

The Conversion of the Adopted Children's Clan in the Village of Tumbak from the Islamic Law Point of View

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ABSTRACT

This study aims to see the process of conversing the clan of adopted children by the community in Tumbak Village Posumaen District and the reasons they adopt children and to analyze them in terms of Islamic law. This research method is field research in Tumbak Village using interview analysis to the actors of the clan conversion and their biological parents.

The results of the study revealed that parents conversed their clan after adopting a child to make the adopted child feel like their biological child and, most of the local people adopted a child because the couple had no children. However, in this incident, it turned out that there was a change in the name or surname of the adopted children since the adoptive parents intent to make them feel truly like biological offspring.

Islam considers this a wrong affair. Even though the child is being cared for by adoptive parents, they are still not allowed to forget the biological parents, because this will have an impact on the inheritance and guardianship matters of the adopted child.

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1. INTRODUCTION

Every married couple's desire to have children is a human instinct and by nature, these children are a mandate from Allah SWT to the husband and wife (Faradz, 2009). This desire sometimes cannot be achieved for several reasons that the couple adopt children to experience parenting and have successors for the family even though they are adopted children.

The tradition of caring for descendants or close and distant family members as well as other people's children, is common in Indonesia under different names. If we look at the treatment of adopted children in the Western tradition, where the situation of other people's children or anyone else's when being cared for, they will turn into biological children and get rights and commitments as biological children which are not legitimized by Islamic law adopted by most Indonesian individuals (Ka'bah, 2008).

Adoption of a child is something that is crucial and will have legal consequences for adopted children, adoptive parents, and biological parents (Dewata, 2017). In adopting a child, the adoptive parent may not release the adopted child from his or her biological parents because this will have an impact on religious practices such as marriage guardianship, lineage, and inheritance of the adopted child and his biological parents (Ghaffar, 2019; Lasabuda, 2013; Mardani, 2019; Yumarni, 2015).

Adoption of children has become a habit that occurs in a community in Tumbak Village, Pusomaen District. Most people adopt children because they do not have offspring so they agree with the parents of the adopted child for their child to be adopted. However, the community who adopts the child removes the original surname of the adopted child so that the child does not know whether he is an adopted child because by eliminating the surname of the child and using the surname of his adoptive parents, so that the child is a real child of his adoptive parents, and In the adopted child's birth certificate, the last name of the biological father is not written, only the last name of the adoptive father which is given to the adopted child.

Adoption of children has become a habit that occurs in the community in Tumbak Village, Pusomaen District. Most people adopt children because they do not have offspring so they agree with the parents of the adopted child for their child to be adopted. However, people who adopts the child removes the original surname of the adopted child so that the child does not know if he is adopted because he is using the surname of his adoptive parents as if he was the real child of his adoptive parents. In addition, the last name of the adoptive father which is given to the adopted child is written in the adopted child's birth certificate, instead of the last name of the biological father.

Adopting a child is a noble act because it can help others who are less fortunate in their lives (Sompie, 2017). The purpose of adopting a child is to educate, provide love and livelihood assistance for the welfare of the child (Abidin & Kelib, 2018; Faradz, 2009) and does not mean that the adopted child's relationship with his biological parents is lost. However, various community perspectives that arouse alternative points of view for the author in reviewing an article will make this article interesting to see considering how the thorough understanding of the apparatus from the people of Tumbak Village to the aspects of Islamic law makes adopted children welcomed in the families who care for them.

2. RESEARCH METHOD

This is a Field Research with a Sociological-Juridical approach (Creswell & Creswell, 2017). The research conducted by the author is qualitative research by revealing certain social situations by describing facts that are correctly formed by words based on the collection and analysis of relevant data obtained from scientific situations (Satori & Komariah, 2009). The aim is to understand the phenomena experienced by the object of research, such as perceptions, opinions, motivations, and everyday behavior in an easy-to-understand way using descriptive language and narrative language methods, popularly. It is achieved through the natural use of various scientific methods (Moleong, 2013). This study will focus on the views of the people of Tumbak Village and Islamic Law regarding the adoption of children and the replacement of clans for adopted children.

3. RESULTS AND DISCUSSION

Tumbak is a coastal village located on an elongated promontory land surrounded by sea, with a rather high land location from the sea settlements of Southeast Minahasa Regency, North Sulawesi (Poedjowibowo, 2016). The state of the beach in the village of Tumbak relative, the type of sand beach in the village Tumbak more rough and black. There is still mangrove forest area around Tumbak. The residents of the village all live in coastal areas and depend on marine products for their livelihoods, making a living as fishermen. The people in the village come from the Bajo, Gorontalo, Mongondow, Makassar, Mandar, Bugis, Ternate, Tidore, Sangir, Minahasa, Buton, Sula, Kaili, Javanese, and Minangkabau tribes. The condition of the people in Tumbak Village has a more homogenous community structure. This is seen from religion,

culture, education level, and people's livelihoods. Tumbak village is almost entirely dominated by fishermen who are all Muslim.

3.1. Adoption of Children in the Islamic Law Point of View

Children are responsibilities bestowed by God to parents. Parents are required to look after, nurture, and educate them until they can meet their needs when they grow up. In the end, they can return their parents filial piety, love, and care. They will pray for their deceased parents (Djatikumoro, 2011). A child is a presence awaited by his parents. However, sometimes God does not grant this mission to some people who really desire it.

The presence of children is a gift and a blessing from Allah that must be grateful for (Hamid, 2000). Thus, the existence of children is an important element in a family. The meaning of the child's presence aforementioned shows how much God cares about children's problems. Parents should provide protection to children in all aspects that can guarantee and protect children's rights in order that they can live, grow, develop, and participate optimally by human dignity and protection from violence and discrimination. Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, society, government, and the state.

The prohibition of adopting a child in the sense of making him like an actual biological child is confirmed based on the Word of Allah SWT in Surah Al-Ahzab verses 4 and 5 which reads:

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِيْ جَوْفَةٍ وَمَا جَعَلَ أَرْوَاجَكُمْ أَلْيَ تَظْهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ

Allah has not made for a person two hearts in his cavity, and He did not make your wives whom you rejoice as your mothers, and He did not make your adopted children as your biological children (alone). That is just what you say in your mouth. And Allah tells the truth and He shows the (right) way. (Surat al-Ahzaab/33:4)

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

Call them (adopted children) by (using) the names of their fathers; That is justice in the sight of Allah, and if you do not know their father, then (call them) your brothers and sisters in your religion and your Maul'ula and there is no sin on you if you err about that, but (who has a sin) what is intentional by your heart. Allah is Forgiving, Most Merciful." (Surat al-Ahzaab/33:5)

According to the verse above, it can be understood that as long as the blood of the child is not removed from the original parents, instead of being served by the adoptive father, the adopted child cannot be the same as the biological child, and a person can take care of the child. Just like the story of Zaid bin Haritsa, after the revelation was revealed, Zaid continued to give his biological father "Zaid bin Haritsa" instead of "Zaid bin Muhammad". There is no other reason, namely nurturing, nurturing, and educating children (Shihab, 2002). Then Rasulullah SAW said in a hadith narrated by Bukhari and Muslim as follows:

عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : مَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ وَهُوَ يَعْلَمُ أَنَّهُ غَيْرُ أَبِيهِ فَالْجَنَّةُ عَلَيْهِ حَرَامٌ. متفق عليه

From Sa'ad bin Abu Waqqash radiyallahu anhu that the Prophet sallallahu 'alaihi wa sallam said: Whoever claims - as a lineage or descendant - to someone who is not his father, while he knows that that person is not his father, then heaven is forbidden for him. (Narrated by Bukhari).

As stated in Article 99 paragraph (1) "Compilation of Islamic Law" (KHI), Allah SWT has properly guarded the morals of children through marriage, namely children born from legal marriages, so that children can serve their parents. In the Islamic law, the lineage between children and men can occur due to three things, namely through legal marriages, indecent marriages, and because of the sexual behavior of *syubhatan-nikah* (Kamil & Fauzan, 2008). Maintaining a child's good reputation is what the Prophet SAW taught us. Therefore; we must not oppose small children.

You should not criticize or speak harshly to your child. Imam Ghazali strongly criticizes parents who reprimand or insult their children. According to him, if a child is used to being insulted and scolded, he will get used to it so he doesn't pay attention to what his parents say. This will also affect his character to be stupid and weak (Al-Ghazali, 1980). According to Law No. 23 of 2002, the revision of Law No. 35 of 2014 means a legitimate child is a child born through a legal marriage relationship and a child recognized by his biological father. According to Abdul Manan (2020) that a legitimate child is a child born through a legal marriage bond, has parent-child status, has civil rights, and has the right to take advantage of his family. After his last name or father's name to indicate his ancestor.

According to Soedharyo Soimin (2004), adoption is the act of bringing another person's child into his own family, therefore a legal relationship exists between the person who takes the child and the child who is taken away. The adoption relationship has legal consequences, namely the blood of the adopted child is separated from the biological parents, enters the adoptive parent's family, and has the same status as the biological child in the adopted family. This results in adopted children being able to acquire rights related to the rights possessed by parents and children of their relatives, in accordance with life, income, inheritance, and other aspects (Kamil & Fauzan, 2008).

To protect and raise children, in this case, is the responsibility of parents, teachers, and society. The obligation of parents to educate their children is manifested in the form of love as in Islam, it is an obligation comes from Allah. In addition, a teacher is responsible for educating children from Kindergarten to Junior High School according to the authority of parents. The teachers must be responsible for the given tasks, and Islamic education is the shared responsibility of every community's members because society is a collection of individuals. If it is damaged, then all hope is lost.

In the context of the modern world, globalization is characterized by all aspects of human life, including raising children. The goal is that parents not only prioritize responsibility for meeting children's material needs, but also the need for love and emotions which are the determining factors in the formation of the child's personality (Rofiq, 2017). *Nasab* or lineage (bloodline) refers to the relationship that determines the origin of a person as seen from the blood contained in a person. Marriage rules are things that determine offspring based on Islam so that children born through legal marriages have legal status. This means that the child has legal parents. However, if the child is born outside a legal marriage, the identity of the child is unclear, and there is only the mother, not the father (Sudarto, 2020). Keeping blood is one of the five things to become *maqashid al-shari'ah*. Blood relations according to Islamic law refer to sexual relations between a man and a woman based on a legal marriage relationship, not a non-marital relationship such as adultery. If this relationship is carried out after a marriage relationship, then according to the Shariah the relationship between father, mother, and child is legitimate. Usually, the concept of the ancestry of the child is more closely related to the ancestry of the father. Lineage cannot be ignored, if the three elements meet, then the blood will still exist. Father, mother, and son.

In a family life, having children is the dream of every family. Therefore, it is not uncommon for people who are married but do not have children and eventually get divorced, but some people maintain their marriage and seek medical treatment at a large cost to have children. For someone, offspring is very valuable, even more, valuable than any treasure, but for some other people, having children is a shame. This is because she had children before marriage, so to hide her embarrassment, she asked her partner to marry her. In addition, heredity is also a factor that makes someone marry illegally (Mathlub & Majid, 2005).

3.2. The Process of Conversing the Clan of Adopted Children

According to the Tumbak village community, "Clan is a fam or last name as a family name". The clan becomes something that must be discussed when the clan becomes a different meaning to the community. People often assume that clan is one of the conditions when they want to adopt a child. What happened in Tumbak Village was that when they adopted a child, they would replace the adopted child's clan with the family clan (male) who adopted him or her.

It has become a habit that occurs in the people of Tumbak Village. People who adopt children will remove the original clan from their fathers" (Interview with Ahmad Abidolo Hukum Tua Tumbak Village, Tumbak Village August 14, 2020)

Adoption of children has become a habit that occurs in the community in Tumbak Village, most people adopt children by removing the names of their biological parents and replacing them with adoptive parents." (Interview with Irlan Darise the Head of Guard of Tumbak Village, Tumbak Village, August 13, 2020)

Changing the clan is a habit of the community and is always done if you want to raise a child. This is done as a transfer of custody, in the sense of being a way to distance them from their biological parents.

In adopting a child, so that the child becomes his biological child, and also the adopted child thinks that his adoptive parents are his biological parents. When other people say that the child is adopted, the adoptive parents forbid, and are angry with those who say that he is an adopted child. (Interview with Irlan Darise the Head of Guard of Tumbak Village, Tumbak Village, August 13, 2020)

The change of clan is also followed by changing the birth certificate as a requirement for admission for making a Family Card, where the names of the biological parents of the adopted child are replaced with the names of the adoptive parents.

In the birth certificate of an adopted child, the last name of his biological father is not written, only the last name of his adoptive father is written." At the time of making the birth certificate, I asked the administrator to make a statement that the child born was my child, so that he could make a birth certificate in the civil registry, and so that we can make this child like a biological child. (Interview with Kinda Kahar adoptive parents, Tumbak Village August 15, 2020).

The surname and names of the parents of adopted children are changed because the community considers that if they adopt a child, it is considered as their biological child, therefore they replace the clan in their name to change the name of the parents on their birth certificate. All of this is done as a form of affection from adoptive parents to their adopted children.

Because his adoptive parents have considered him as his biological son, and do not like to be called an adopted child. (Interview with Iralan Darise as head of the guard in Tumbak Village, Tumbak Village, August 13, 2020; Interview with Yusuf Abidolo as Imam in Tumbak Village, Tumbak Village, August 20, 2020; Interview with Lilis Maysara as Islamic Religious Counselor Non Civil Servant for the Eradication of Al-Qur'an Illiteracy 'an Ministry of Religion, Tumbak Village, August 22, 2020)

The reason I gave my adopted child a surname or last name is that I think of him as my biological child. We also held thanksgiving and invited neighbors, community leaders, priests, and Old Law. I adopted because I couldn't get pregnant anymore, so I adopted a daughter and the child I adopted was considered my biological child. (Interview with Kinda Kahar adoptive parents, Tumbak Village August 15, 2020)

It often happens in the Tumbak village community that someone who replaces the clan of his adopted child by using the name of his adoptive parents is the same as not acknowledging the real father of the adopted child, and they already regard him as a biological child, not as an adopted child. (Interview with Haris Bidulah Community Store in Tumbak Village, Tumbak Village, August 16, 2020; Interview with Lilis Maysara Non-PNS Islamic Religious Counselor for Eradication of Al-Qur'an Illiteracy, Ministry of Religion, Tumbak Village, 22 August 2020)

Most people of Tumbak Village, Posumaen District, adopted children because they had no offspring. After the adoption, the adoptive parents change the surname of the adopted child. For example, Suhardi Norang's family adopted a child from the Uwak Mau family with a son named Arif Mau. Furthermore, the family of Rusnan Noma adopted the child of Mr. Mus Moduto and Mrs. Haryati since the child was born and was given the name Sinta Noma (following the name of Mr. Rusnan Noma).

I adopted a child because I had no children from the time I was married, so I adopted a child. the biological parents of the child named Uwak Mau and Ibu Ica. And my adopted son was named Arif Mau and I changed it.

I adopted a child because I could no longer conceive so I adopted a daughter because I wanted to have a daughter. And I raised it since birth and I named her Sinta Noma.

Another purpose of assigning or attributing a clan to an adopted child is so that the child does not know that he is an adopted child. Because of the custom that occurs in the people of Tumbak Village that the adopted child is considered a real child of the adoptive parents. Due to the lack of public knowledge about the law of adoption or *hadanah* so that people do not consider it a problem that violates Islamic law.

In changing this clan, the community is based on the Qur'anic argument that it is possible to call children by the names of relatives who share their faith, as Allah SWT. Says:

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

Call them (adopted children) by (using) the names of their fathers; That is justice in the sight of Allah, and if you do not know their father, then (call them as) your brothers and sisters in the religion and your maula-maula and there are no sins on you if you err about that, but (the sin is) what is intentional by your heart. Allah is Forgiving, Most Merciful. (Surat al-Ahzaab/33:5).

The community considers in this verse that Allah Almighty asks that every child be attributed to his father, not to his mother or the person who raised him, because later on the Day of Judgment humans will be called by the name attributed to their father.

3.3. Islamic Law on Conversing Clans

The separation of clans is actually not explained in Islamic law but *nasab*. If you look at the meaning of the two and they are related to the last name, they are very different, because the clan is a kinship group according to patrilineal lineage (Bushar, 2004), while lineage is based on blood ties (Harlina, 2014). It's just that there are several things that happen in the Tumbak Village community that need to be studied in-depth,

starting from the implementation of clan changes to the reasons and procedures that come out of Islamic law itself.

An adopted child is a biologically legitimate child (blood ties) and is not related to his adoptive parents, or in other words the lineage of the adoptive parents who do not have to be followed by the adopted child and must continue to follow the lineage of his biological parents (Rais, 2016). By taking the basis of the adoptive parents' affection for their adopted child, the people of Tumbak Village, in this case, changed the birth certificate to legitimize the adopted child to become a biological child. This is strictly prohibited in Islam which is emphasized in Q.S. Al-Ahzab: 39. Even Abd. Rasyid As'ad (Judge of the Mojokerto Religious Court) stated what was contained in Q.S. Al-Ahzab: 39 emphasizes that adopted children cannot be equated with biological children (Tobing, 2013).

Viewing the opinion of Ibnu Katsir (2010) that an adopted child cannot change his status to become a biological child of adoptive parents, because he was born to someone else. Q.S. Al-Ahzab: 39 this invalidates the customary law that prevailed in the age of ignorance. All family relationships and ties have restored their pure nature. A word cannot change facts, and cannot create inbreeding and natural relationships. It is based on the reality that children are the flesh and blood of their living parents.

If you want to remove the clan behind your name, it should not be to break your relationship with your biological father (Harahap, 1993). This concept is a response to the pre-Islamic tradition (Jahiliyah) which allows the adoption of children (*tabanni*) to establish a legal relationship between children and their adoptive parents, on the pretext that adopted children are considered as biological children of their family members. The same is true for biological children, by adopting such a child will destroy the blood relationship between the child and his biological parents and the family of his biological parents.

Islamic law explains that there is a prohibition against naming an adopted child after the name of the adoptive parent. *Mahram* law is still valid and there is no kinship inheritance. Responding to the pre-Islamic tradition regarding the relationship between adopted children and their adoptive parents, Al (Al Amruzi, 2014) said that such things damage the blood relationship between children and their biological parents.

Adoption in the current law only focuses on the protection and interests of the child, such as parenting, giving love and affection, the future, education, and welfare of the adopted child. It's just that the law prohibits adoptive parents from breaking the relationship of the adopted child with his biological parents.

Considering the understanding of the people of Tumbak Village about their reasons for changing the clan of an adopted child to the point of forgetting the biological parents of an adopted child, it is a disaster for the family who adopts a child, especially for the adoptive parents. If so, it means that there will be problems with guardianship (for prospective brides) and inheritance issues which are very contrary to Islamic Law.

In short, an adoption is a legal act that takes care of and treats other people's children who are not their descendants as their descendants. The goal is to reduce the burden on biological parents who adopt children because the number of adoptions is very small, or because the adoptive parents have no children at all. In many communities, adoption of a child is usually carried out without a court order, i.e. by removing the status or relationship between the adopted child and the biological parents, which means that they deliberately do not inform that they actually adopted the child. Not born in her womb. This is contrary to the *fiqh* provisions which do not recognize the absolute adoption of biological children. Islam advocates parenting in terms of love, life, education, and other satisfactions.

The most important thing in *Tabani's* case is in the best interests of the child. Adoption should always focus on the interests of the child and take precedence over the interests of the parents. Adoption prohibits the use of children for the benefit of others. Adoption involves earning the love and understanding of adoptive parents and enjoying their rights regardless of race, color, gender, nationality, or social status.

In addition to the agreement between the child's biological parents and adoptive parents, adoption must be strengthened according to court decisions. In many societies, the illegal adoption of children is based solely on the adoptive parents and the child's biological parents. There is no need for a court decision to reach an agreement between the two.

For that reason, in caring for adopted children, it is enough to give love like biological parents, not to give status as biological children. That way the adopted child still remembers that he has biological parents and the issue of guardianship and inheritance does not become an obstacle for the adopted child.

3.3. Adopted Child against Inheritance and Guardianship

The issue of adoption is not new in Indonesia (Matuankotta, 2011). Since ancient times, adopted children have followed the legal system, and the sense of law has lived and developed in the relevant area. Adoption of children with love and treated like their own children is an absolute thing to be fulfilled, without giving him the status of child ownership. Child adoption must be carried out by court decisions (Ghaffar, 2019; Heriawan, 2017). By using the court's decision, it can be used as concrete evidence of the adoption of a child. If there is a dispute regarding the adoption of a child in the future, the court's decision can be used as evidence.

In the law of inheritance, adopted children are not biological heirs, unless the adopted child is obtained from the family of the adoptive parents, and does not have a familial relationship between the adopted child and the adoptive parents. Because they are not heirs, the adopted child will not receive his share as heirs of the inheritance of his adoptive parents. Even if he does not inherit from his adoptive parents, the adopted child will get the mandatory will to get inheritance rights from his adoptive parents. As mentioned by KHI in Article 209(a) (Ghaffar, 2019).

If the adopted child complies with the applicable provisions, there will be no inheritance dispute. Because it is clear that the position of the adopted child is not the heir of the adoptive parents, then the adopted child can inherit from the adoptive parent through mandatory. However, there are inheritance disputes between adopted children and the heirs of adoptive parents, as shown below.

One example is when the adoptive father died and left several heirs consisting of brothers and sisters. They then filed a lawsuit against the son of the heir in the religious court, because the right of inheritance is controlled by the heir who is an adopted child and is not shared with the heir's brothers and sisters.

The preferred guardian of the marriage is the father or grandfather. In addition, it can also be replaced by a family that is *wala'ashabah*, such as a brother or uncle, and the last option is the guardian of the judge. Regarding adopted children, it does not result in family rights in terms of lineage and this has been explained in the 1982 MUI fatwa (MUI Fatwa Number U-335/MUI/IV/1982). So that the adopted child will not get inheritance rights or the right to get a marriage guardian from the adoptive parents (Hidayah, 2014; Nanda & Mukri, 2018).

4. CONCLUSION

The community consider the conversion of clans is a normal thing. The community adopts a child by giving their last name (surname) to the adopted child as legitimacy that the adopted child is a biological child. However, the public does not know that the separation of clans carried out is to separate the biological family relationship from the adopted child and this is a forbidden act in Islamic teachings.

Islam does not prohibit people from adopting children and clan issues, only Islam forbids breaking the family relationship of adopted children with their biological parents. Whatever the reason, the adopted child still has to know his biological parents.

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