



STATUS OF ADOPTED CHILDREN IN ISLAM

Children are a gift from *Allah SWT* and therefore their rights should be protected. It also means that parents should not neglect or abandon their children. However, there are cases where married couples do not have children of their own and intend to adopt children. In other cases, married couples with children adopt the children of their poor relatives. There are also people who adopt children who do not have direct blood relations with them. What is the status of these children in Islam?

Child adoption in Islam can be traced back to the era of the Prophet Muhammad SAW. Prophet Muhammad SAW adopted a child named Zaid bin Haristah. According to Islam, ***nasab*** (hereditary status by blood) must still be recognized in child adoption. The adopted child should always be referred to by the name of their birth father. In the case of Prophet Muhammad SAW's adopted child, he was named after his father and therefore is called Zaid bin Haristah, not Zaid bin Muhammad.

Allah SWT in verse 5 of the Sura Al-Ahzab commands "call them (adopted children) by (the names of) their fathers, that is more just with Allah SWT. But if you know not their father's names, call them your brothers in faith and your Maula (freed slaves). And there is no sin on you if you make a mistake therein, except in regard to what your hearts deliberately intend. And Allah is Ever Forgiving, Most Merciful."

Article 39 paragraph (2) of the Law (UU) No.23 year 2002 on Child Protection also requires that child adoption as referred to in paragraph (1) of the same article should not end the blood relation between the adopted child and their birth parents. Further article 40 paragraph (1) confirms that when the adopted

child is ready, the adoptive parents must inform them of their lineage of origin and their birth parents.

Child adoption in Islam is formally governed by the Compilation of Islamic Laws (*Kompilasi Hukum Islam/KHI*). Article 171 (H) of the KHI provides that an adopted child is a child whose responsibility for daily care and bringing up, education and so on is transferred from their original parents to their adoptive parents by way of a court order.

The Vice Chairperson of the *Mahkamah Syar'iyah* (Islamic Court) of Banda Aceh, Drs. Salahuddin Mahmud, says that people usually adopt children of their own next of kin who are poor and must always be carried out with the consent of each party concerned. Salahuddin further recommends that adoption in Islam, especially in Aceh, should be carried out by way of a *Mahkamah Syar'iyah* order. This is in compliance with Article 39 paragraph (1) of the Child Protection Law No. 23 year 2002, which requires that child adoption shall only be carried out in the best interest of the child and in accordance with the local customs and prevailing legislations. Under Acehnese customary law says Salahuddin, child adoption has long become a practice. Adopted children are commonly known as *aneuk geutueng* in Acehnese.

In terms of the inheritance rights of adopted children, Article 209 paragraph (1) and (2) of KHI provides that adopted children and the adoptive father have the right to an inheritance portion in the form of *wasiat wajibah* (compulsory bequeathment). It means that when the adopted children die, adoptive fathers will automatically have the right for the *wasiat wajibah* of the adopted children's inheritance. On the other hand, when the adoptive fathers die, adopted children will automatically be entitled for the *wasiat wajibah*. *Wasiat wajibah* is the compulsory bequeathment where the adoptive father or adopted



child is entitled only for 1/3 (one third) of the adopted child's or adoptive father's inheritance.

In addition, Drs.Salahuddin Mahmud also relates that under *faraidh* (inheritance law), an adopted child is not bequeathed a portion of their adoptive father's estate because their needs have been fully met and taken care of by the adoptive parent. In such cases, adopted children will be entitled for *wasiat wajibah*. In the event that the heirs of the adoptive father object to the distribution of *wasiat wajibah*, the heirs can file the objection to the Religious Court or *Mahkamah Syar'iyah*. To prevent such cases from happening, Salahuddin recommends that a written will and statement should be made before an adoptive father dies.

Application and Approval of Child Adoption

In compliance with the Supreme Court Circular Letter No 6 year 1983 on Amendment to the Supreme Court Circular Letter No. 2 year 1979 on Child Adoption by Indonesian Citizen, the following are required when child adoption is being applied for at the *Mahkamah Syar'iyah*:

1. Application form mentioning the motive for the adoption.
2. In addition, a proof of evidence should be submitted that the adoption is implemented in the best interest of the child and his/her future.

Meanwhile, the following types of adoption are recognised:

1. Private adoption, where birth parents relinquish their parental rights directly to the adoptive parents
2. Single parent adoption, where an unmarried person adopts children

The following requirements must be met for children to be eligible for adoption:

1. Adoption of children under the care of particular social institutions or foundations must have the written approval of the Minister of Social Affairs certifying that the respective institutions have been granted licenses to work in child adoption field.
2. Potential adoptive children must have written approval from the Minister of Social Affairs or any assigned government authority, certifying that the children can be relinquished to be adopted.

Hanifah, one of the Banda Aceh Mahkamah Syar'iyah registrars, says that application for child adoption should be supported by the following:

1. Written consent of the birth parents to the adoption
2. Copy of applicant's ID
3. copy of marriage certificate
4. Letter of Good Behaviour (*Surat Keterangan Berkelakuan Baik*) from the police
5. Letter from a medical doctor certifying the good health of the potential adoptive parents
6. Letter stating the economic capacity of potential adoptive parents, normally issued by a *geuchik* and will be proven in the court.
7. birth certificate of the adoptive child
8. witnesses (at least 2)

During 2007, *Mahkamah Syar'iyah* of Banda Aceh Municipality has issued two orders of child adoption.



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One of the advocates of the Legal Aid Institute (*Lembaga Bantuan Hukum/LBH*) Anak of Banda Aceh, Juwita, S.H, emphasises that adoptive parents must have the same religion with the adoptive children, which is in line with the requirement stipulated in Article 39 paragraph (3) of the Child Protection Act.

Juwita concludes that any couples who wish to adopt children and have it formalised by written order of the *Mahkamah Syar'iyah* but lack the knowledge on the application procedures as well as the legal consequences of child adoption can consult LBH Anak at Jln. Angsa, No.2, Ateuk Pahlawan at phone number 0651-7411587 and fax number 0651-638753 or send email to lbh_anak@yahoo.com or go directly to *Mahkamah Syar'iyah* in their respective municipalities/districts.