

## Child Adoption Without a Judicial Process in Sawentar Village, Blitar Regency (Perspective of Positive Law and Islamic Law)

**Damar Amanu**

Universitas Nahdlatul Ulama Blitar  
[damaramanu76@gmail.com](mailto:damaramanu76@gmail.com)

**Aisyatul Azizah**

Universitas Nahdlatul Ulama  
[aisyatulazizah@gmail.com](mailto:aisyatulazizah@gmail.com)

**Afrohatul Laili\***

Universitas Nahdlatul Ulama Blitar  
[afrohatullaili29@gmail.com](mailto:afrohatullaili29@gmail.com)

**Yaoma Tertibi**

Universitas Nahdlatul Ulama Blitar  
[yaoma.tertibi@gmail.com](mailto:yaoma.tertibi@gmail.com)

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### ABSTRACT

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Corresponding

Author:

Afrohatul Laili

[afrohatullaili29@gmail.com](mailto:afrohatullaili29@gmail.com)

In Islam, adopting children has been known since the time of the Prophet Muhammad. Literally, *tabbani* means a family couple who tries to get a foster child from another family, then treats it as if it were their biological child. The reality of informants in Sawentar, Blitar, child adoption is based on the agreement of biological parents with adoptive parents, then the adopted child is manipulated as if he were the biological child of the adoptive parents, without going through the court process. Research qualitative approach type of observational research, field-research, determination of empirical approaches, subjected to 3 primary sources. Descriptive qualitative means using qualitative data, then described descriptively. Problems are solved by non-doctrinal empirical normative studies, sourced from primary and secondary data. The purpose of the research is to describe the process of adoption without trial, under HI / Islamic Law and or HP / Positive Law. Documentation, data collection by interviewing, observing reinforced the technique of analyzing documents in the design of descriptive qualitative methods, starting with reducing, presenting, ending with drawing conclusions, where the researcher holds the primary key. The conclusion was found that child adoption in Sawentar Village, the subject of the study carried out the adoption without going through the procedures as established by the government. This means that in positive law there is a violation of the law. The subject considers the judicial procedure to be a lot of time consuming, feels the complexity, does not meet the requirements of adoption, and the lack of understanding regarding child adoption according to the law. Implications, reviewing positive law, judicial child adoption is not fulfilled, if the socialization of adoption in the community is not intensified. Adoption is more about the agreement of both parties without a court process. Then, there is a lack of legal protection for adopted children, confidentiality in both, if not open, *nasab* (family ties based on blood relations, both up, down, and sideways) and the pleasure of the mother, father or biological person will be lost.

**Keywords:** *Adoption, Positive and Islamic Law, Without Judiciary.*

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## INTRODUCTION

It is fundamental that the mercy on man for all the advantages set by Allah SWT that distinguish him from other creatures on earth. The advantages of instinct, way of thinking, and caliphs provide the power to spread important descendants to become leaders. Through a marriage that is full of pleasure, according to Islamic law, it determines marriage (Nasution, Z. Y., 2021). Strictly speaking, Al Ghazali states to get good offspring based on good marriage according to the legal requirements. Good offspring, caliphs on earth, require the creation of new humans who are designed and born from couples in the right way in marriage. This means that it is right according to Islamic law, which is supported by the laws of the state (Rahman, N. F., 2023).

What about couples who have not been blessed with children for various reasons that cause their families? Polemics or all parts of family choices with various causes as well, the point of harmony of couples in building their household ark becomes a benchmark for sustainable family resilience. In fact, it is found that many family couples, both those who have been married for a long time and or even newly married in the age of 3-5 years of marriage, are found around our lives. This is also the case for members of the community living in Sawentar Village, Blitar Regency. In situations with various medical and non-medical reasons, identities were found in the indicator of families who had not previously been blessed with children or in the indicator of medically identified couples unable to get children, quote, between the two there are medical and non-medical obstacles.

The policy of a family, in its couple with various reasons for the creation of a harmonious family ecosystem, efforts to create a good family resilience in the love and affection of the couple, then the provision of "Child Adopting" or other terms do adoption becomes an option. This alternative fundamentally has polemics, as a result of the origin of the adoption family in the tactical adoption of children, both through state courts and outside these courts. The procedure, pattern, and design of child adoption are the basis for the continuity of polemics that will be published next. This means that adopted children, who are handed over by biological parents, who are basically in reality still in their biological family, where the factor of the term adoptive parents will then be interpreted only as a call as adoptive parents in the system of rights and obligations will issue a breadth of policies both categorized in the design of the law and will be published in the design outside the rules set by the legislation (Pandika, R., 2022).

Fundamentally, as caliphs, children as offspring, are said to be trusted human beings with all the multi-blessings given by God. This means that these caliphs are assets for the

sustainability of life on earth (Munajat, H. M., & Hum, S. H. M., 2023). At the point of function as the bearer of the continuity of life with a carried character, it is necessary to design the determination of children as the caliphs of Islam so that they are able to develop in the world, as children of the nation who have the ability to protect rights and obligations. Considering this assumption, husbands and wives have the right to obtain offspring from their spouses. The right to have offspring and the desire to have children are natural (Sunarso, B., 2022).

Therefore, husbands and wives should protect each other's rights in obtaining Islamic offspring and respect or appreciate their extraordinary efforts in line with the words of God Almighty, in surah Al Ahqaf verse (15) and surah Luqman (14). This means that the design of the realization of children, as human resources, requires good family couples in the sense of marriage rituals that are in line with statutory law and Islamic law. The realization of this kind of design, children as part of the caliphs will get a pattern of creating human resources with multi-qualities in the way of God who is full of pleasure (Hadi, S., et al., 2023). It is necessary to protect children properly in line with established laws and Islamic law, so that in the continuation of their lives children as part of the future caliph can grow and develop according to the goals of national education based on *akhakul karimah*. Factually, not all couples get a mandate from God for offspring, so the best alternative for these couples is to adopt children. These assumptions are in line with the essence of Surah Al Ahzab verses (4) and (5).

Adoption, adopting a child is said to be virtuous behavior, as an act of legal behavior that basically seeks to transfer the condition of a person (child), whether still conditioned in the womb or has been born from the authority of the biological family, or from the foster guardian to the authority of the second party as adoptive parents with various agreements stipulated, both judicially and non-judicially. Basically, the government has stipulated, the transition, the adoption of children is stipulated through judicial legislation as a step not to publish manipulations of the lineage of offspring or continuous lies. And what is certain is the issuance of legal certainty over children and both (Ramadan, S., Agustiani, R., & Adnus, E., 2024). In fact, in community life, the practices of adoption, adopting children from certain families prefer only through the agreement of the two families and or the process of notarization, as well as the system that occurs in Sawentar Village.

The subject of the review based on observations through interview procedures that the implementation of child adoption in Sawentar Village is still found to be just a willingness, an agreement between families, and passing a deed of notarization. That is, in the field, the willingness of both parties, namely the parents of the adopted biological child and the adopting

parents, was found. The characteristics of the adoption pattern as it occurs by some community members found by researchers in the child adoption room without going through the court (Ramadan, S., et al., 2024). The basis of the legal pattern of determining the appointment of children through the court is as an effort of legal order, avoidance of sustainable multi-social engineering, as well as the establishment of judicial adoption as a pattern of legal order and legal certainty for both parties.

There are two understandings related to child adoption, namely (1) meaning to pick up children from other families and then the right to care and education as biological children in accordance with love, without being given the identity / status of their own / biological children and (2) meaning to pick up children from other families, with the status of biological children with the certainty of using the *nasab* of the adoptive family, where adopted children are entitled to inheritance as biological children to biological parents. Child adoption, or often referred to as adoption, has been practiced since and or even before the existence of Islam (Fatia, G. P., et al., 2023).

The tactical legal protection of adoption is contained in the Law and the regulations set out how the process of adopting children is only permitted and intended for the future of the child towards happiness and ultimate good. This provision is also reinforced by the basics of regional cultural customs as customary behaviors that become applicable legal provisions. Legal candidates for caregivers as well as foster/adoptive parents are identified as a married couple of Indonesian citizens, where the age limit is stipulated in PP/54/2017, article (13), point (b), which is basic for prospective adoptive parents aged 30 to 55 years. The existence of this decree is a benchmark for the standard of authority for prospective adoptive parents, and this point is also a signpost for prospective family couples who wish to adopt children. On the other hand, this decree acts as a barrier for members of the Sawentar community in their adoption efforts.

Furthermore, the Government Regulation, which is emphasized by Law No. 4/1979, formulates how the rights of children should be obtained, as stated in articles (2) and (3), then article 4 (1), article 5 (1), (2) and (8), and article 12. 23/2003, as a fundamental law for the protection of children, especially Ps. The meaning of a child in accordance with Law/No. 23/2002, according to Art. 1 (1) is stated to be a child before the age of 18 years, as well as while in the womb / womb. Then, contained in Art. 1 (10) states the definition as an adopted child means that all rights are transferred to the adoptive parents based on judicial decree (Zahara, Z., & Arianto, E., 2021).

Basically referring to the legal protection of protection to children, Law/23/2002, Art. (23) states (1) adopting a child for the good of the child who is adopted in the future according to the stipulated rules, (2) the essential meaning of adoption according to Art. (1), with no break in lineage, (3) furthermore, there is the same faith, the same religion, (4) adoption by foreigners as the final alternative, (5) related to the unclear origin of the prospective adopted child, his religion will be adjusted by the majority of the community (Kurniati, P. A. D., 2022). This means that this adoption pattern has become the culture of the Indonesian people as well as being contained in the systematics of family law (Safarianingsih, R., 2022). Thus, if a family conducts an adoption process through the courts, it is a sign that there are clear and measurable legal provisions, namely the documentation of legal authentication as well as the discovery of the basis of Islamic law that participates in it (Arifin, S., 2020).

It is unfortunate to find that the act of adoption in the Sawentar Village area is not based on state laws and regulations. This means that the community prefers to directly negotiate, making agreements directly between the two biological parents and the prospective adoptive family. These findings are a polemic that must be studied, not only by the community, but also by the village government and all related institutions. Clearly, with PP/54/2007 the government provided guidelines for adoption between Indonesian citizens (Budi, M. K. A., 2020).

Not only in the laws and regulations that set signs, but also the design of adoption, adopting children as biological children from different lineages is contained in Islamic Law. Islam regulates how adopting children must still be based on love as humans created by God as caliphs on earth. Islam teaches humans to always help, share love, provide assistance, especially abandoned children, abandoned babies, and or those who are in trouble in their lives. In view of this fundamental issue, especially for children, both born and, in the womb, the religion of Islam sets conditions as a guide to adoption. In other words, Islamic law encourages adoption as part of a better life for the child, not just as a successor to his or her offspring. This also means that Islam provides signs that adoption does not eliminate the line of *nasab*, not to change the status of biological children of biological families, so that it remains fundamental in Islamic law, adoptive parents are not entitled to become guardians of the children they adopt (Pandika, R., 2022).

And, it is a reality that not all adopted children in Sawentar Village have legal documents. In fact, this legal document is very important in family law because the legal consequences of child adoption will have far-reaching consequences for the next generation regarding legal responsibilities, inheritance and others. So, a more in-depth study is needed to

get the best and sustainable follow-up.

## **RESEARCH METHOD**

This field research study on adopting a child without a judicial process is based on a qualitative research design. The qualitative approach research is a type of field research with an empirical approach, with 3 primary sources as subjects (Muhammad Syahrudin, S. T., 2022). This means that a maximum effort is made to study the publication of phenomena in the field, then describe them through the stages of in-depth analysis of the study findings. The researcher who functions as the key instrument becomes the main determinant to determine the processes and meanings found. The concepts, theories become the basis that will be best utilized as a guide in an effort to focus more on the point of finding facts in the field as a step to find and collect data according to research objectives (Hadi, S., & Chairyadi, E., 2022). Descriptive qualitative means using qualitative data, then described descriptively. Problems are solved by non-doctrinal empirical normative studies, sourced from primary and secondary data. The research aims to describe the process of adopting/raising children, and reviewing the adoption process based on Islamic Law. Data collection used interview techniques, observing, documenting, which was strengthened by the process of reducing data found in language, presenting disaggregated data, and concluding. The results of the research are in the form of values, rules of positive and Islamic law related to non-judicial child adoption with qualities that are able to answer the research objectives (Huda, M. C., 2021).

## **RESULT & DISCUSSION**

### ***The Process of Child Raising Without Court in Sawentar Village, Kanigoro Subdistrict, Blitar Regency***

It is very clear as a fundamental how the rules of adoption are established, which is strengthened by the legislation of Law/23/2002, Article 1 (9), related to the protection of children, which states that the processes of a family that seeks to adopt must go through a legal process that is determined in the judicial chamber. The fundamental direction of this positive law is not just to limit, but has noble goals, namely the issuance of legal certainty between the adopted child and the adopting family. The legal certainty that remains in both of them as well as the establishment of this adoption law as a fundamental order in the practices of raising children (adoption). This means that the process that must be undertaken by the community, families who seek to adopt, adopting children, is not a stage that should be avoided, shunned or

even not taken into account, but should be a point of view for developing adoption literacy that is able to guarantee legal provisions that bring the common good.

Not only in the courts or religious courts, the socialization of this literacy is also a calculation that must be prioritized. These attitudes show that the literacy of legal protection of adoption does not permeate the psyche of the lower society. It needs an extraordinary attitude of attention, especially government institutions, especially village government institutions and related agencies in it.

Legal certainty, then the fulfillment of sharia according to Islamic Law is a literacy right that must be understood to the community of actors and or who will enforce the practice of adoption with all the reasons and problems in each family that accompany it (Hasibuan, A. N. S., 2020). It is clear that the meaning of child adoption through this judicial institution is an effort to fulfill the provisions of certainty over legal rights, legality, the possession of justice-justice rights and the establishment of applicable legal documents. Based on these legal court documents, the child will have certainty for the continuity of life, especially his/her identity, that he/she has really been adopted by a family. This legality will safeguard the rights that he or she should get from the family of the couple who adopted him or her.

The implications of the issuance of a decree law are the results of events that can be caused by judicial legal events. This means that when a child is legally adopted, through a court process, either a district court or a religious court, the implications, especially in the aspect of inheritance, as well as guardianship rights, become a concern. This means that published legal certainty brings differences, especially the rights that will and must be obtained by the next adopted child in the future, especially adoption without judiciary.

Then what about the events that happened to members of the Sawentar Village community who adopted children without going through the courts, either the district court or the religious court. The description of the results of the study is contained in the review of the results of interviews with sources in the form of dialogue quotes. The appearance of data findings related to the child adoption system can be assessed through the following quotations:

Words of N1KB<sup>2</sup>:

“The father and I got married in 2011. Since we hadn’t had a baby for almost a couple of years, we decided to take the child in. I have carefully considered this decision with his father. I tried to go to the doctor, I went to my parents, but I still didn’t seem to get a baby. Finally, with the advice of several people, we decided to adopt a child instead.”

In this quote, the source states the details after the marriage that has been lived during the household. The technical consideration of child adoption became a family disruption as a

step to create an atmosphere in everyday life to be happier, cheerful as an effort to bring children into the family. Basically, the decision was taken considering that during the last years since marriage, they have not yet had a baby. The wife, together with the family, has also tried to get offspring. Consideration of harmony, as well as resilience in the family is one of the fundamental considerations.

The agreement to adopt a child was decided together with the couple, which was taken from the womb. This is as a resource step, easier to care for, easier to nurture, introducing themselves as parents like biological parents is easier to design, rather than adopting a toddler. The search for adopted children is carried out in various ways, one of which is looking for parents who are willing to give their children to be adopted since they are still in the womb. This can be seen in the following quotations:

Words of N1KB<sup>4</sup>:

“At that time, my husband and I did not want to be complicated. So, when we agreed with many considerations, we made the decision to take a child from the womb. My husband considered that it would be easier to take care of a child from a young age, rather than a big child. So, as we go along, we just listen if there is anyone who is allowed to ask for their child to be adopted, we will go or can contact me or my husband.”.

However, the source at this point refers to the process of adoption as a non-judicial process. This means that the couple is more about the agreement between the two families who adopt and the family who gives their child to be adopted. The agreement that is made is only in the process of agreement between the two parties, which is marked by a letter of agreement between the two parties. The appointment is simple, containing indicators of the agreement mutually agreed upon by both parties. The appearance can be studied in the following quotations:

Words of N1KN<sup>13</sup>:

“Together with my husband, I made an agreement letter, the point is that they are willing to willingly transfer custody to me and my family. We two families will continue to maintain our respective identities, and I promise that one day when it is time, I will tell them who the biological mother is. Although my attitude is still a consideration for the good of the child himself. I also conveyed my thoughts to them. I tell them that if I find out later that it is not good for the child's development, I will tell them when it is time, the child is ready mentally. Whatever for me, whose offspring is important ... my husband said, we are only entrusted with it, so one day we must be told for the sake of religion.”.

Then what is the attitude of the child's parents towards the situation when the child born will be taken for adoption by another party? Fundamentally, the process is inseparable



from the interconnection between the families of the parties. Submission, family willingness, also driven by the economic existence of the child's biological family which is indeed in an insufficient state, as well as the number of children in the family which is quite a lot, makes the consideration of both of them releasing the prospective child conceived. Then, trust in the prospective adoptive family who is already quite well known indirectly, so understanding facilitates the negotiation process to be more pro-active and surrender so that the child can get better things for his future, rather than having to be cared for by himself. This attitude can be seen in the following quotations:

Words of N1KB<sup>11</sup>:

“If I look at it, I think it is an economic factor, both of them have many children. It's a conception. How nice, she can give birth repeatedly, I even have difficulty having children. But before that, my husband had checked first. My husband also wants to just take a child, so my husband traces first, what is the character of the family, the attitude of the parents around, then the religion of the family, good religion or not. After we saw that the family was good, we went to their house. We expressed our intentions, at first the husband actually objected a bit, but with our good intentions, they finally allowed it with various conditions proposed. Moreover, they know that our family is a good family, trustworthy since our grandparents. So that everything goes smoothly, they are willing, and beg us for the future of their children. They realize that if they continue to live with them, their children will not necessarily get proper education.”

Referring to this quote, it is clear that the background of both families determines the agreement. In addition, the economic situation of a family makes it one of the decisions to relinquish a child for adoption. In short, the nature of this agreement does not refer to the correct legislation on child adoption. This means that the above event, when reviewed based on the row of Positive Law, the adoption process occurs due to negotiation, the existence of an agreement agreed by both parties, without coercion, with willingness, the act of adoption without going through this court is not appropriate. In the future, the existence of this system may have more problems, especially related to guardianship and inheritance rights of the adoptive parents' property. The legal impact, legal protection, and the emergence of social manipulation are increasingly open.

Then what if reviewed from Islamic law, on the process of the source in the tactical agreement implemented by the source with the biological parents of the child he adopted? Based on the source's quote on the agreement, the future of the child he adopted is as follows:

Words of N1KB<sup>14</sup>:

“According to the agreement, until now there has never been. But we still provide information on the situation. Whatever our relationship is, it is still with the knowledge

of my adopted son. It's just that in recent years, their family has moved out of Java, to Lampung if I'm not mistaken, his wife is from Lampung, I think they went back to his wife's house. Anyway, so far according to the agreement, they have never met my adopted child, they already feel happy by looking at the photos I sent them.”

In this quotation, both parents, biological and adoptive, maintain a good relationship. This means that, in terms of Islamic law, there is no attempt to break the lineage. However, in the growth phase of the child, it is still maintained, which means that the adopted child currently only knows that the original (biological) parents he knows are still the ones who are currently taking good care of him, namely the adoptive parents. The confidentiality of the parents' truth remains the foundation point that is maintained as a pattern of harmony as well as the resilience of the family lived by the adoptive parents. The child's biological family also maintains the agreement that has been agreed upon, as a mutually agreed confidentiality effort. This can be seen in the following quotations:

Words of N1Kb<sup>15</sup>:

“According to the agreement, until now there has never been. But we still provide information on the situation. Whatever our relationship is, it is still with the knowledge of my adopted child.... .... Until now it is clear that we don't know. Inshallah, we will keep it a secret, both many neighbors also do not know if it is my adopted child. This is because at that time, before taking the adopted child, my neighbor was pregnant. So, thank God, it seems to have been arranged by those above. My intention really wanted to have a child, then made an effort by adopting a child, as if it was conditioned like this”.

The point of the quote that does not violate lineage, the attitude towards the publication of social lies, and the publication of the effects of legal guardianship can be seen in the following quotations:

Words of N1KB<sup>16</sup>:

“God willing, of course. That's why we keep in touch with her parents. Until they moved to Lampung, we also communicated, even my husband took care of moving them. I also gave them some things to take to Lampung. Alhamdulillah mas, I even found a relative. So, God willing, we will meet them when the time comes. Let me grow up first, get a good job, God willing, the time will come, God willing, I will meet them.”.

Based on this quotation, it is clear that the subject of N1KB, although the adoption process did not go through a judicial process, not in accordance with positive law legislation, but in terms of Islamic law, is still firmly committed to the goodness of the future lineage for the adopted child. This is evident through the results of the dialog, where both adoptive fathers and mothers are willing to bring their adopted children together with their biological parents

when the time comes, in the sense that the adopted children are mentally and spiritually ready.

This means that when referring to this source according to positive law, PP/54/2007, Article 39 paragraph 1, states that the adoption process is determined as an effort to improve the fate and growth of children in the future. This regulation emphasizes that this adoption is able to have the best impact, especially on both parties, which means that many of the interests of the rights of the child and the adopting family are fulfilled. The adoptive family gets more value with the presence of the child, while the child gets rights in line with biological children, even without the judiciary being fulfilled. Furthermore, referring to Article 171 (h) of the Compilation of Islamic Law, the existence of adopted children has received good rights. This means that the adoptive family has provided welfare, fulfillment of affection, fulfillment of needs, education is well obtained. The adoptive family really sets itself up according to the standards of Islamic law, adopting a child for the good of the adopted child's future. It is evident that this source really treats the adopted child as if she is raising her own biological child, without any intention of removing the criteria for her lineage in the future.

Based on the stipulations of the applicable laws, adoption through an agreement between the biological parents and the adoptive family is not appropriate. This means that the adoption does not comply with the adoption laws that have been established. However, reviewing article (1) bt. (9), Law/35/2014, as an amendment to Law/23/2002 concerning the protection of children, then J.o article1 bt. 1, PP/54/2007, then the N1KB resource person has met the standard. This means that as a result of the adoption, which means that the rights of the child from the biological parents are transferred to the adoptive parents, the resource person as an adoptive parent has carried out his or her duty of care, protection, nurturing, and providing proper education in harmony with the child who has truly been born. The adoptee, while in the care of the adoptive family, gets his rights according to the law.

What if referred to based on the compilation of Islamic law, then it is found that not only based on the results of interviews, but observations at the location, it is found that the application of Islamic law in the sharia of children who are morally good is fulfilled. The natures of the guidance for raising children according to the treasures of Islamic law are fulfilled. The results of observations without the interview process, children with the Koran teacher are learning to memorize the Qur'an. Education like their own biological children, good treatment, no torture found, even feels like a child who is very concerned about his needs. The *akhlakul karimah* attitude of both adoptive parents, as the basis of Islamic values, is the basis of education at home.

Islamic procedures, adoption as a step of worship, in accordance with *fiqh* scholars, providing the best education in line with Islam, bringing adopted children to have more independence, good reasoning is truly carried out by the resource person. Thus, even without the court process in adoption, the goal of adoption to bring children as moral human resources has been instilled from an early age. N1KB has earned the pleasure of her sincerity and best intentions.

Considering the above attitude, it will be published if the adoption intention is not in line with the rules of Islamic law, either through the court or not at all. This means that if the child is adopted through the process of adopting a child without a court, at the end of the day there will be legal consequences. One possibility is that their rights will not be fulfilled. The possibility of not being fulfilled according to these rights is (1) the *nasab* of the adopted child who cannot refer to the *nasab* of the adopting family, namely the binding label on the name of the *nasab*, namely bin and or binti is not fulfilled, (2) the adoptive father cannot be used as a full guardian, (3) adoption does not have the limitations of a family mahram, and (4) the adopted child clearly cannot be one of the heirs of the adopted family's estate.

The difference between adoption through the courts, with a pattern of voluntariness, and or under notarization is said to be a legal implication. The meaning of legality as a biological child is a separate point. The rights that arise in the legality of biological children provide an opportunity to fulfill the rights of life in the family. However, the obligation to be determined as a biological child is not just readability for the child. An essential obligation in accordance with Islamic law, the obligation as a child with good character becomes the point of how much the child gets a decent education in accordance with Islam. This obligation is also inseparable from the essential legislation of Law/1/1974, especially Article 45 (1), then Article 46 (1) and (2).

What about the fate of the children adopted by the informants, whose adoption was only based on the agreement of the two families, and not through judicial adoption? Indeed, during the observation period the rights have been fulfilled, everything feels like a biological child, but in the absence of a legal umbrella that has positive legal provisions, then if observed from the Law/1/1974, especially Article 45 (1), and Article 46 (1) and (92) related to the rights and obligations of parents to children can be described.

Referring to the provisions of these laws (1) adoptive parents are not authorized to provide education, maintenance, let alone at the point of trying to fulfill all the needs of the child's life. This is because there is no legal provision that protects it, even if there is an agreement, it is not a legal provision. Furthermore, (2) on the other hand, adoptive parents have

no authority over the situation of adopted children in all respects, and (3) the difficulty of administrative value as a member of society in identity clarity.

### ***Legal Implementation of Child Adoption without Court Process in the Perspective of Islamic Law***

Based on the fact that the Muslim community in an effort to maintain family harmony in the space of not getting a baby, customary law, alternatives by picking up children as a lure, and Islam guides the collection of children as a misfortune for the good of the child's future. It is appropriate for Muslims in the practice of adoption to be determined through a religious court. That is, the Religious Courts have the authorities of correction, acceptance, as well as courts on one of them adoption applications, raising children referring to Islamic Law (Lase, S. P. O., 2023). In the view of Islamic Law, there is no essential termination of the *nasab*, between the child who has been adopted, and the two biological parents. The assertion is that adopted children referring to the law, are still considered legitimate biological children of their biological parents. Conversely, the relationship of the adopted child is not recognized as the biological child of his adoptive guardian. This means that legally, the relationship between the adopted child and the adopter is like a child who is cared for by the guardian who cares for him.

So, the law that is issued to families who adopt, raise children, without going through a court process according to the treasures of Islamic Law as happened in the NIKB informant is (1) the existence of the *nasab* of the adopted child with his biological family will be detached, and if this happens, then this situation is not considered good in terms of Islamic law 9HR. Bukhari Muslim); (2) guardianship of adopted children is not allowed, which means that if this happens to the NIKB family in the future, the behavior is not justified, because there is no flow of *nasab* as a fundamental bond of descent (Qur'an Surah Al Ahzab, verses 4 to 5); and (3) adopted children are not allowed to marry their adoptive father or mother, or will be married to one of the biological children of the adoptive family as mahram boundaries. Assessing this material, Islamic law teaches 3 things related to *mahrims*, namely the limit of the connection of virginity, breastfeeding, and the connection of marriage. So, if there is marriage between the two, Islam does not prohibit it (QS. Al Ahzab verse 37).

Based on this study, Islam emphasizes that adopted children are only allowed to obtain wills that are *wajibah* only. That is, this adopted child as one of the heirs who are not allowed to receive the assets of the deceased person's estate, as a result of the issuance of obstacles that are *syara'*. This intention is contained in the Compilation of Islamic Law, Article 209 (1) and

(2), where the assets for adopted children refer to Articles 176 to 193. The provisions in the articles of the Compilation of Islamic Law are still based on statutory regulations specific to adopted children.

The impact of the behavior of adopting a child without another court is the issuance of misunderstandings, especially the issuance of halal and haram laws in the family. Then, the most common thing that happens is when both adoptive parents die, there will be a polemic over the rights that must be obtained. This struggle for rights has become a conventional polemic in society. Another issue is the firmness of guardianship in marriage. The absence of written legal evidence as self-legality, this identity makes a gap in the relationship where a time passes where no authentic evidence is obtained in an effort to regulate the rights and obligations between the two. The obligations of the child are increasingly unclear. This means that Islam regulates adopted children as limited to providing a better life according to their life needs, both education, affection, and moral needs. This means that the relationship becomes the child's distinction as a biological child, so it is fundamental that Islamic law in the adoption strategy is more directed at systematic *hadlanah*.

## CONCLUSION

Adoption, taking a child that is not determined through the courts, both general and religious, will basically have legal implications. This means that the act of adoption can cause future losses to both parties, namely the adopted child or the adoptive mother and father. The disadvantages that are built up both as a result of positive law and Islamic law will affect the life of each family, especially on the rights and obligations that will be received or carried out. The implications of the review of positive legislation, based on the study of Law/1/1974, article 45 (1) and article 46 (1) and (2) both will get losses according to the rules contained in the article of the law. Another thing is that the act of adopting children without judicial procedures if there is a dispute, the fact of claiming rights and obligations will not be strong if there is a dispute. Another implication is that there is no legal protection between the two, namely the child and the adoptive parents, because there is no authentic evidence authorized by the state through the judiciary or court that is determined and authorized, according to the applicable laws and regulations.

From the perspective of Islamic law, adopting a child without going through the courts will result in a lack of harmonization, especially in relation to the relationships between the adopted child and his or her family members. Problems that arise are mainly related to

inheritance, fatherhood, or *mahrms*. Clearly stated in the Child Protection Act, article 79, as specified in article 39 (1), (2) and (4), there are sanctions imposed on family couples who attempt to adopt children not in accordance with the article will get a maximum penalty of 5 years, or a maximum fine of 1 million.

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