasizing that only the name should not be ascribed to the adoptive family. This is followed by verse 5, which intends to avoid any confusion regarding blood relationships because unclear blood relationships can lead to issues in marriage and eventually affect inheritance distribution. It is these types of complications that Islamic teachings seek to prevent, ensuring that the lineage between adopted children and their biological parents remains intact.

Child Adoption in Batang District Community

The existence of a decision from the District Court or Religious Court is a requirement for the registration of the birth certificate of an adopted child. Armed with a copy of the court's ruling, the adoptive parents report to the Department of Population and Civil Registration Office. The purpose of this reporting is to record every action of someone who adopts a child after the adoption request is approved by the Court in the form of a decision (ruling), by making a "margin note" on the birth certificate register and a copy of the child's birth certificate. As stated in Article 47, paragraphs (2) and (3) of the Population Administration Law, which mandates the obligation of residents to report the registration of the adoption to the agency that issues birth certificates to create a "margin note" on the birth certificate register and a copy of the birth certificate after the court's decision (ruling) is issued (Khalawati, 2023).

The process of recording the adoption of a child at the institution that issues the birth certificate must be completed within 30 (thirty) days from the receipt of the court's decision/ruling copy. As emphasized in Circular Letter Number 2 of 2009 from the Supreme Court, it is mandatory for anyone seeking to adopt a child to attach the birth certificate of the child to be adopted. The process of recording the birth certificate of an adopted child has legal consequences that will become apparent once the adoption process is completed.

In this study, there are 10 sets of husband-and-wife data, all of whom have adopted children. The profiles of these 10 couples and their explanations regarding why they adopted a child and their decision to include their names in the child's birth certificate can be explained as follows:

The first couple consists of the husband, "T" (73 years old), and his wife, "K" (66 years old), who are residents of Lebo Village, RT 01 RW 03, Warungasem Sub-district, Batang Regency. T works as an entrepreneur, and K is a farmer. Both T and K have an elementary school education (T, 2023). According to T's statement during the interview, he explained that:

"I adopted a child in 2002, and now the child is 49 years old. Both of the biological parents of the baby were still alive back then. The adopted child still maintains a sibling relationship with my wife. The child is now married and has a family. I already have a grandson, a boy. We are happy to have children and grandchildren. My wife and I did not have biological children, so we adopted a child. We raised and educated the child."
Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mr. "T," he explained:
"Since 2002, I have never processed adoption documents. In the family card, my child is already included. I have never gone to court to handle the adoption. I do not know the correct procedures for adoption or how much it costs. I have never processed it until now."

The second couple consists of the husband "AG" (41 years old) and his wife "MU" (35 years old), residents of Lebo Village, RT 02 RW 02, Warungasem Sub-district, Batang Regency. AG works as a private sector employee with an elementary school education, and MU is a homemaker with a high school education. When interviewed, MU shared the following:
"I adopted a baby boy when he was less than 1 year old, it was in the year 2020. He is my husband's relative. Now, the child is 3 years old."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mrs. "MU," she explained:
"I have never applied to the court to handle the adoption status. In the Family Card (Kartu Keluarga), I've already included him as my child and my husband's child. I listed him as my child in the Family Card. I do not know the correct process for handling the adoption documents. But for going to court, we will need money for the expenses. I will do it later when we have the money."

The third couple consists of the husband "EDS" (34 years old) and his wife "FU" (29 years old), who are residents of Lebo Village, RT 03 RW 03, Warungasem Sub-district, Batang Regency. Both "EDS" and "FU" work as entrepreneurs and have a high school education. When interviewed, "EDS" shared the following:
"I adopted a child, and his biological parents are still alive, but they have economic difficulties. I adopted the child in 2019. Now, the child is 5 years old and attending preschool. We adopted the child because we were married but didn't have any children of our own. Hopefully, we will have our children later."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mr. "EDS," he explained:
"The child is still listed in the birth certificate and Family Card as part of his biological family. So, I have not made any changes. His name is not in our Family Card yet. I also have not processed it through the Civil Registration Office and the court. Mr. Sutrisno (Head of Village) could help with this, but I have not been willing to do it yet. We will just leave the child listed in his biological family in the Family Card; there is no plan to change it."

The fourth couple consists of husband "NK" (49 years old) and wife "SE" (47 years old). "NK" and "SE" are residents of Kalipucang Wetan Village, RT 05 RW 01, Batang Sub-district, Batang Regency. They both work as entrepreneurs, and both have a high school education (SMA). When interviewed, "SE" shared the following:
"I adopted a child who is my younger sibling's child, my nephew. We adopted him because we did not have biological children. We adopted the child in 2019, and now the child is 4 years old."
Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mrs. "SE," she explained:

"For the birth certificate and Family Card of the adopted child, the documents are still registered under his biological family. We have not submitted any requests to the Civil Registration Office) or the court to handle any formal adoption procedures."

The fifth couple comprises husband "K" (51 years old) and wife "H" (34 years old). They are residents of Kalipucang Wetan Village, RT 02 RW 01. Both work as entrepreneurs, and their education levels are elementary school and junior high school (SMP). When Mr. "K" was interviewed, he explained:

"The child I adopted is my niece, and now she is 8 years old. She is already attending an Islamic Elementary School. Since I did not have any children of my own, my sibling offered to let me adopt her for care. My sibling has four children and gave me one."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mr. "K," he said:

"The Family Card and birth certificate for the child already exist and are registered under the biological parents. I plan to handle the formal adoption process, but I have not allocated the funds for court expenses yet."

The sixth couple consists of the late husband "R" and wife "M" (36 years old). They are residents of Kalipucang Wetan Village, RT 06 RW 03. "M" works as an entrepreneur and has a junior high school education. When interviewed, Mrs. "M" explained:

"In 2004, I adopted a male child who is now 19 years old. He has completed his high school education and is currently employed."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mrs. "M," she said:

"We have not handled the formal adoption process yet. We did start the process by filing a request with the court in the past. However, we found out that the fees were expensive, and it required us to bring witnesses. As a result, we decided not to pursue it."

The seventh couple comprises husband "M" (60 years old) and wife "R" (54 years old). They are residents of Banjiran Village, RT 07 RW 02. "M" and "R" both have an elementary school education and work as entrepreneurs. When interviewed, Mrs. "R" explained:

"My adopted child is now 27 years old, working at RSI (Islamic Hospital), and already married. I raised him from infancy."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mrs. "R," she said:

"My child already has his own Family Card with his own family. Back then, the Family Card and birth certificate were registered under his biological parents. I did not make any changes to the Family Card and birth certificate. I did not know the formal adoption process at that time or whether it required going to court."
The eighth couple consists of husband "EAW" (42 years old) and wife "AY" (38 years old). "EAW" is a resident of Pesaren Village, RT 01 RW 02. He holds a Diploma 3 degree and works as an entrepreneur, while "AY" has a high school education and works as a homemaker. When Mr. "EAW" was interviewed, he explained:

"The child I adopted had both parents already deceased. My wife and I adopted the child with the permission of his relatives. We then lived in the birth parents' house."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mr. "EAW," he said:

"The child's information is already included in our Family Card as our child. Initially, I needed it to handle the child's school matters."

The ninth couple consists of husband "M" (49 years old) and wife "N" (43 years old). "M" is a resident of Pesaren Village, RT 03 RW 02. He has a high school education and works as a village official, while "N" has a junior high school education and works as a homemaker. When Mr. "M" was interviewed, he explained:

"My adopted child is currently less than 1 year old and has been ill. There was a recent heat-related illness, and the child was admitted to Batang Hospital's ICU."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by Mr. "M," he said:

"Due to the need for handling the child's BPJS (health insurance), I quickly prepared a Family Card. As a result, the child is included in our Family Card, both mine and my wife's. I care for this child as if they were my biological child. The child is still a relative of mine. I have not submitted any formal request to the court for official adoption."

The tenth couple consists of husband "AK" and his wife, "D" (age 50). "AK" and "D" are residents of Banjiran Village, Warungasem Sub-district, Batang Regency. The wife, "D," works as a village official in Banjiran Village. When "D" was interviewed, she explained:

"I adopted my niece, who is a girl. I decided to adopt her because I wanted a daughter. I already have two sons from my biological children. My adopted daughter is now attending an Islamic elementary school. I raised and educated her, considering her as my child."

Regarding the adoption paperwork in the birth certificate and Family Card, as mentioned by "D," she said:

"I've already included my daughter in my Family Card. I found it easy to process since I frequently visit the Civil Registry. It was a straightforward process."

The child adoption process carried out by the community in Batang District involves adoption without going through the court procedure, either by not handling the child's administration (due to reasons of lacking requirements and costs) or by deviations (acknowledging the child as a biological one). Reluctance to go through the legal procedure for handling the child's administration is particularly prevalent, as indicated by respondents from Desa Kalipucang Wetan and Lebo. Meanwhile, those who choose to take a deviation (acknowledging the child as their own) are respondents
from Desa Lebo, Pesaren, and Banjir. Such adoption practices in Batang District do not comply with the laws of Indonesia.

According to Indonesian law, individuals should first seek legal permission for child adoption through the court to obtain an adoption decree. The people of Batang District have not followed this proper legal procedure. Instead, they have adopted children through traditional means without going through the appropriate authorities. This practice contradicts Indonesian law and Islamic law since it can obscure the child's lineage by adding their name to the adopted child's birth certificate.

Overall, the child adoption practices in Batang District do not align with the established legal procedures in Indonesia and may lead to legal complications and issues related to the child's status and rights.

**The model of the Batang District community in Adoption Practices**

The model of adoption outside the court practiced by the community of Batang Regency is as follows: Biological parents voluntarily hand over their child to adoptive parents within the family; The adoption process is witnessed only by family members; There is no official written document stating that the adoption has taken place; Adoption is not based on a court decree; The adoptive child is registered in the birth certificate as a biological child of the adoptive parents.

The procedure for creating a birth certificate that includes the names of the adoptive parents involves the following steps: First, creating a birth certificate without a copy of the adoption court decree. The birth certificate is created informally within the family without following the court procedures (Sutrisno, 2023). This practice is carried out without obtaining a court decree, which should be a requirement for creating a birth certificate for an adopted child. This is often due to a lack of knowledge about adoption laws and the procedure for creating a birth certificate for an adopted child.

Second, creating a birth certificate based on knowledge gained from interactions within the community and local customs, rather than through legal education. Adoptive parents create a birth certificate for their adopted child based on the knowledge and customs of the local community. This knowledge and customs include not seeking a court decree and listing the adoptive parents as the biological parents on the birth certificate. This is often done due to a lack of legal knowledge and the absence of government-led education and guidance on adoption and birth certificate procedures (Wulansih, 2023).

The legal system of Friedman states that the effectiveness or success of legal enforcement depends on the three elements of the legal system: the structure of law, the substance of the law, and legal culture. The structure of law involves law enforcement agencies, the substance of law includes legal regulations, and legal culture relates to how a community's attitudes towards the law affect its implementation (Friedman, 2011, p. 5). These three elements work together like a machine, with the structure being the mechanism, the substance being the output, and legal culture determining who decides to operate or shut down the machine and how it's used.

The adoption practices without court procedures in Batang Regency are influenced by several factors based on Friedman's theory: First, the factor of the legal structure. The research suggests that adoption practices in Batang are influenced by the behavior of law enforcement officials. Whether the law operates effectively or not is highly dependent on the behavior of those enforcing the law. In this case, the
community's actions indicate that law enforcement officials are not upholding the law as they should. There is a lack of legal awareness and insufficient government-led education about adoption laws and birth certificate procedures. The law should be followed according to formal regulations, and law enforcement officials should ensure that the law is implemented properly in the community.

Second, the factor of legal substance (legal instruments). Legal substance also includes living law, not just regulations found in law books. The practices of adopting a child without a court decree are supported by the community's understanding of adoption based on local customs. The common practice is that adoption is seen as an agreement between adoptive parents and biological parents to care for and fulfill the needs of the adopted child. Child-rearing is considered essential, whereas legal status is not a priority. People often decide to adopt a child, especially a relative, to provide care and support economically and educationally.

Based on the research findings, there is a significant amount of undocumented child adoption in Batang Regency, and individuals often keep it secret due to various reasons and backgrounds. Some people still perceive a difference between the legal status of adopted children and biological children. Adoptive parents are concerned that if the legal status of an adopted child is known too early, it might affect the child's psychological well-being. Another concern is that adoptive parents may feel ashamed if they are unable to have biological children. Despite these concerns, the community does not consider such deviations from the law to be a serious problem.

Third, legal culture is a belief or customs practiced by the community concerning the law. Legal culture is closely related to the level of legal consciousness within the community. When the community has a high level of legal consciousness, it can develop a positive legal culture; conversely, if the legal consciousness is low, the legal culture may be negative. In this context, the practices of creating a birth certificate that includes the names of adoptive parents as biological parents are influenced by the legal culture of the community. Although the respondents are aware of Islamic legal rules on adoption, they lack knowledge about the consequences of adoption in terms of inheritance rights. With this legal culture, the community tends to see the adoption without a court decree as not a serious issue. However, it should be noted that such deviations from the law are not justified under Indonesian law regarding adoption procedures.

The five respondents do not provide legal certainty as they adopt children without a court decree to establish the legal status of the adopted child. They believe that there will be no issues in the future, as the adoption is based on customary practices and originates from close family ties. They do not anticipate potential problems if the biological parents or the extended family of the adopted child decide to reclaim custody in the future due to the absence of a court decree, which is essential for legal certainty for the adopted child.

**Legal Effects of the Status of Adopted Children in Islamic Law**

Child adoption without a court decree can result in legal consequences, such as the termination or loss of the existing legal relationship between the adopted child and their biological parents. The legal consequences of the practice of child adoption without a court decree in Batang Regency create a new legal relationship between the adopted child and the adoptive parents because it changes the parentage of the adopted
child to the adoptive parents. This change in parentage has legal consequences for the parties involved in the adoption, including the adopted child, biological parents, and adoptive parents.

The legal consequences for the adopted child resulting from child adoption without a court decree in Batang Regency are as follows based on the research conducted: First, the adopted child may not know their true origins. The practice of child adoption without a court decree can lead to the loss of the adopted child's right to know their true origins. As stated in Article 2(2) of the Minister of Social Affairs Regulation No. 110/HUK/2009 regarding Adoption Requirements, adoptive parents are required to inform their adopted child about their origins and biological parents while considering the child's mental preparedness.

Second, the administrative status of the adopted child becomes that of the biological child of the adoptive parents. The administrative status of the adopted child becomes that of a legitimate biological child of the adoptive parents due to the inclusion of the adoptive parents' names as the biological parents on the child's birth certificate. However, Islam prohibits severing the legal relationship between the adopted child and their biological parents, as outlined in Surah al-Ahzab verses 4 and 5.

Third, the adopted child may potentially become an heir to the adoptive parents. In essence, child adoption does not automatically grant inheritance rights to the adopted child. However, the practice of including the adoptive parents' names as the biological parents in the birth certificate gives rise to a potential legal consequence: the adopted child may become an heir to the adoptive parents. If no one reminds them of their actual legal status, the adopted child may come to consider themselves as the biological child, potentially inheriting assets. As stated in Article 1(2) of Government Regulation No. 54 of 2007 concerning Child Implementation, adopted children do not have the legal status of heirs to their adoptive parents, as they do not share a blood relationship that would warrant inheritance.

According to Islamic law, adopted children can only receive a bequest of no more than one-third of the inheritance, as they remain the legal heirs of their biological parents. If the adopted child is recognized as an heir to the adoptive parents, this may lead to conflicts among the descendants in the adoptive family. It disrupts the normal scenario where adopted children do not inherit, but instead become heirs, potentially closing off the share that other legal heirs of the adoptive parents should receive. The research data also shows that those involved in child adoption without a court decree are not aware that the adopted child cannot inherit from them.

Fourth, there is a concern that adopted children, after reaching adulthood, may be treated as mahram (unmarriageable kin) by the adoptive parents. The practice of child adoption without a court decree, by including the names of the adoptive parents as the biological parents in the birth certificate, can lead to the legal consequence that adopted children may be considered mahram to their adoptive parents when they grow up. This can create misunderstandings between what is halal (permissible) and what is haram (forbidden) in Islamic law. As a result of the perceived mahram relationship, adopted children may not be allowed to marry their adoptive parents (similar to the relationship between biological parents and children), and the adoptive parents may also see the child's aurat (intimate parts of the body), and vice versa.

Child adoption under Islamic law does not affect the mahram relationship between adopted children and adoptive parents. Adopted children are not included in
the list of mahram relationships, which means there are no prohibitions against marrying each other or inheriting from one another.

Fifth, the legal relationship between the adopted child and their biological parents is severed. The legal consequence of child adoption without a court decree, which involves listing the adoptive parents as the biological parents on the birth certificate, leads to the severance of the legal relationship between the adopted child and their biological parents. However, the principles of child adoption in Islam are focused on child-rearing alone, to ensure that adopted children are not neglected or left to suffer during their growth and development. This process should not sever the legal relationship between the adopted child and their biological parents, disinherit the child, or make the adopted child the legitimate child of the adoptive parents with all the legal rights of a biological child.

**Conclusion**

The child adoption model in Batang District displays significant variation, ranging from biological parents voluntarily entrusting their children to adoptive parents on familial grounds, unceremonious adoptions witnessed solely by family members, a lack of formal written documentation for adoption, the absence of a court decree for adoption, to the adopted children being recognized as the biological offspring of their adoptive parents in their birth certificates. The underlying reasons for adopting without court procedures in Batang District are multifaceted, encompassing weak law enforcement efforts, limited legal education and awareness among local authorities and the community, the prevalence of local customs not aligned with Islamic and formal legal systems, and an underdeveloped legal culture leading to low legal awareness. These practices give rise to various legal consequences for adopted children, including potential identity confusion, the administrative classification as biological children of the adoptive parents, the potential for inheritance rights, concerns about familial relationships, and severance of legal ties with biological parents. Addressing these consequences necessitates implementing proper legal processes and educational efforts regarding child adoption, as well as aligning local customs with established legal systems to protect the best interests of the children involved.

**References**


EAW. (2023). *Orang yang Mengangkat Anak, diwawancarai oleh Qurrota A’yun, Desa Pesaren Kecamatan Warungasem Kabupaten Batang, 10 Juli 2023*.


Fatwa Majelis Ulama Indonesia (MUI) tentang Adopsi (Pengangkatan Anak) ditetapkan pada tanggal 7 Maret 1984.


Pasal 1 angka 17, Undang-undang No. 23 Tahun 2006 Tentang Administrasi
Kependudukan.
M. (2023b). *Orang yang Mengangkat Anak, diwawancarai oleh Qurrota A’yun, Desa Pesaren Kecamatan Warungasem Kabupaten Batang, 10 Juli 2023*.
Pasal 1 angka 2 PP No. 54 tahun 2007 tentang Pelaksanaan Pengangkatan Anak.
Pasal 3 Undang-Undang Republik Indonesia Nomor 23 tahun 2002 tentang Perlindungan Anak.
Undang-undang Perlindungan Anak Pasal 39 ayat 2a No. 35 tahun 2014.
Undang-Undang Republik Indonesia No. 4 Tahun 1979 Tentang Kesejahteraan Anak.

---

*Kependudukan.*

M. (2023b). *Orang yang Mengangkat Anak, diwawancarai oleh Qurrota A’yun, Desa Pesaren Kecamatan Warungasem Kabupaten Batang, 10 Juli 2023*.
Pasal 1 angka 2 PP No. 54 tahun 2007 tentang Pelaksanaan Pengangkatan Anak.
Pasal 3 Undang-Undang Republik Indonesia Nomor 23 tahun 2002 tentang Perlindungan Anak.
Undang-undang Perlindungan Anak Pasal 39 ayat 2a No. 35 tahun 2014.
Undang-Undang Republik Indonesia No. 4 Tahun 1979 Tentang Kesejahteraan Anak.

---

*Hikmatuna*. Volume 9, Number 2, 2023