



## **Controversy of Adopted Children Status and Foster Father in the Marriage Process Based on Islamic Law Perspective**

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### **Abstract**

This paper seeks to explain the controversy regarding the status of adopted children and adoptive fathers in a marriage procession by using a normative juridical approach, it is concluded that the status and position of adopted children in the Islamic legal system does not break the kinship relationship between the adopted child and his biological parents so that the adoptive father does not become the guardian of his adopted child except through the mandate given by the child's biological parents. This study uses a normative approach and method, conducted by examining theoretical matters concerning Islamic legal norms and positive law. Primary sources are the Koran, hadith, Compilation of Islamic Law, and Marriage Laws. Secondary sources refer to the opinions of experts, as well as references related to the issues raised. The results of this study explain that the validity of the marriage guardian for adopted children is to remain with the lineage guardian if his whereabouts are still known and cannot be replaced by anyone except the lineage guardian is unknown, then the marriage guardian can be replaced by a judge's guardian. However, if in practice the adopted child is not known who the biological parents are, then the adopted daughter's marriage guardian is the adoptive father, or if the adoptive father receives a mandate from the child's biological father, then the marriage is valid as stated by al-Bahuti

**Keywords:** Adopted Son, Adopted Father, Islamic Law

### **Introduction**

Marriage in Arabic fiqh literature is referred to by two words, namely *nikah* and *zawaj*. These two words are used in the daily life of Arab and are widely found in the Qur'an and the hadith of the Prophet Muhammad. (Amir Syarifuddin, 2009 : 73) Marriage which in religious terms is called “nikah” is carrying out an aqad or promising to bind oneself between

a man and a woman to justify sexual relations between the two parties, on a voluntary basis and the pleasure of both parties to realize a happy family life that is encompassed affection and peace in ways that are pleasing to Allah SWT (Amir Syarifuddin, 2009 : 35)

Marriage is carried out not only as a fulfillment of human instincts and as an implementation of worship, but also to obtain offspring as a form of affection and continuation of the life and life of every human being. Children as a mandate from Allah SWT have an important position in a family and household. (Neng Djubaidah, 2010 : 311). In a child marriage is also one of the factors of harmony and peace in the household.

As in the Constitution which has guaranteed its citizens to have offspring. This is strictly regulated in Article 28B Paragraph (1), *which stipulates that everyone has the right to form a family and continue offspring through legal marriage. With marriage, you will form a family. The family consists of father, mother and children. Children also guarantee the protection of children. It is also regulated in Article 28 B paragraph (2), which determines that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.*

In order to achieve a harmonious, harmonious and happy family with the presence of a child, not a few husband and wife make efforts to have children and as successors in a family, one of which is by adopting children.

## **Literature Review**

In terms of terminology, according to Musthofa quoting Wahbah al-Zuhaili about al-tabanni, is the taking of a child by someone who has a clear lineage, then the child is assigned to him. (Musthofa, 2008: 21) In another word, al-tabanni is a person, both male and female, who deliberately assigns a child to himself, even though the child already has a clear lineage to his biological parents. Adoption in this sense is clearly contrary to Islamic Law, because the legal act of adoption cannot break the family ties between the biological child and the biological father.

Irma Setyowati Soemitro explained the formulation of adoption or what is commonly referred to as adoption as an act of raising a child to be made his own child, or appointing someone in a certain position which causes a relationship that seems to be based on blood relations. (Irma Setyowati Soemitro, 1990: 34) Because the Indonesian state is a constitutional state, the legal standing of an event for every citizen must be clear and definite."(Victor M. Situmorang, 1991: 10) This includes marriage and child adoption which are important events in human life which will then be proven in a marriage certificate. So the marriage must also be registered. One of the purposes of registering marriages is none other than to make the marriage clear and legally enforceable, both for the person concerned and for the rest of society, so that it can be proven by a marriage certificate book. Marriage registration in the form of a marriage certificate is indispensable in this modern world. A person who marries without being recorded by VAT or does not have a marriage certificate, then his marriage is not valid according to the laws and regulations that apply in a country.(Sujono, 2022)

## **Research Method**

This research is normative legal research (juridical research), namely legal research regarding the enactment and implementation of normative legal provisions such as codification, laws and contracts in action in every particular legal event that occurs in society. In this research method the writer will study the theories, principles and laws and regulations related to research. In this study one of the three Grand Methods was used, namely Library Research, which is scientific work based on literature or literature, Field Research, which is research based on field research and Bibliographic Research, namely research that focuses on the ideas contained in theory. The approach method used in this research is statutory approach (Statue Approach) and conceptual approach (conceptual approach). The legal materials used consist of primary legal materials and secondary legal materials as well as legal materials and tertiary legal materials.

## **Result and Discussion**

### **1) Terminology of Adopted Children (al-tabanni) in Islam**

The definition of adoption according to language comes from the English "adoption" which means appointment or collection. Thus, it is often said with the adoption of child which means the adoption or collection of children.(John M. Echolds dan Hassan Shadily, 1986: 13) The word adoption is meant by Arabic linguists with the term al-tabanni which means adoption, adopting or giving birth to children.(Al-Furqaan & Mustafa, 2023)

The definition of adoption according to terms, definitions can be put forward by experts, including:

- a) Muderis Zaini, he puts forward Hilman Hadi Kusuma's opinion by saying that adopted children are other people's children who are considered their own children by the adoptive parents officially according to local customary law because the aim is to continue heredity and or maintenance of household assets.(Muderis Zaini, 1985: 5)
- b) Mahmud Shaltut stated as follows that adoption is someone who adopts a child, who he knows that the child is someone else's child. Then treat the child the same as his biological child, both in terms of affection and maintenance (living expenses), regardless of differences. (Even so) religion does not regard it as its biological child, because it cannot be equated with the status of biological children (Mahmud Syaltut, t.th : 321)

Adopted child (adopted) has two meanings as follows:

- a) Taking other people's children to be cared for and educated with full attention and affection, and treated by their adoptive parents as their own children, without the status of biological children to them.
- b) Taking someone else's child to be given status as a biological child so that he has the right to use the bloodline of his adoptive parents and inherit his inheritance, and other rights as a child's relationship with parents. (Setiawan Budi Utomo, 2003: 130)

The second definition of adopted child above is the meaning according to the term in religious and customary circles in society. Adopted children according to this term have been entrenched on the surface of this earth, both before Islam and after Islam, including in Indonesian society.

Adopted children (adopted) in Indonesia are generally carried out by holding traditional and religious ceremonies and by announcements and witnesses from officials and religious leaders so that their status is clear. After the adoption ceremony is completed, the child becomes a full member of the relatives who adopted him, and his inheritance rights with his old relatives are cut off, as is the case in Bali.

## **2) History of Adopted Children in Islam**

Historically, child adoption was known and developed before the apostolate of the Prophet Muhammad. Rasulullah SAW himself once raised Zaid bin Haritsah to be his adopted son, even no longer calling Zaid by his father's name (Haritsah) but replaced by Rasulullah SAW with Zaid bin Muhammad. The appointment of Zaid as his son was announced by Rasulullah SAW in front of the Quraysh. The Prophet Muhammad also stated that he and Zaid inherited from each other. Zaid was then married to Zainab bint Jabary, daughter of Aminah bint Abdul Muttalib, the aunt of the Prophet Muhammad. Because the Prophet Muhammad had called him and considered him a child, the friends then called him Zaid bin Muhammad. (Syamsu Alam Andi, 2008: 20)

Because of this event, then QS. al-Ahzab verse 4 came :

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِيْ جَوْفِهِۦ وَمَا جَعَلَ أَزْوَاجَكُمُ الَّتِي تَظْهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

The Meaning:

Allah does not place two hearts in any person's chest. Nor does He regard your wives as 'unlawful for you like' your real mothers, 'even' if you say they are.<sup>1</sup> Nor does He regard your adopted children as your real children. These are only your baseless assertions. But Allah declares the truth, and He 'alone' guides to the 'Right' Way.

In the following verse QS. al-Ahzab verse 5 as follows:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَّمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَّحِيمًا

The Meaning:

Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are 'simply' your fellow believers and close associates. There is no blame on you for what you do by mistake, but 'only' for what you do intentionally. And Allah is All-Forgiving, Most Merciful." (Religion Department of RI, 1999: 333)

In line with the above thoughts, Law No. 1 of 1974 concerning marriage regulates the registration of marriages and the mechanism for marriage procedures and their registration. This is regulated in Article 2 paragraph (2) of Law No. 1 of 1974 concerning marriage which states "every marriage is recorded according to the applicable laws and regulations". (Victor M. Situmorang, 1991: 10)

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Dalam penjelasan Pasal demi Pasal, tidak ditemukan penjelasannya, tetapi dalam penjelasan umum angka 4 huruf dijelaskan as follows :

*“...and besides that, every marriage must be recorded according to the applicable laws and regulations. Marriage registration is the same as recording important events in a person's life, for example births, deaths which are stated in the certificates of a certificate which are also included in the registration list. (Accessed on 12 December 2022).*

Even in KHI in Indonesia Article 5 it has been stated as follows:

- a) In order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded.
- b) The registration of the marriage referred to in paragraph (1) is carried out by a Marriage Registrar (PPN) as stipulated in Law Number 22 of 1996 in conjunction with Law Number 32 of 1954. (Abdurrahman, 2004: 114)

Furthermore, in Article 6 is explained:

- a) To fulfill the provisions in Article 5, every marriage must take place before and under the supervision of a Marriage Registration Officer.
- b) Marriages performed outside the supervision of the Marriage Registration Officer do not have legal force. (Abdurrahman, 2004: 114)

Furthermore, Article 1 point 9 of Law Number 2 of 2002 asserts that: *“adopted child is a child whose rights are transferred from the power of the family of parents, legal guardians, or other people who are responsible for the care, education, and raising of the child into the family environment of the adoptive parents based on a decision or court order”*.

However, in reality, the practice of adoption that has developed in Indonesian society has many strong and very varied backgrounds. Likewise, the registration of marriages of adopted children is still a part of the complex problem of registering marriages. With the growing and varied condition of Indonesian society, one can find the practice of adopting a child by a family where the child is given by his biological parents to another family who will care for, educate and make him a biological child or on a voluntary basis.(Asadullah et al., 2020)

### **3) Status of Adopted Children in Islam**

What is the Islamic view of adopted children? if adoption or al-tabanni is interpreted as adopting someone else's child with a status like a biological child, then Islam clearly prohibits it(Al-Furqaan & Mustafa, 2023). This can be seen in several verses of the Al-Quran such as QS. al-Ahzab verse 37 as follows:

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاهَا لَكَ لَا يَكُونُ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا

**The Meaning:**

And 'remember, O Prophet,' when you said to the one<sup>1</sup> for whom Allah has done a favour and you 'too' have done a favour, "Keep your wife and fear Allah," while concealing within yourself what Allah was going to reveal. And 'so' you were considering the people, whereas Allah was more worthy of your consideration. So when Zaid totally lost interest in 'keeping' his wife, We gave her to you in marriage, so that there would be no blame on the believers for marrying the ex-wives of their adopted sons after their divorce. And Allah's command is totally binding.

This verse is a series of verses of the Qur'an which tells about a case that occurred in Zaid bin Haritsah's household with Zainab bint Jahsy. Zaid was freed by the Prophet Muhammad, then married to Zainab, the cousin of the Prophet himself. This husband and wife are good people and obedient to religious teachings. However, his household is not happy, because the difference in social status is very different. This is because Zainab comes from a noble family, while Zaid is a former slave, even though Islam does not recognize discrimination based on race, nation/ethnicity, language, and so on. Zaid in this case was aware of the disharmony of his household and lack of appetite, thus, he asked the Prophet's permission to divorce his wife, but the Prophet ordered him to continue to maintain his household.( Yazid Muttaqin, 20 December 2021).

By the above explaining Zaid's case with Zainab, it is to emphasize that:

- a) Adoption, such as practices and traditions in the time of ignorance which gave status to adopted children equal to the status of biological children, is not justified (prohibited) and is not recognized by Islam.
- b) The relationship of the adopted child with the adoptive parents and their family remains the same as before adoption which does not affect the mahramanity and inheritance, (Mahmud Syaltut, t.th : 321) whether the adopted children are taken from internal relatives themselves, as in Java, most of their own nephews are taken as adopted children, or taken from outside the circle of relatives. (Masjfuk Zuhdi, 1987:60)

Meanwhile, based on the Regulation of the Minister of Home Affairs Number 19 of 2010 concerning Procedures for Filling in the Population Biodata Form, a child can be registered as a member of his adoptive parents' family with the relationship status with the Head of the Family as "other" and the names of his biological father and mother are still listed in the column names of father and mother. If the child is registered on the Family Card and has a National Identity Number (NIK). Furthermore, you can make a birth certificate with the names of the biological parents still listed in the certificate.

This is to ensure that the child's relationship with his biological parents is not completely cut off. Adoptive parents can then apply for adoption in accordance with the mechanism stipulated in Government Regulation Number 54 of 2007 concerning Implementation of child adoption. If a court decision with permanent legal force has been issued regarding the adoption of the child, it must be reported to the implementing agency, in this case the Department of Population and Civil Registration.(Kalsel.kemenag.go.id, diakses 20 Mei 2023).

#### 4) Marriage in Islam

Marriage in fiqh literature is called by two words, namely *nikah* and *zawaj* (Nurliana et al., 2023). These two words are used in everyday life for Arabs and are also widely found in the Qur'an and the hadith of the Prophet Muhammad. The word *na-ka-ha* is widely found in the Qur'an with the meaning of marriage, as in

QS. al-Nisa' verse 3 as follows:

وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَّةَ وَرُبُعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا ۗ

The Meaning:

If you fear you might fail to give orphan women their 'due' rights 'if you were to marry them', then marry other women of your choice—two, three, or four. But if you are afraid you will fail to maintain justice, then 'content yourselves with' one<sup>1</sup> or those 'bondwomen' in your possession.<sup>2</sup> This way you are less likely to commit injustice.

Likewise there are also many words *za-wa-ja* in al-Qur'an which literally related to marriage as in QS. al-Ahzab verse 37 as follows:

وَإِذْ تَقُولُ لِلَّذِي أَنْعَمَ اللَّهُ عَلَيْهِ وَأَنْعَمْتَ عَلَيْهِ أَمْسِكْ عَلَيْكَ زَوْجَكَ وَاتَّقِ اللَّهَ وَتُخْفِي فِي نَفْسِكَ مَا اللَّهُ مُبْدِيهِ وَتَخْشَى النَّاسَ وَاللَّهُ أَحَقُّ أَنْ تَخْشَاهُ ۖ فَلَمَّا قَضَىٰ زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاهَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا

The Meaning:

And 'remember, O Prophet,' when you said to the one<sup>1</sup> for whom Allah has done a favour and you 'too' have done a favour,<sup>2</sup> "Keep your wife and fear Allah," while concealing within yourself what Allah was going to reveal. And 'so' you were considering the people, whereas Allah was more worthy of your consideration. So when Zaid totally lost interest in 'keeping' his wife, We gave her to you in marriage, so that there would be no blame on the believers for marrying the ex-wives of their adopted sons after their divorce. And Allah's command is totally binding.

Meanwhile, literally the word marriage means "*joining, sexual relations*" and also means "*akad*". There are two possible meanings because the word marriage contained in the Qur'an does contain these two meanings. This can be seen for example in QS. al-Baqarah verse 230 as follows:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۚ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ ۚ وَتِلْكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

The Meaning:

So if a husband divorces his wife 'three times', then it is not lawful for him to remarry her until after she has married another man and then is divorced. Then it is permissible for them to reunite, as long as they feel they are able to maintain the limits of Allah. These are the limits set by Allah, which He makes clear for people of knowledge.

Dealing with the case, fiqh experts usually use the definition formula as mentioned above with the following explanation:

- a) The use of the word contract to explain that marriage is an agreement made by the people or parties involved in the marriage. Marriage is made in the form of a contract because it is a legal event, not a biological event or merely a sexual relationship between a man and a woman.
- b) The use of the expression *dhammu or wathi'* because basically the relationship between men and women is prohibited, unless there are things that are permitted by syara'. Among the things that allow sexual intercourse is the existence of a marriage contract between the two. Thus the contract is an attempt to allow something that originally was not allowed.
- c) The use of the word *tazwij* which means using the words *na-ka-ha or za-wa-ja* implies that the contract which allows sexual intercourse between a man and a woman must use the word *za-wa-ja*, because in In early Islam, apart from the marriage contract, there was another attempt to allow relations between men and women, namely the possession of a man over a woman or also known as "slavery". (Amir Syarifuddin, 2003: 74-75)

## 5) Guardianship Issues in Marriage Processions

What is meant by a guardian etymologically is a person through whose intercession someone's affairs can be carried out by another as a substitute for him. In Islam, the issue of guardians plays a very important role for the validity of a marriage. (Amir Syarifuddin, 2003: 74-75) This is shown in the hadith of the Prophet as follows:

أَنَّ عَائِشَةَ أَخْبَرَتْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَيُّمَا امْرَأَةٍ أَنْكَحْتَ بِغَيْرِ إِذْنِ مَوْلَاهَا فَنِكَاحُهَا بَاطِلٌ ثَلَاثًا وَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا فَإِنْ اسْتَجْرُوا فَإِنَّ السُّلْطَانَ وَلِيُّ مَنْ لَا وَلِيَ لَهُ (رواه الترمذي، رقم 1102 وأبو داود، رقم 2083 وابن ماجه، رقم 1879 وقال أبو عيسى الترمذي : هذا حديث حسن)

Meaning:

From Aisha, that the Messenger of Allah said: Whoever of the women who marries without the permission of her guardian, her marriage is void, her marriage is void, her marriage is void, if her husband has intercourse with her, then she has the right to her dowry, because she has justified her honor. If the guardian is reluctant to marry off, then the judge acts as guardian for someone who does not have a guardian. (Narrated by Ahmad, Abu Daud, Ibn Majah, al-Tirmizi and added that this hadith is hasan).

In the case of marriage, Islam has stipulated several requirements for someone who acts as a guardian, namely Muslim, baligh or adult, intelligent, independent and male. (Sayyid Sabiq, 2010: 371). While the people who are entitled to become marriage guardians are as follows: (Amir Syarifuddin, 2003: 74-75)

- a) Close guardian or *qarib guardian*, namely father and grandfather. Both have absolute power over the daughter to be married. Guardians in this position are called *guardian mujbir*.
- b) Distant guardians or *ab'ad guardians*, who become distant guardians sequentially are, biological brothers, paternal brothers, children of paternal brothers, biological uncles,



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paternal uncles, biological uncle's children, uncle's children seafather, heirs of other relatives and judges. (Musthafa Kamal Pasha, 2003: 270-271)

Meanwhile, there are several types of guardians, including the following:

### **a) Mujbir Guardian**

*Mujbir* guardian is a guardian who can force (*ijbar*) a girl under his guardianship to marry a man without the permission of the girl in question. Meanwhile for children or grandchildren who are widowed, the guardian does not have a *ijbar*. Guardians who have coercive rights only consist of fathers and grandfathers (father and so on), while *mujbir* guardians can marry off girls who are under their guardianship, they must meet the following conditions:

- 1) The male chosen guardian must be *kufu* (balanced) with the girl being married off.
- 2) Between the wali *mujbir* and the girl in question there is no animosity.
- 3) There is no animosity between the girl and the boy-to-be husband.
- 4) The prospective husband must be able to pay the dowry in cash.
- 5) The man chosen by the *mujbir* guardian must be able and able to properly fulfill his obligations towards his wife. (Musthafa Kamal Pasha, 2003: 270-271)

### **b) Guardian Judge**

Guardianship of a family or relative can be transferred to a judge's guardian it can be an individual or an institution, such as: Head of KUA if as follows :

- 1) Lineage guardian does not exist.
- 2) The nasab guardian travels far away or is not in place, but does not give power of attorney to a closer guardian who is in place, such as giving power of attorney to his younger brother or older brother.
- 3) The nasab guardian loses his guardianship rights, like his father who is a christian.
- 4) The nasab guardian refuses to act as guardian.
- 5) The nasab guardian becomes the bride and groom under his guardianship. Like someone who should be his guardian but the woman he marries is his own cousin. (H.E. Hassan Saleh, 2008: 300)

### **c) Muhakkam Guardian**

In certain situations and conditions, if a nasab guardian cannot act as a guardian because he does not meet the requirements, such as he is a non-Muslim, or he refuses to become a guardian, but the judge's guardian cannot act because as a substitute for a nasab guardian he is not authorized by a nasab guardian (Sabreen, 2021). To fulfill the requirements for a valid marriage, the bride can appoint someone to be her guardian. The guardian who is appointed by the bride like this is called the *muhakkam* guardian. (بوهدة et al., 2020)

In KHI in Indonesia with this guardian, it explains in full and in its entirety follows the Fiqh of the Jumhur Ulama School, especially the Syafi'iyah scholars. This guardian is regulated in articles 19, 20, 21, 21, 22 and 23 with the following formula:

### **Article 19**

The guardian of marriage is a pillar that must be fulfilled for the prospective bride who acts to marry him.

- 1) Acting as marriage guardian is a man who fulfills the requirements of Islamic law, namely Muslim, aqil and baligh.
- 2) Marriage guardians consist of: a. lineage guardian, b. guardian judge.

#### **Article 21**

- 1) The nasab guardian consists of four groups in order of position, one group takes precedence over the other groups according to whether or not the kinship arrangement is close to the prospective bride and groom. *First*, the lineage of male relatives must be upward, that is, father, paternal grandfather, and so on. *Second*, the group of relatives of biological brothers or paternal brothers, and their male descendants. *Third*, the uncle's family group, namely the father's biological brothers, half-fathers, and their male descendants. *Fourth*, the group of grandfather's biological brothers, grandfather's half-brothers, and their male descendants.
- 2) If in one group of marriage guardians there are several people who are equally entitled to be guardians, then those who are most entitled to become guardians are those who are closer in degree of kinship with the prospective bride.
- 3) If in one group the degree of kinship is the same, then those who are most entitled to become marriage guardians are biological relatives of relatives who only share the same father.
- 4) If within a group the degree of kinship is the same, namely the same degree of biological degree or the same degree of paternal kinship, they are equally entitled to become marriage guardians by prioritizing those who are older and fulfilling the requirements of a guardian.

#### **Article 22**

If the marriage guardian who is most entitled in sequence does not meet the requirements as marriage guardian because the marriage guardian suffers from a speech impairment, is deaf or is old, then the right to become guardian shifts to another marriage guardian according to the next degree.

#### **Article 23**

- 1) The new guardian of the judge can act as guardian of the marriage if the guardian of the lineage is not available or it is impossible to present him or his place of residence is unknown or unseen or *adhal* or reluctant.
- 2) In the event that the guardian is *adhal* or reluctant, the judge's guardian will only act as marriage guardian after the decision of the Religious Court regarding the guardian. (Abdurrahman, page 118-119)

### **6) Legal Status of Marriage with Foster Father's Guardian in Islam**

The status of the child depends on the marital status of the parents at the time the child is born. If the parents' marriage is valid, then the child born as a result of the marriage is the legitimate child of the parents. However, if the parents' marriage is invalid, then the child

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born as a result of the marriage is a child out of wedlock. Marriage must be carried out by an authorized marriage guardian, if the marriage guardian does not have authority or kinship relationship, then the marriage is invalid. Likewise, being a marriage guardian is an adoptive father who is not authorized, then the marriage law he implements becomes invalid and the child born as a result of the marriage is a child out of wedlock.

Whereas children born from the marriage of parents whose adoptive father is the legal guardian are legitimate and have civil and civil relations with both parents, if prior to the marriage the parents are carried out with a marriage guardian tawkil or the granting of power of attorney from the authorized marriage guardian to the adoptive father to marry him off. If previously the legal marriage guardianship was not carried out and the adoptive father did not have the authority to increase it, then the marriage is invalid, so the child born as a result of the marriage is an illegitimate child and only has civil relations with the mother and the mother's family.(Djawas et al., 2022)

because adopted children do not change their lineage. However, adoptive parents can also become guardians on condition that they obtain a mandate from the biological parents.

Adopted children have a different status from biological children. According to Islamic rules, an adopted child who is raised by adoptive parents cannot change their lineage. This means that he is still in line with his biological parents. This rule has been confirmed by Allah SWT in His Word. QS. al-Ahzab verse 5 as follows:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

The Meaning:

Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are 'simply' your fellow believers and close associates. There is no blame on you for what you do by mistake, but 'only' for what you do intentionally. And Allah is All-Forgiving, Most Merciful.

## **Conclusion**

In Islamic law and positive law, the position of an adopted child cannot break the family relationship between the adopted child and his biological parents. Thus, the foster father cannot be the guardian for his adopted child in the marriage procession. It's just that the adoptive father can be the guardian of the adopted child, if he gets a mandate from the adopted child's biological father. So that in this case, the adoptive father has the status of the beneficiary (representative) of the father of the child. As explained by Imam al-Buhuti, however, if the adoptive father does not get a mandate or permission from a legal guardian, then he cannot be the guardian of his adopted child's marriage, and if he is still married, then the marriage will be void.

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