



The Intervention of Islamic Law on Minangkabau Tradition Regarding Children Adoption

Helmi Yusnita,^{1*} Endri Yenti,² Safrin Salam,³ Kayode Muhammed Ibrahim⁴

^{1,2} Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi
Jorong Gurun Aur Kenagarian Kubang Putih, Kecamatan Banuhampu, Kabupaten Agam, Provinsi Sumatera Barat, Indonesia

³ Universitas Muhammadiyah Buton
Jl. Betoambari No. 36, Lanto, Kota Bau-Bau, Sulawesi Tenggara 93724

⁴ University of Ibadan
Oduduwa Road, 200132, Ibadan, Nigeria

* Corresponding Author, e-mail: helmiyusnita123@gmail.com

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Abstract

The process of child adoption is not done widely based on the traditional law of Minangkabau because most of the adopted children are still their relative. The legal status of adopted child in the foster family can be obtained through the court where the status is the same with biological child or foster child, while the legal status of adopted child in the adopted relative can be gained through the tribe recognition or determination of Minangkabau tradition namely as "*kamanakan di bawah ltuik*" (the closest nephew/niece). The purpose of this paper was to find out how was Islamic law intervention towards the law of Minangkabau tradition especially in child adoption. This research employed field research with the main data came from primary data obtained from informants in the field and the secondary data obtained from the materials related to the research. The data collection was carried out through interview, reading, and grouping in accordance with the theme being discussed, then were analyzed by using descriptive theory, inductive theory, and presented them in the form of paper. The results of this research state that in Islam and Minangkabau tradition basically forbid someone to adopt other people's child by cutting the family ties with the child's parents, then move it to the foster parents because it can cause chaos in the inheritance system either according to the traditional law or according to Islamic Law.



Introduction

Children are a mission and gift given by God Almighty. Even children are considered the most precious possessions when compared to other assets. As God's mission, children must constantly be looked after and protected since children, like humans, are born with dignity, dignity, and rights. A good reputation is required.¹ Offspring are expected or required in terms of the kinship environment in a family consisting of a husband and wife to preserve the kinship environment. However, many people do not fulfill their goal to have children, despite their best attempts. Adopting a child is one option for meeting these needs. Adopting a child who has been properly acknowledged and confirmed as one's own child by a recognized authority is different from accepting someone else's child into one's own family.²

In general, children are adopted before the age of adulthood because the adopter is an adult, and the adopted child is a youngster who deserves to be their own child. Adoption is typically motivated by social, political, economic, and cultural concerns as well as the desire to have children in childless households.³ An investigation into Minangkabau customs revealed no adoption agencies. However, it has been discovered that many Minangkabau people adopt children through court decrees. Some Minangkabau ethnic communities adopt children to care for children whose partners do not have biological children, or to reassure families who are financially unable to fund the child's schooling and living expenses due to a failing economy. Thus, children will have a better and more secure education in the future, and also for friends who will look after and care for him in his old age, as well as serve as a catalyst for the birth of the adoptive parent's biological children. Even though the adoption system in Minangkabau customary law lacks its own institution, it is not prohibited by Islamic law and is followed by nearly 100% of the Minangkabau community.⁴

Minangkabau customs are quite rare because the majority of adopted children are still related to their adoptive moms. The legal status of adopted children in adoptive families is obtained through a court decision, where their status is the same as that of biological or foster children, whereas the legal status of adopted children in adoptive relatives is obtained through racial recognition or decree. The Minangkabau custom is to act as *kamanakan* under *lutuik*. The rights and obligations of adopted children in adoptive families are based on Civil Law or Islamic Law regarding *pusako randah*, while the rights and obligations of adopted children in adoptive families are based on Minangkabau Customs.

Adoptions conducted according to Minangkabau custom are quite rare because the majority of adopted children are still related to their adoptive moms. The legal status of adopted children in adoptive families is obtained through a court decision, where their status is the same as that of biological or foster children, whereas the legal status of adopted children in adoptive relatives is obtained through racial recognition or decree. The Minangkabau custom is to act as *kamanakan dibawah lutuik*. The rights and obligations of adopted children in adoptive families are based on Civil Law or Islamic Law regarding *pusako randah*, while the rights and obligations of adopted children in adoptive families are based on Minangkabau customs.

¹ Muhammad Dava Manossoh, "Kedudukan Anak Angkat dalam Pembagian Harta Warisan Dilihat dari Perspektif Hukum Adat," *Lex Privatum* 6, no. 10 (2018): 166. <https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/view/25855>.

² Ridwan Jamal, "Kewarisan Anak Angkat Dalam Hukum Islam, Hukum Perdata dan Hukum Adat," *Jurnal Ilmiah Al-Syir'ah* 4, no. 2 (2016): 3. <https://doi.org/10.30984/as.v4i2.203>.

³ Diane L. Scott, Chang-Bae Lee, Susan W. Harrell & Mary B. Smith-West, "Permanency for Children in Foster Care: Issues and Barriers for Adoption," *Child & Youth Services* 34: no. 3 (2013): 290-307. DOI: [10.1080/0145935X.2013.826045](https://doi.org/10.1080/0145935X.2013.826045)

⁴ Dessy Balaati, "Prosedur dan Penetapan Anak Angkat di Indonesia," *Lex Privatum* 1, no. 1 (2013): 138. <https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/view/1023>.

Based on the author's research, several studies discuss themes similar to the research that the author will discuss, namely *the first* article written in journal form by Johan Agustian in 2013 with the title “*Pengangkatan Urang Bainduak pada Masyarakat Minangkabau di Nagari Ampang Kuranji*” (The Appointment of Urang Bainduak in the Minangkabau Community in Nagari Ampang Kuranji), with the problem formulation: what is legal basis for the appointment of *urang bainduak* in the Minangkabau community in Nagari Ampang Kuranji?⁵ The second is an article written by Mardani in 2019 with the title “*Pengangkatan Anak dalam Perspektif Hukum Islam*” (Adoption of Children in the Perspective of Islamic Law), with a focus on discussing motivation, objectives, types, conditions, principles, legal status, and legal consequences of adoption in the perspective of Islamic law with a case study approach at the Central Jakarta Religious Court.⁶ Next, in 2017, Zamzami published a study titled “*Kedudukan Anak Angkat dalam Perspektif Hukum Perdata, Hukum Adat, dan Hukum Islam*” (The Position of Adopted Children from the Perspective of Civil Law, Customary Law, and Islamic Law), with a focus on discussing the position of adopted children from the perspectives of civil law, customary law, and Islamic law, both about inheritance and in matters of marriage, guardianship, and so on, between adopted children and their adoptive parents/family.⁷ There is no comparable research among the studies relating to the author's discussion titled intervention of Islamic law on customary law in the child adoption system.

Method

This writing departs from the concept of child adoption in Minangkabau customary law which is carried out with different traditions in each region, specifically, child adoption can be done with the determination of a religious court (Islamic law). Therefore, it is important to discuss Islamic law's intervention into customary law methodologically. If it is not done using the right method, it can produce incorrect conclusions. This research uses field studies. Data collection was carried out using empirical legal research methods, namely those that examine law which is conceptualized as actual behavior, as unwritten social phenomena experienced by everyone in social life. Data sources in empirical legal research are data directly obtained from the community, subjects studied at institutions or community groups, and direct actors who can provide information, data, and information to researchers, namely respondents and informants, as well as resource persons. Meanwhile, secondary data includes library data and documents which include primary legal materials, secondary legal materials, tertiary legal materials, and non-legal materials.⁸ The method of interviews was employed in this study with people who adopted children in Nagari Sumani, X Koto Singkarak Sub-District, Solok Regency.

Results and Discussion

1. Definition of Adopted Children

The definition of an adopted child can be seen from two perspectives: etymology and terminology. The etymology of the word adopted child, also known as the word adoption, is based on the origin of the word *adoptie* (Dutch) or adoption in English, which means adoption of a child, *tabanni* in Arabic, which according to Prof. Mahmud Yunus is defined as "taking an adopted child" while according to the *Munjid Dictionary*, it means "making

⁵ Johan Agustian, “Pengangkatan Urang Bainduak pada Masyarakat Minangkabau di Nagari Ampang Kuranji,” *Premise Law Journal*, vol. 4, 2014.

⁶ Mardani, “Pengangkatan Anak dalam Perspektif Hukum Islam,” *Binamulia Hukum* 8, no. 2 (2019). <https://doi.org/10.37893/jbh.v8i2.344>.

⁷ Zamzami, “Kedudukan Anak Angkat dalam Perspektif Hukum Perdata, Hukum Adat, dan Hukum Islam,” *Nurani* 17, no. 1, 2017. <https://doi.org/10.19109/nurani.v17i1.1428>.

⁸ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 90.

him a child." Furthermore, the definition in Dutch according to the legal dictionary means the adoption of a child to be considered as one's own biological child.⁹

Meanwhile, according to Hilman Hadi Kusuma, an adopted child is a child of another person whose adoptive parents are formally regarded as their own child under local customary law, to continue and/or maintain the family's wealth.¹⁰ According to the Comprehensive Encyclopedia, "adoption is a legal method of establishing a parent-child relationship." Adoption is done to gain a child as an heir or for parents who are unable to conceive children. Adoption of this type means that the adopted child has all of the rights and obligations of a biological child. Prospective parents must meet the conditions to properly ensure the best interests of the child before an adoption can take place.¹¹ Naqvi describes that adoption is the institutionalized practice through which an individual belonging by birth to one kinship group acquires new kinship ties that are socially defined as equivalent to the congenital ties. These new ties supersede the old ones either wholly or in part.¹²

The Compilation of Islamic Law article 171 (f) explains that: An adopted child is a child whose responsibility for daily maintenance, education costs, and so on is transferred from their original parents to their adoptive parents based on a court decision.¹³ Government Regulation Number 54 of 2007 Article 1 paragraph (1) explains that an adopted child is a child whose rights are transferred from within the authority of the family of parents, legal guardians, or other people responsible for the care, education, and raising of the child, into the family environment of the adoptive parents based on a court decision or determination.¹⁴

Adoption, on the other hand, according to customary law, is a legal act of family and descent (inheritance). When a child is adopted as a foster child, he or she is placed and accepted in a position that is physiologically and socially equal to that of one's child, which was previously unavailable to that child.¹⁵

Essentially, there is no known institution for adopted children in the Minangkabau tradition. This is because it will have an impact on inheritance law. However, in Minangkabau culture, bringing someone else's child or a child who is being cared for is known. In Minangkabau, children are only taken to be cared for or cared for and raised or raised as their own children. However, in general, the child still maintains a family bond with the person who took the child.¹⁶ From the definition above, it can be concluded that adopted children or adoption means adopting a child to be cared for, paid for, and met with all his life needs and treated as his own child, based on the court's decision and determination.

2. Legal Basis for Adopted Children

Islam forbids someone from adopting another person's child by severing the lineage tie with their own parents, then transferring the lineage to the adoptive parents and being granted

⁹ Soeroso, *Perbandingan Hukum Perdata* (Jakarta: Sinar Grafika, 2007), 174.

¹⁰ Hasballah Thaib, Hashim Purba, and Rosnidar Sembiring, "Warisan Anak Angkat Menurut Hukum Adat dan Kompilasi Hukum Islam," *USU Law Journal* 5, no. 1 (2017): 80. <https://www.neliti.com/id/publications/164962/warisan-anak-angkat-menurut-hukum-adat-dan-kompilasi-hukum-islam#cite>.

¹¹ Husnah, "Pelaksanaan Pengangkatan Anak (Adopsi) yang Dilakukan oleh Warga Masyarakat di Indonesia," *Thesis* (Depok: Universitas Indonesia, 2009), 13. <https://lib.ui.ac.id/file?file=digital/2016-8/20322794-S21480-Husnah.pdf>.

¹² Ali Raza Naqvi, "ADOPTION IN MUSLIM LAW," *Islamic Studies* 19, no. 4 (1980): 283–302. <http://www.jstor.org/stable/20847150>.

¹³ Abdur Rahman, *Kompilasi Hukum Islam* (Jakarta: CV Akademik Pressindo, 2010), 156.

¹⁴ Al Fahmi, et.al., "Warisan Anak Angkat..."

¹⁵ Husnah, "Pelaksanaan Pengangkatan Anak..."

¹⁶ Muhammad Armeidi, "Hak Dan Kewajiban Orangtua terhadap Anak Angkat dalam Perspektif Hukum Adat Minangkabau dan Perspektif Hukum Islam," *Thesis* (Bukittinggi: IAIN Bukittinggi, 2017), 25.

the same rights or position as a biological child. This is based on Allah SWT's word in Surah al-Ahzab verses 4-5, which states:¹⁷

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّنْ قَلْبَيْنِ فِيْ جَوْفِهِ ۖ وَمَا جَعَلَ أَزْوَاجَكُمْ الَّتِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۗ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ۚ أُدْعُواهُم لِّآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِن لَّمْ تَعْلَمُوا آبَاءَهُمْ فَالْحَاوِيَاتُ فِي الدِّينِ وَمَوْلَاتِكُمْ ۗ يُولِيَنَّ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ ۚ وَلَكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ يَسَّكَانَ اللَّهُ غَفُورًا رَّحِيمًا

“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.¹ 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. 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. (Al-Ahzab/33: 4-5)”

We can infer from the verse above that adopted children cannot be ascribed to their adoptive parents and that adopted children are distinct from biological children. Following that, a revelation came down that governed inheritance regulations, particularly Surah Al-Ahzab verse 6, which then nullified inheritance due to appointment. Adoption of children is acceptable and even encouraged under Islamic law if the motivation for adoption is for the child's interests and welfare and is by Islamic law.¹⁸

Regarding adoption, there is no family relationship. The ex-wife of his adopted son is not his adoptive father's mahram as explained by the verse above, reinforced by the Word of Allah SWT in Q.S. Al-Ahzab verse 37 which reads:

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 قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا لِكَيْ لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرَجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ إِذَا قَضَوْا مِنْهُنَّ وَطَرًا ۚ وَكَانَ أَمْرُ اللَّهِ مَفْعُولًا

“And ‘remember, O Prophet,’ when you said to the one¹ for whom Allah has done a favour and you ‘too’ have done a favour,² “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.”

According to verse 37 of Surah Al-Ahzab, adopted children and their adoptive parents are not related by blood, and if adopted children and their adoptive parents are related, Allah SWT would not allow the Prophet Muhammad to marry Zaid's ex-wife, who is his adopted son. When Allah SWT ordered the marriage of an adopted child to the Prophet Muhammad

¹⁷ Husnul Aulia, “Adopsi Menurut Hukum Islam dan UU No 23 Tahun 2022 Tentang Perlindungan Anak (Studi Perbandingan Antara Hukum Islam dengan Hukum Positif),” *Thesis* (Jakarta, UIN Syarif Hidayatullah, 2007), 27. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/18535/1/HUSNUL%20AULIA-FSH.pdf>.

¹⁸ Jamal, “Kewarisan Anak Angkat...,” 132.

SAW's ex-wife, it demonstrated that the adopted child was not part of a family whose lineage could be extended to his adoptive family.¹⁹

Adoption is becoming increasingly important in society, and legal certainty can only be gained after a judicial ruling. In carrying out the main functions of their jurisdiction, such as accepting, investigating, and determining matters submitted to them, district courts or religious courts must rely on applicable law. (Azwir and colleagues 2021). There are various legal requirements that judges might utilize as a guide in carrying out the primary functions of judicial power related to child adoption:²⁰

- a. Staatsblad 1917, Articles 5 to 15 regulate the issue of adoption which is a complement to the existing Civil Code/BW.
- b. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 2 of 1979 concerning Adoption of Children.
- c. Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 6 of 1983 concerning Refinement of SEMA Number 2 of 1979
- d. Decree of the Minister of Social Affairs of the Republic of Indonesia Number 41/HUK/KPE/VII/1984 concerning Guidelines for Implementing Child Adoption Licensing
- e. Law Number 23 of 2002 concerning Child Protection
- f. Republic of Indonesia Supreme Court Circular Number 3 of 2005 concerning the Adoption of Children
- g. Republic of Indonesia Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption.
- h. Several Supreme Court jurisprudence and court decisions have permanent legal force, which in judicial practice has been followed by subsequent judges in deciding or determining the same case, repeatedly, for a long time until now.

3. *Reasons for Adoption*

There are several reasons for adopting a child according to customary law, which consists of 13 (thirteen) types, among others:²¹

- a. Because the family does not have any children. This is a general reason since the only solution for those who do not have or do not want to have children is to adopt them as a supplement to happiness and wholeness, as well as to brighten up the household.
- b. There is sympathy for children whose biological parents are unable to support them. This is a very beneficial reason since, in addition to assisting the child, it also alleviates the burden on the child's biological parents, as long as it is founded on a genuine agreement between the adoptive parents and the biological parents.
- c. There is sympathy because the child is without parents. This is both a moral obligation and a humanitarian mission for those who can afford it.
- d. A family with only sons wishes to adopt daughters, or vice versa. This is a reasonable explanation because most people like to have both girls and boys.
- e. As a motivation for those who do not have children to have biological children. This explanation is intimately tied to what exists among members of society.
- f. To increase the number of families. This is because his adoptive parents have a lot of wealth.
- g. For the adopted child to have a proper education. Its cause is linked to humanitarian missions.

¹⁹ Armeidi, "Hak dan Kewajiban Orangtua...", 30.

²⁰ Husnah, "Pelaksanaan Pengangkatan Anak...", 15.

²¹ Isabella Kimberly Natasha Tinggogoy, "Aspek Yuridis Kedudukan Anak Angkat Terhadap Harta Warisan Orang Tua Angkat Menurut Perspektif Hukum Adat," *Lex Privatum* VI, no. 9 (2018): 26. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25820>.

- h. Due to the wealth element. In this situation, the child is often adopted to gain blessings for both the adoptive parents and the adopted child to enhance their lives.
- i. To preserve the lineage and provide successors for those without biological children.
- j. Because there is a family tie, the child's biological parents ask a family to adopt them. There is also a humanitarian purpose in this.
- k. It is hoped that children will be able to aid in the old life and that their descendants will continue to support people who do not have children. From here, there is a reciprocal reason between the child's interests and the adoptive parents' retirement security.
- l. There is a sense of sympathy for the fate of uncared-for children. Being neglected might indicate that the parents are still alive but unable or irresponsible to care for the child, leaving the child adrift. Aside from that, it can be done for deceased parents.
- m. Because a biological child is sick or dies, to save the child, the child is given to family or other people who do not or do not have children in the hope that the child in question will always be healthy and live a long life.

The aim of adoption is not only to have children but also to have children of a different gender than the one they have, to help orphans. Apart from that, other goals include ensuring the success of children and protecting them from violence and discrimination, and a dignified life for children through an abundance of attention and affection.²² In line with developments over time and society, the reasons and goals for adopting children have shifted. In the beginning, adoption was primarily aimed at the interests of the person who adopted the child (adoptant), but currently, the issue of adoption is aimed at the interests of the adopted child (adopted), namely for the welfare of the child.²³

The purpose of adopting a child according to Law No. 14 of 1979 concerning Child Welfare, adoption must be carried out by prioritizing the child's welfare and according to Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Article 39 point 1, adoption can only be carried out in the best interests of the child and is carried out based on local customs and provisions of statutory regulations²⁴. Apart from the reasons and objectives for adopting a child, there are numerous considerations to consider when doing so:²⁵

- a. Adoption can only be carried out in the best interests of the child and is carried out based on local customs and applicable laws and regulations.
- b. Adoption does not sever the blood relationship between the adopted child and his biological parents²⁶.
- c. Prospective adoptive parents must share the religion of the prospective adopted child.
- d. If the child's origin is unknown, the child's religion is adjusted to the religion of the majority of the population where the child is found
- e. Adoption of an Indonesian citizen's child by a foreign citizen can only be done as a last resort
- f. Adoptive parents are obliged to inform their adopted children about their origins and their biological parents by paying attention to the child's mental readiness.
- g. Adoption is aimed at the best interests of the child to realize the welfare and protection of the child which is implemented by local customs and statutory provisions.

²² Firdaus et.al., *Bunga Rampai Seminar Nasional Hukum Adat dan Islam Minangkabau (Seri 1)*, (Bukittinggi: LP2M IAIN Bukittinggi, 2021), 161. <http://repo.uinbukittinggi.ac.id/636/>

²³ Evie Sompie, "Kajian Yuridis Pengangkatan Anak dalam Upaya Perlindungan Anak," *Lex et Societatis V*, no. 2 (2017): 167. <https://doi.org/10.35796/les.v5i3.15975>.

²⁴ Aulia, "Adopsi Menurut Hukum Islam...", 48.

²⁵ Mardani, "Pengangkatan Anak...", 123.

²⁶ Galu Putri Fatia, I Nyoman Putu Budiarta, and Indah Permatasari, "Pengaturan Pengangkatan Anak (Adopsi) dalam Hukum Islam," *Jurnal Analogi Hukum* 5, no. 1 (2023): 37. <https://doi.org/10.22225/ah.5.1.2023.34-40>.

4. Adoption of Children According to Customary Law and Islamic Law

a. Adoption of Children According to Customary Law

In Minangkabau customary law, as well as in Islamic law, adoptive parents are currently considered only as foster parents, namely nurturing, caring for, and educating other people's children to become independent children. However, the roots of life are not removed from his veins, and the relationship between the adopted child and his biological parents is not broken, it remains as before. Apart from that, a relationship is created between adopted children and their adoptive parents but adopted children do not necessarily become heirs of their adoptive parents. In other words, the relationship is purely a social relationship.²⁷

In line with the customary law that applies to the Minangkabau community, the adoption of children was initially prohibited because it could result in chaos in the inheritance system both according to customary law and according to Islamic law. The equality of the position of adopted children according to Islamic law and Minangkabau customary law shows that the spirit of the principle of Minangkabau customary law "*Adat Basandi Syarak, Syarak Basandi Kitabullah*" has worked well.

The matrilineal system does not recognize the adoption of children, but the Supreme Court of the Republic of Indonesia (MARI) made a breakthrough or legal deviation to create adoption in the Minangkabau area as stated in the decision of the Supreme Court of the Republic of Indonesia dated 13 May 1975 Number 813 K /Sip/1972.²⁸

Adopted children can only enjoy income from their adoptive parents according to Minangkabau customary law. This applies as long as the adoptive parents are still alive. If the adoptive parents die, the inheritance belongs to the heirs according to Minangkabau custom. However, in the Compilation of Islamic Law (KHI), the juridical consequences of adopting a child through a District Court Determination can be seen in Article 209 paragraphs (1) and (2). This article gives the adopted child (and vice versa) the right to receive a third of the inheritance from his adoptive parents if he did not previously receive a will from his adoptive parents.²⁹

According to widely held beliefs, Minangkabau traditions do not acknowledge child adoption facilities, and children are only taken to be nurtured and cared for as their own. However, in most cases, the youngster still has a family relationship with his adoptive parents. The child's link with his biological parents is not broken, and he remains their heir. Child adoption patterns in the Minangkabau community, specifically:

- 1) Adoption of other people's children (outside the Minangkabau community) as one's own child, in which case the relationship between the child and his biological parents is severed.
- 2) Adoption of a relative's or relative's child as one's child, where the child's relationship with their biological parents is not severed.
- 3) Appointment of children to be used as servants, while the adopted child's relationship with his biological parents is not severed.
- 4) Adopting a child to be looked after because of pity for the child's life is not fortunate, in this case, the child's relationship with his biological parents is not broken.³⁰

Thus, in the Minangkabau customary law community, especially in terms of child adoption institutions, this institution is unknown; in fact, child adoption patterns and the practice of adopting children have emerged in society.

²⁷ Syaiful Anwar, "Anak Angkat dalam Adat Minangkabau," *Salingka Luak*, 2020, 14. <https://www.salingkaluak.com/2020/09/anak-angkat-dalam-adat-minangkabau.html>

²⁸ Agustian, "Pengangkatan Urang Baiduak...", 4.

²⁹ Anwar, "Anak Angkat...", 17.

³⁰ Ibid., 20.

According to Amir Sjarifoedin Tj.A., Minangkabau customs are divided into 4 (four) categories: *Adat nan sabana adat*, *Adat nan diadatkan*, *Adat nan teradat*, and *adat istiadat*. Firstly, *Adat nan sabana adat* is a reality that is permanent in nature, never changing by the conditions of place and time. This reality contains values, norms, and laws. In the Minangkabau expression it is stated as a custom: “*Nan indak lakang dek paneh, indak lapuak dek hujan, diasah indak layua, dibubuik indak mati*,” or “*Adat babuhua mati*.” The *Adat nan sabana adat* originates from nature. In essence, this custom is a custom that occurs by God's will. Thus, Minangkabau customs do not conflict with Islamic teachings.³¹ *Adat nan sabana adat* has the highest position of the four types of custom in Minangkabau, as the main basis of the norms, laws, and rules of Minangkabau society. All customary laws, customary provisions, social norms, and regulations that apply in Minangkabau, originate from “*Adat nan sabana adat*.”

Second, *Adat nan diadatkan* are artificial customs designed and compiled by the ancestors of the Minangkabau people, to be implemented in everyday life. The rules in the form of *Adat nan diadatkan* are conveyed in *petatah* and *petitih*, *mamangan*, rhymes, and language expressions that are inspired by wisdom. The Minangkabau people believe in two figures as the designers, planners, and compilers of *Adat nan diadatkan*, namely Datuak Katumangguangan and Datuak Parpatiah Nan Sabatang. The essence of *Adat nan diadatkan*, designed by Datuak Katumangguangan, is to implement a sovereign government and above all, autocratic but not arbitrary. Meanwhile, the customs compiled by Datuak Parpatiah Nan Sabatang, are essentially democratic, sovereign to the people, and prioritizing deliberation to reach consensus. At first glance, the two traditional concepts are contradictory. However, in practice, the two concepts meet, blend and complement each other. It is expressed in Minangkabau traditional teachings as follows: “*Bajanjang naiak, batanggo turun. Naiak dari janjang nan di bawah, turun dari tanggo nan di ateh. Titiak dari langik, tabasuik dari bumi*.” The combination of these two systems is like the legislative and executive relationship in the current government system.³²

Third, *Adat nan taradat* is customary provisions prepared in the Nagari to implement “*adat nan sabana adat*” and “*adat nan diadatkan*” according to the circumstances and needs of the Nagari. This custom was compiled by the figures and leaders of the Nagari community through deliberation and consensus. From this understanding, the term *adat salingka nagari* was born. *Adat nan taradat* is also called *adat babuhua sentak*, meaning it can be repaired, changed, and replaced. Its main function is to implement regulations for Minangkabau customs. Such as the implementation of the *batagak pangulu* ceremony, bathing descent, apostle circumcision, and marriage, which are always protected by religious provisions, where *syarak mangato adaik mamakaikan*.³³

Adat nan taradat are local customs that can vary from village to village. This custom was initially formulated by the Ninik Mamak Nagari stakeholders to realize customary customs, the implementation of which was adapted to local situations and conditions. As the saying goes: *Lain padang lain belalang, lain lubuak lain ikannyo. Cupak sapanjang batuang. Adat salingka nagari*.

Fourth, *Adat istiadat* are traditional rules made by consensus of the Ninik Mamak in a Nagari. This regulation accommodates all the wishes of Nagari children according to *alua jo patuik, patuik jo mungkin*. Aspirations that are channeled into customs are aspirations that are by the customs of *adat jo limbago, manuruik barih jo balabeh, manuruik ukuran cupak*

³¹ Amir Sjarifoedin Tj.A., *Minangkabau dari Dinasti Iskandar Zulkarnain sampai Tuanku Imam Bonjol* (Jakarta: PT. Gria Media Prima, 2011), 68.

³² Aria Zurnetti, Nani Mulyati, Efren Nova & Riki Afrizal, “The Role of the Minangkabau Customary Law Tigo Tungku Sajarangan in Preventing Domestic Violence against Women and Children in West Sumatra, Indonesia,” *ISVS e-journal* 10, no. 1 (2023): 229-237. https://www.isvshome.com/pdf/ISVS_10-1/ISVSej10.1.16_Aria.pdf

³³ Ibid., 69.

jo gantang, manuruik alua jo patuik. Minangkabau customary law can be interpreted as rules (actions and so on) that have been commonly followed or carried out by the Minangkabau people since time immemorial or methods (behaviors and so on) that have become habits of the Minangkabau people, it can also be a form of cultural ideas consisting of cultural values, norms, laws and rules are related to each other to form a system in Minangkabau society.³⁴

The procedure for adopting a child under customary law is carried out according to custom, which varies from region to region. Some individuals use traditional rites to adopt children and those who do not.³⁵ Doni Afrizon³⁶ one of the parents who carried out the adoption said that the adoption which was carried out in Solok City, was not carried out or celebrated according to tradition, but was directly arranged through the Social Service and the Solok Religious Court, only that traditionally was held with prayer and introduction to his extended family. Vina Yuniarti³⁷ who is the wife of Doni Afrizon, said that her adoption was an agreement between husband and wife and with permission from the extended family, permission from the extended family was also based on a certificate signed by Ninik Mamak. Dt. Magek Aluih³⁸ as a Ninik Mamak from the Chaniago tribe in Solok City said that child adoptions or child adoptions carried out in Solok City, are not carried out with large traditional ceremonies, but are simple, the purpose of which is to introduce or notify other people in the community that a child has been adopted. and the child is his responsibility until the child grows up, but the right of guardianship for a child's marriage remains with the child's biological father.

Adoption is illegal in Minangkabau. This is because traditional teachings are strongly ingrained in matrilineal society. Sharia states that a child's genealogy is inherited by the father, however, custom holds that genealogy is measured by the mother's genealogy (matrilineal). Women (grandmother, mother, daughter, grandchild, maternal aunt, maternal niece) hold common (racial) inheritance. These assets can be transferred or inherited by the closest relatives (near relatives according to the mother's lineage) in families that do not have female offspring according to the maternal lineage. In the lack of equal households, inheritance may be passed down to female tribal members. This means that the Minangkabau people are raised in huge families.³⁹

As a result, if no female descendants exist (extinct), there is no need to adopt to inherit riches. Even if a family member dies, there is still someone who can inherit the property, according to custom. Here's what the customs had to say: A handful of dirt and a blade of grass are used in this ritual. Deliberation will be used to address inheritance difficulties following ancient practices. Aside from that, the Minang people bear a great deal of responsibility for the lives of their family, relatives, and hometowns. This is governed by traditional teachings, as illustrated by the customary rhyme:

*Pucuk paku kacang belimbing
Sayak tampuruang lenggang lenggokkan
Anak dipangku kamanakan dibimbiang.
Rang kampuang dipatenggangkan.*

³⁴ Agustian, "Pengangkatan Urang Bainduak...", 8.

³⁵ Zamzami, "Kedudukan Anak Angkat...", 34.

³⁶ Doni Afrizon, The Resource Person Who Adopted the Child at Kelurahan Tanah Garam, Kecamatan Lubuk Sikarah, Kota Solok, *Interview*, December 7, 2023.

³⁷ Vina Yuniarti, The Resource Person Who Adopted the Child at Kelurahan Tanah Garam, Kecamatan Lubuk Sikarah, Kota Solok, *Interview*, December 7, 2023.

³⁸ Dt. Magek Aluih, The Resource Person: Ninik Mamak of Chaniago Tribe Kota Solok, *Interview*, December 7, 2023

³⁹ Arifki Budia Warman, Zulkifli, Yustiloviani, Wardatun Nabilah, Riska Fauziah Hayati, "Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 253-268. <http://dx.doi.org/10.29240/jhi.v8i1.6971>

This indicates that the children are financially supported. Nephews, or children of younger sisters/sisters, are directed by inheritance, which is passed down from generation to generation in a matrilineal fashion. The population of the village must also be taken into account. This customary law prevents someone from formally adopting a child. Even if there are Minang people who watch after other people's children, it is to lead them until they are economically self-sufficient.⁴⁰

Adoption is recognized in the Kenagarian Sumani area of the Mansiang Jorong Sumagek and Malay tribes, as well as in the Singkarak district of the Singkarak tribe, where someone adopts a child with the consent of the people (traditional ceremony) because they do not have offspring who will support their living. The "*adaik dipakai limbago di tuang*," the approach involves slaughtering the cow and throwing a banquet. During the ceremony, the town and village are informed that a kid has been adopted, and the person who adopted the child is identified. The adopted child could have been from a different tribe.⁴¹ Dt. Malin Sati⁴² a Malay Niniak Mamak in Nagari Sumani, the local community, the traditional ritual is carried out with the calling of the Niniak Mamak Nagari Sajaka, in this event the name of the child, the child's parents, and the child's rights will be declared. Mr. Afrizal⁴³ as Pakiah stated an adopted child's rights are the same as other children, but if the child is a woman, the right of marriage guardian is still the lineage guardian, and the child does not become the heir of the adoptive family, only the adopted child normally receives a gift.

In conclusion, the adoption of children is carried out by society now no longer using big events, but only simple events that are used for thanksgiving as well as notification to the community. Adoption of children has now been intervened by Islamic law so that adoption can be carried out through the determination of a religious court, which goes through a permit/recommendation process from the Solok City Social Service.

b. Adoption of Children According to Islamic Law

Only in the framework of worshipping Allah SWT does Islamic law acknowledge adoption in the sense of transferring the obligation to provide daily living, educate, care for, and so on. Customs or traditions of society that have existed for a long period are sometimes referred to as '*Urf*' in Islamic law.⁴⁴ According to Islamic law, the legal relationship between adoptive parents and adopted children will be restricted as the relationship between adoptive parents and adopted children grows, and there will never be a lineage relationship between adoptive parents and adopted children. Adoption legislation in Islam only creates a relationship of love and affection, as well as a relationship of human responsibility between people. Because there is no bloodline tie, adoptive parents and adopted children are required by law to keep a *mahram*. The two can marry because there is no bloodline relationship. Rasulullah Muhammad SAW was compelled to marry Zaid bin Haritsa's widow because he had no link with his adopted child other than love.⁴⁵

Adoption of an adopted child justified by Islamic law is the adoption of a child that does not compare an adopted child's status to that of a biological child. Islamic law forbids the practice of adopting children that has legal implications, such as adoption known by Western

⁴⁰ Zamzami, "Kedudukan Anak Angkat...", 36.

⁴¹ Armeidi, "Hak dan Kewajiban Orangtua...", 27.

⁴² Dt. Malin Sati, The Resource Person: Niniak Mamak of Malay Tribe in Nagari Sumani, X Koto Singkarak, Solok Regency, *Interview*, December 7, 2023

⁴³ Afrizal, The Resource Person: Pakiah of Malay Tribe in Nagari Sumani, X Koto Singkarak, Solok Regency, *Interview*, December 7, 2023

⁴⁴ Endri Yenti, Busyro, Ismail, Edi Rosman, and Fajrul Wadi, "A Set of Prayer Outfits As a Mahar? Discrimination Against Women in the 'Urf Reality of the Archipelago's Fiqh," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 1 (2020):17-30. <https://doi.org/10.30631/alrisalah.v20i1.567>.

⁴⁵ Thaib et.al., "Warisan Anak Angkat...", 83.

law/secular law and practices of ignorant society, in the sense of adoption that makes adopted children biological children, adopted children are cut off from legal relations with their biological parents, adopted children have the same inheritance rights as biological children, adoptive parents become absolute guardians of adopted children, and adoptive parents become absolute guardians of adopted children.⁴⁶

In terms of giving welfare and education to adopted children, the Islamic religion does not deny their reality. What Islam forbids is the breakup of a biological child's blood tie with his or her biological parents. Because Allah does not make an adopted child a biological child, adoption does not remove all of the consequences of being a biological child. The adoptive father will be unable to be the guardian of the marriage of the adopted female child, which preserves the biological father's privilege. Adoption of children according to Islamic law can be seen from several perspectives:

- 1) In terms of the meaning of adoption, the Islamic religion does not recognize the adoption of children who are given the status of their own biological children. Adoption of children in Islam emphasizes love, providing a living, education, and meeting all their needs.
- 2) In terms of the social justice mission, according to Islamic law, adoption allows the rich to do charity through a will and gives them the right to bequeath a portion of their inheritance to their adopted children to cover their future needs, so that their livelihoods are not disrupted and their education is not neglected. This activity is an expression of love for God and is a vital mission of Islam in its efforts to promote social justice.⁴⁷
- 3) Adopting means doing a particularly nice deed and following Islamic principles from a moral and social standpoint. Of course, this applies to people who take children intending to love and care for them, for those who take adopted children are typically persons who have not been blessed with children by Allah SWT.
- 4) In terms of Islamic teachings, Islam teaches that humans should help each other. Those who can afford it must help those who can't. Muslims must be social and care for abandoned children or babies whose parents cannot afford it.
- 5) In terms of reality, as a process of development over time, Islamic law is always developing. In connection with the definition of children in a broad sense, Islamic law develops the issue of adoption.⁴⁸

According to Islamic law, adoption of a child can only be justified if the following conditions are met:⁴⁹

- 1) Do not break the blood relationship between the adopted child and his or her birth parents and family.
- 2) Adopted children are not heirs of their adoptive parents, but rather of their original parents; similarly, adoptive parents are not heirs of their adopted children.
- 3) Adopted children may not use their adoptive parents' names directly, except for identification/address purposes.
- 4) Adoptive parents are not permitted to serve as guardians in marriage for their adopted children.
- 5) The adopted child's property relationship with the adoptive parents should be a gift and will relationship.
- 6) Appointments made by people from different religions are not allowed.

⁴⁶ Kamaruzzaman Bustamam-Ahmad and Mohamad Zikri Bin Md Hadzir Mohamad Zikri Bin Md Hadzir, "Prosedur Pengangkatan Anak di Perak, Malaysia (Analisis Pengangkatan Anak Angkat di Jabatan Kebajikan Masyarakat Taiping)," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (2018): 55. <https://doi.org/10.22373/sjhk.v2i1.3104>.

⁴⁷ Jamal, "Kewarisan Anak Angkat...," 8.

⁴⁸ Thaib et.al., "Warisan Anak Angkat...," 84.

⁴⁹ Armeidi, "Hak dan Kewajiban Orangtua...," 38.

The conditions for adoption are regulated in PP RI No. 54 of 2007. The conditions for adopted children and also the requirements for prospective adoptive parents as regulated in Article 12 and Article 13 are:

Article 12

- 1) Requirements for a child to be adopted include:
 - a) Not yet 18 (eighteen) years old
 - b) Is an abandoned or neglected child
 - c) Being in family care or a childcare institution
 - d) Requires special protection.
- 2) The age of the adopted child as referred to in paragraph (1) letter a includes:
 - a) Children under 6 (six) years old are the main priority
 - b) Children aged 6 (six) years, up to not yet 12 (twelve) years old, as long as there is an urgent reason.
 - c) Children between the ages of 12 (twelve) and 18 (eighteen), as long as the child requires particular protection.⁵⁰

Article 13

Prospective adoptive parents must meet the following requirements:

- 1) Physically and mentally healthy
- 2) The minimum age is 30 (thirty) years and the highest is 55 (fifty-five) years
- 3) Have the same religion as the prospective adopted child's religion
- 4) Have good behavior and have never been convicted of a crime
- 5) Married status for a minimum of 5 (five) years
- 6) Not a same-sex couple
- 7) Do not or have not had children or only have one child
- 8) In a state of socio-economic capability
- 9) Obtain the child's consent and written permission from the child's parent or guardian
- 10) Make a written statement that the adoption of the child is in the best interests of the child, the welfare and protection of the child
- 11) There is a social report from a local social worker
- 12) Have cared for a prospective adopted child for at least 6 (six) months, since the care permit was granted and
- 13) Obtain permission from the Minister and/or head of social agency.

Conclusion

The purpose of adoption is to have children, to have children of a different gender than the child a family has, to aid orphaned children, to enhance the welfare of children and to protect them from violence and discrimination, and to create a decent life for a child by offering attention and affection. Currently, Islamic law has intervened in customary law, notably by adopting children with approval from the social services department and based on the Religious Court's ruling. Adoption of a child no longer requires a huge traditional ceremony involving the slaughter of a cow, but can instead be done merely to notify the community of the child's adoption. The rights of adopted children are the same as those of biological children, except that adopted children are not heirs and if the child is a woman, the person who is the guardian of the marriage is still the guardian of the lineage.

It is fundamentally forbidden under Islam and Minangkabau customs for someone to adopt someone else's child by cutting their lineage tie with their own parents, moving their lineage to their adoptive parents, and being given the same rights or position as a biological

⁵⁰ Mardani, "Pengangkatan Anak ...," 124.

child. This is forbidden because it could produce havoc in the inheritance system, according to both customary and Islamic law. Adopted children are solely viewed as the definition of foster children by Customary Law and Islamic Law, namely caring for other people's children to be looked after, cared for, and taught so that they become independent human beings, whose roots of life are not uprooted from their veins.

During the writing process, the author noticed that the research was far from complete. There are still flaws in the writing as well as the presentation of the subject. As a result, the author hopes for constructive criticism and suggestions from fellow readers to improve this writing.

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