

The Role and Authority of Adoptive Fathers in Marriage Guardianship: A Comparative Analysis between Islamic Family Law and Civil Law

M. Thoiyibi

muhammadthoiyibi77@gmail.com

Afrizal

afrizalyet@gmail.com

Ainul mardhiah

ainulmardhiah1802@gmail.com

Jarullah

jarullahjar63@gmail.com

Diyetmawati

diyetmawati@gmail.com

Institut Agama Islam Syekh Maulana Qori Bangko

Abstract

This article examines the role and authority of the adoptive father in marriage guardianship, employing a comparative approach between Islamic law and civil law. In Islamic law, marriage guardianship is a pillar that must be fulfilled in the implementation of a marriage contract and can only be carried out by a man who has a blood relationship with the bride. In civil law, particularly as outlined in Staatsblad 1917 No. 129, children adopted through a court decision who are legally adopted obtain a legal status equal to that of biological children. This difference has implications for the validity of a marriage. This type of qualitative research uses a normative and comparative legal approach; primary data comes from the Compilation of Islamic Law (KHI), Law Number 1 of 1974 concerning Marriage, the Civil Code (KUHPerduta), and classical and modern literature in Islamic jurisprudence and secondary data comes from the results of previous research, scientific journal articles, Islamic law books, and civil law. Library research is used to collect data from legal documents and scientific literature. The data collected in this study will be analyzed using both descriptive and analytical methods, as well as comparative methods. The results of this study indicate that there are significant differences between Islamic law and civil law in their views on the role of the adoptive father as a marriage guardian. Islamic law explicitly rejects the authority of the adoptive father because there is no blood relationship, while civil law provides equal legal standing between adopted children and biological children through court ratification. This difference has implications for the validity of marriages that

can be recognized by the state but not recognized according to Sharia, so it is essential to consider the harmony between the two legal systems in the practice of marriage guardianship in Indonesia.

Keywords: Foster Father, Marriage Guardian, Islamic Law.

Abstrak

Artikel ini membahas peran dan kewenangan bapak angkat dalam perwalian nikah dengan pendekatan komparatif antara hukum Islam dan hukum perdata. Dalam hukum Islam, wali nikah merupakan rukun yang harus dipenuhi dalam pelaksanaan akad nikah, dan hanya dapat dijalankan oleh laki-laki yang memiliki hubungan nasab dengan mempelai perempuan. Dalam hukum perdata, khususnya berdasarkan Staatsblad 1917 No. 129, anak angkat yang diangkat secara sah melalui putusan pengadilan memperoleh kedudukan hukum setara dengan anak kandung. Perbedaan ini menimbulkan implikasi terhadap sah atau tidaknya suatu pernikahan. Jenis penelitian kualitatif yang menggunakan pendekatan yuridis normatif dan komparatif, data primer berasal dari Kompilasi Hukum Islam (KHI), Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Kitab Undang-Undang Hukum Perdata (KUHPerdata), serta literatur klasik dan modern dalam fikih Islam dan data sekunder bersumber dari hasil penelitian sebelumnya, artikel jurnal ilmiah, buku-buku hukum Islam dan hukum perdata. Studi kepustakaan (*Library Research*), digunakan untuk menggali data dari dokumen-dokumen hukum dan literatur ilmiah. Data yang dikumpulkan dalam penelitian ini akan dianalisis melalui metode *deskriptif analitis* dan *komparatif*. Hasil penelitian ini menunjukkan bahwa terdapat perbedaan signifikan antara hukum Islam dan hukum perdata dalam memandang peran bapak angkat sebagai wali nikah. Hukum Islam secara tegas menolak kewenangan bapak angkat karena tidak adanya hubungan nasab, sementara hukum perdata memberi kedudukan hukum setara antara anak angkat dan anak kandung melalui pengesahan pengadilan. Perbedaan ini berimplikasi pada keabsahan pernikahan yang dapat sah secara negara namun tidak sah menurut syariat, sehingga penting untuk memperhatikan keselarasan kedua sistem hukum dalam praktik perwalian nikah di Indonesia.

Kata Kunci: Bapak Angkat, Wali Nikah, Hukum Islam.

A. Introduction

The purpose of marriage is to form a harmonious, lasting, and blissful family.¹ In Islamic law, marriage is understood as a powerful bond (*Mitsaqan Ghalizan*) carried out in obedience to the commands of Allah SWT. Its

¹ Mustafid, *Hukum Keluarga: Perkawinan dalam Islam dan Adat* (Kota Kupang: Tangguh Denaya Jaya, 2023), hlm. 12.

implementation is a form of worship, with the primary goal of building a household filled with peace (Sakinah), love (Mawaddah), and compassion (Rahmah).²

Every Muslim who wishes to marry is obliged to comply with the provisions stipulated in Islamic law. The validity of a marriage is determined by Islamic law.³ Based on Article 4 of the Compilation of Islamic Law, a marriage is considered valid if it is conducted according to the provisions of Islamic law, as stipulated in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage.⁴

For an act to be considered valid under Islamic law, two main elements must be met: the pillars and the conditions. The pillars are the basic components that form the core of a legal act, while the conditions serve as complementary elements that support its validity.⁵ The pillars and conditions in Islamic law are crucial for ensuring the formation of a valid marriage bond between a man and a woman.⁶

One of the pillars of marriage is the presence of a marriage guardian. A marriage guardian is a person responsible for the life of the prospective bride. In both legal and customary contexts, a marriage guardian is a person entrusted with the care of a daughter, including her property, until she reaches adulthood. Furthermore, the guardian also acts as the bride's representative during the marriage ceremony, namely during the recitation of the marriage vows (ijab kabul) with the groom.⁷

However, in Indonesia's pluralistic society with its complex family structures, a phenomenon has emerged where adoptive fathers who are not biological fathers want or are asked to act as guardians in their adopted children's

² Tatik Fauziah, *Keabsahan Ayah Angkat Sebagai Wali Nikah Menurut Hukum Islam* (Jakarta: Program Studi Perbandingan Mazhab Fakultas Syariah Dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2023), hlm. 1.

³ Evi Fauziah, *Analisis Yuridis Terhadap Akad Nikah Ulang Karena Bapak Angkat Menjadi Wali Nikah Di Pernikahan Pertama (Studi Kasus di KUA Kecamatan Kartoharjo Kota Madiun)* (Surabaya: Fakultas Syariah dan Hukum Universitas Islam Negeri Sunan Ampel, 2018), hlm. 4.

⁴ Tim Redaksi, *Kompilasi Hukum Islam* (Bandung: Nuansa Aulia, 2009), hlm. 2.

⁵ Soemiyati Soemiyati, *Hukum Perkawinan dan UU Perkawinan* (Yogyakarta: PT. Liberty, 1986), hlm. 30.

⁶ Neng Djubaedah, *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam* (Jakarta: Sinar Grafika, 2010), hlm. 107.

⁷ Rizky Nanda dan Syarifah Gustiawati Mukri, "Studi Komparatif Antara Hukum Islam dan Hukum Perdata Belanda (BW) Tentang Wali Nikah Bagi Anak Angkat," *Mizan: Journal of Islamic Law* 2, no. 1 (11 April 2018): hlm. 15., <https://doi.org/10.32507/mizan.v2i1.210>.

marriages. This phenomenon raises various legal issues, both from an Islamic and a civil law perspective. In Islamic law, the position of guardian in marriage can be held only by someone with a specific lineage or kinship relationship to the bride.⁸ Meanwhile, in civil law, particularly in the context of family law and adoption, the relationship between adopted children and adoptive parents has certain legal legitimacy, allowing for the emergence of rights and obligations similar to the relationship between parents and biological children.⁹

The conflict and potential disharmony between these two legal systems opens up space for comparative analysis, particularly regarding the authority of the adoptive father as a marriage guardian. This paper aims to examine in depth how Islamic law and civil law regulate and view the position of the adoptive father in marriage, as well as the extent to which national law can accommodate the social realities developing within society.

B. Research Methods

This research is a qualitative study using a normative and comparative juridical approach. The normative juridical approach examines the legal norms applicable in Islamic law and civil law, particularly those related to the role and authority of the adoptive father as a marriage guardian. Meanwhile, the comparative approach aims to compare the two legal systems systematically. Primary data comes from the Compilation of Islamic Law (KHI), Law Number 1 of 1974 concerning Marriage, the Civil Code (KUHPerdata), and classical and modern literature on Islamic jurisprudence. Secondary data comes from previous research, scientific journal articles, and books on Islamic law and civil law.

Library research was used to extract data from legal documents and scientific literature. The data collected in this study will be analyzed using descriptive, analytical, and comparative methods. Descriptive analysis aims to explain in detail the provisions in Islamic law and civil law regarding marriage guardians, particularly the role of the adoptive father. Meanwhile, a comparative analysis is conducted to identify similarities and differences and to evaluate the strengths and weaknesses of each legal system.

⁸ Nanda dan Mukri, hlm. 14.

⁹ Hans H.M. Ter Haar, Wilbert D. Kolkman, dan Leon C.A. Verstappen, *Hukum tentang orang, hukum keluarga dan hukum waris di Belanda dan Indonesia*. (Bali: Pustaka Larasan, t.t), hlm. 73.

C. Discussion and Research Results

The Concept of Marriage Guardians in Islamic Law

In general, a guardian is an individual who, by virtue of their position, has the authority to represent and act on behalf of another person. This authority arises because the person being represented has certain limitations that prevent them from acting legally independently, whether regarding personal or property matters. In the context of marriage, the guardian serves as the bride's representative during the ceremony.¹⁰

A marriage guardian is one of the essential pillars of marriage; without one, the marriage is considered invalid. This is based on a hadith narrated by Aisha ra., that the Prophet Muhammad SAW said: "A woman who marries without the permission of her guardian, then her marriage is invalid." If the husband has had intercourse with her, then she is still entitled to receive a dowry as compensation. If the guardian is reluctant to marry her, then the authority shifts to the guardian judge. Another narration from Abu Burdah ibn Abu Musa also confirms that a marriage is invalid unless performed by a guardian.¹¹

Some Islamic scholars believe that a guardian is required for a marriage contract to be valid. This means that the guardian determines the validity of a marriage. Therefore, if the marriage contract is concluded without the guardian's presence or consent, the marriage is considered invalid under Islamic law.¹²

Linguistically, guardianship implies compassion and assistance, and can be interpreted as power or ability, with the word "al-Waali" referring to the possessor of authority. Meanwhile, in the terms of Islamic jurists (fuqaha), guardianship is defined as the authority to act independently without requiring permission from another party. The person who carries out or executes the contract in this context is referred to as a guardian.¹³

According to Abdul Rahman Ghozali, the term guardian has various meanings, including: first: a person who is legally given responsibility, both according to religion and custom, to take care of orphans and their property until

¹⁰ Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Kencana, 2009), hlm. 69.

¹¹ Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 1998), hlm. 84.

¹² Ahmad Zaky Nauval, Mhd Amar Adly, dan Heri Firmansyah, "Kaidah Yang Terdapat Pada Bab Wali Nikah," *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 2, no. 4 (7 Juli 2024): hlm. 13., <https://doi.org/10.59246/aladalah.v2i4.949>.

¹³ Wahbah al-Zuhaili, *Fiqh al-Islam Adillatuhu* (Jakarta: Gema Insani, 2011), hlm. 178.

the child is an adult; second: a person who becomes the guardian or representative of the bride in the marriage contract with the prospective husband; third: a person who is known to be pious and spreads religious teachings; fourth: and can also refer to a government leader or similar official.¹⁴

Scholars from various schools of thought agree that a person acting as a guardian, whether directly or through a will, must meet several key requirements, such as having reached puberty, understanding their responsibilities, and being of the same religion as the guardian. Most scholars also add that the guardian should be just, even if he is the woman's father or grandfather. In matters of managing the assets of the person under his guardianship, the guardian's actions are valid as long as they benefit the person, whereas actions that cause harm are legally invalid. According to Sabiq, the requirements for a guardian in marriage are that he is Muslim, free, sane, and mature. Az-Zuhaili adds that the guardian must be male, just, and upright, whereas the Maliki school holds that the guardian must not be in ihram for Hajj or Umrah. According to the Hanbali and Shafi'i schools of thought, there are seven requirements: male, free, of the same religion, mature, sane, just, and upright. Meanwhile, the Hanafi school lists four conditions: being sane, having reached puberty, being free, and having the same religion.¹⁵

Syarifuddin emphasized that eight conditions must be fulfilled by a marriage guardian, namely: (1) he is an adult and of sound mind, because small children and crazy people cannot carry out the contract; (2) men, because women are generally not allowed to be guardians, although the Hanafiyah and Shia Imamiyah allow adult and sensible women to be guardians for fellow women; (3) Muslim, because non-Muslims are not valid as guardians for Muslims; (4) independent status; (5) not in the status of mahjur alaih (under guardianship), because he is unable to carry out legal actions independently; (6) have a clear mind and are not disturbed by age or other factors; (7) fair, namely not being known as a perpetrator of major sins or those who frequently commit minor sins; and (8) not being in ihram for Hajj or Umrah, because in that condition a person is not permitted to carry out a marriage contract.¹⁶

¹⁴ Masna Yunita dan Intan Sahera, "Wakalah Wali Nikah (Studi Kantor Urusan Agama Ranah Pesisir)," *Jurnal AL-AHKAM* 13, no. 1 (18 Juni 2022): hlm. 95., <https://doi.org/10.15548/alahkam.v13i1.4428>.

¹⁵ Yunita dan Sahera, hlm. 95.

¹⁶ Amir Syarifuddin, *Hukum perkawinan Islam di Indonesia, Antara Fiqh Munakahat dan Undang-undang Perkawinan* (Jakarta: Kencana, 2006), hlm. 78.

Regarding the order of guardianship in marriage, Imam Syafi'i's Fiqh Kifayatul Akhyar explains the order that must be followed. This order begins with the biological father, then the paternal grandfather, followed by the biological brother, the half-brother, the son of the biological brother, the son of the half-brother, the brother's brother (half-father), and finally the son of the half-brother. This order is hierarchical and cannot be skipped unless the higher-ranking guardian has given permission or does not meet the requirements as a guardian.¹⁷

From an Islamic legal perspective, there are two definitions of adoption. First, adoption is defined as the act of caring for and educating another person's child with full attention and affection, without making them one's own child. The child is still treated as their own by the adoptive parents, but is not given the legal status of a biological child. The purpose is solely to provide protection, education, and affection to the child.

Second, adoption is understood as an effort to legally make another person's child their own, granting them the lineage status of their adoptive parents, including the right to use the family name, inherit, and obtain other rights as a biological child. Based on these two definitions, it can be concluded that the first concept is more in line with the principles of Islamic law, as it focuses on providing care and education to the child as a social concern, without altering the child's lineage status or the legal relationship between the child and their biological parents.¹⁸

In Islamic law, the position of adopted children is different from the customs that prevailed during the Jahiliyah era. Adopted children may not be relied on or attributed to anyone other than their biological father. This is confirmed in Surah Al-Ahzab verse 5, where Allah orders that adopted children be called after their biological father, because that is fairer in the sight of Allah. If their biological father is unknown, they are considered a religious brother. According to Imam Ibnu Katsir, this verse cancels the early Islamic tradition that once allowed adopted children to be treated like biological children. Thus, maintaining lineages is an essential principle in Islamic law.

In addition, adopted children do not have inheritance rights from adoptive parents, because legally they are not part of the lineage. The relationship between

¹⁷ Yunita dan Sahera, "Wakalah Wali Nikah (Studi Kantor Urusan Agama Ranah Pesisir)," hlm. 98.

¹⁸ Zulfan Efendi Hasibuan, "Kedudukan Anak Angkat dalam Hukum Islam," *Yurisprudencia: Jurnal Hukum Ekonomi* 5, no. 1 (2019): hlm. 97., <https://doi.org/10.24952/yurisprudencia.v5i1.1729>.

adopted children and their adoptive families also does not make them mahram, so biological children must still wear the hijab in front of them, as in front of other people who are not mahram. In fact, an adoptive father is allowed to marry his adopted child's ex-wife, as explained in Surah Al-Ahzab verse 37. However, Islam still recommends treating adopted children with affection, and calling them with gentle names such as "son" or "daughter" as a form of respect, as exemplified by Rasulullah SAW.¹⁹

Guardians in marriage and adoption in Islam play a crucial role in maintaining legal order and the values of justice. Guardianship is an indispensable element of a marriage contract, ensuring legal validity and protecting women's rights. Similarly, in the case of adoption, Islam emphasizes the need to distinguish between compassion in parenting and clarity of lineage, a fundamental principle of family law. Therefore, Islamic law provides a set of rules that not only uphold rights and obligations but also maintain honor and order in the social fabric of humanity.

The Concept of Adopted Children and Marriage Guardians in Indonesian Civil Law

The Indonesian Civil Code (KUH Perdata) does not contain specific terms or regulations regarding adopted children. Provisions regarding adoption are instead regulated in Staatsblad 1917 Number 129, which addresses the legal gap in the Civil Code on this issue. This Staatsblad then serves as the legal basis for adoption processes, especially for communities subject to the civil law system (Burglarlijk Wetboek).

Book I, Title 12, Article 227 of the NBW (Nieuw Burgerlijk Wetboek) stipulates that adoption can only be carried out through a court decision upon the request of the husband and wife seeking the adoption. Furthermore, Article 229 of the NBW states that with adoption, the adopted child gains legal status equal to that of the legitimate child of the adoptive parents, and the legal relationship between the child and their blood relatives is automatically severed. Meanwhile, Law Number 35 of 2014, concerning Amendments to Law Number 23 of 2002 on Child Protection, emphasizes that adoption may be carried out only in the best interests of the child and must comply with local customs and applicable laws and regulations.²⁰

¹⁹ Hasibuan, hlm. 99.

²⁰ Winda Winda dan Vita Firdausiyah, "Status Anak Angkat (Adopsi) Dan Akibat Hukumnya: Studi Komparasi Hukum Islam Dan Hukum Positif," *AL-MUQARANA: Jurnal*

Meanwhile, in the Netherlands, the country of origin of the Civil Code, the States General, or parliament, has approved a new adoption law. The background to this law's emergence is a growing social phenomenon in Europe, such as parents who have lost children but are unable to reproduce naturally, the large number of orphans due to war, and the increase in births outside of marriage. These conditions formed the basis for the adoption law (*adoptie wet*), which allows adoption under certain conditions.²¹

The discussion regarding the status of adopted children in the family refers to the provisions of *Staatsblad* Number 129 of 1917, specifically Articles 5 to 15, which expressly state that adopted children have the same status as legitimate children from the marriage of adoptive parents. This means that within the family, adopted children have the same rights and obligations as biological children, including in terms of inheritance of property if the adoptive parents die. This provision exists to fill the legal gap in the Civil Code, which does not explicitly regulate adoption.²²

Based on the provisions of Western Civil Law as regulated in *Staatsblad* 1917 Number 129, adoption has several legal consequences, including: first, the Use of the adoptive father's surname: Children who are legally adopted are required to use the surname of their adoptive father as their legal identity. Second: Legal status equal to legitimate children: Adopted children have the same status as biological children from a legal marriage, including in terms of family rights and obligations. Third: Inheritance rights: Adopted children have the right to be treated as heirs to their adoptive parents, as if they were biological children. Fourth: Severance of civil relations with biological parents: With the adoption, all civil legal relations between the adopted child and their biological parents are automatically severed.²³

In the context of positive law, the guardianship relationship between an adopted child and adoptive parents is regulated by Law Number 35 of 2014, Article 1, Paragraph 9, concerning Amendments to Law Number 23 of 2002. It

Perbandingan Madzhab 1, no. 1 (31 Oktober 2023): hlm. 34., <https://doi.org/10.55210/jpmh.v1i1.286>.

²¹ Soeroso, *Perbandingan Hukum Perdata* (Jakarta: Sinar Grafika, 1992), hlm. 178.

²² Nur Aisyah, "Anak Angkat Dalam Hukum Kewarisan Islam Dan Hukum Perdata," *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah dan Hukum* 2, no. 1 (30 Juni 2020): hlm. 107., <https://doi.org/10.24252/el-iqthisadi.v2i1.14137>.

²³ I Dewa Nyoman Gde Nurchana dan I Kadek Adi Surya, "Kedudukan Anak Angkat Ditinjau Dari Hukum Adat Bali, Hukum Islam Dan Hukum Perdata Di Indonesia," *Unizar Law Review* 4, no. 2 (2021): hlm. 152.

states that an adopted child is a child whose rights are transferred from the control of their biological parents, legal guardian, or other party responsible for their care, education, and maintenance, to the family environment of the adoptive parents through a court decision or ruling.

Based on this provision, it can be concluded that guardianship rights over the child are transferred entirely to the adoptive parents. Therefore, the adoptive parents have full legal responsibility for the adopted child, including the management of the child's assets. Once the adopted child has reached adulthood, the adoptive parents are obligated to account for all asset management actions undertaken during the guardianship period.²⁴

Comparative Analysis of Islamic Law and Civil Law on the Role and Authority of Adoptive Fathers in Marriage Guardianship

In Islamic law, the position of a marriage guardian is a requirement for a valid marriage, especially for women. The marriage guardian must be from the male lineage (*nasab*), such as the biological father, grandfather, brother, or uncle. Because there is no bloodline relationship between an adopted child and the adoptive father, Islamic law does not recognize the adoptive father as a marriage guardian. This refers to the Prophet's hadith, which states that a marriage without a guardian is invalid,²⁵ and is reinforced by the provisions in Surah Al-Ahzab, verses 4–5, which emphasize that adopted children remain dependent on their biological father.

Unlike Islamic law, in civil law, specifically according to Staatsblad 1917 No. 129 and the Civil Code, adopted children have equal status to biological children if the adoption is legally carried out through a court order. In this position, the adoptive father is recognized as the legal parent.²⁶ Consequently, under certain circumstances, the adoptive father can be authorized to act as guardian in the marriage of his adopted child, provided all legal procedures for adoption have been fulfilled.

The similarity between the two legal systems is the recognition that adopted children have the right to protection and care. However, the difference lies in guardianship. Islamic law maintains the principle of lineage as the basis for guardianship, while civil law grants authority to the adoptive father based on legal

²⁴ Winda dan Firdausiyah, "Status Anak Angkat (Adopsi) Dan Akibat Hukumnya," hlm. 39.

²⁵ Muhammad Lutfi Syarifuddin, "Tinjauan Umum Tentang Wali Nikah," *An-Nuha : Jurnal Kajian Islam, Pendidikan, Budaya dan Sosial* 5, no. 1 (2018): hlm. 119.

²⁶ Winda dan Firdausiyah, "Status Anak Angkat (Adopsi) Dan Akibat Hukumnya," hlm. 34.

aspects and legal protection. Therefore, in Islamic law, there is no compromise regarding the role of the adoptive father as guardian, while civil law allows a limited scope if legal procedures have been followed.

The legal implications are significant, particularly regarding the validity of marriages conducted by adoptive guardians. Under Islamic law, a marriage conducted by an adoptive father is considered invalid because it does not meet the required guardianship requirements.²⁷ The marriage contract can be annulled and must be repeated with a legal guardian or a judge. Conversely, under civil law, as long as the appointment is valid, there is no obstacle to the adoptive father acting as guardian, and the marriage is administratively valid.

In Indonesia, which adheres to a dual legal system (religion and state), this often creates a dilemma. Many people consider the marriage of an adopted child legitimate if the adoptive father is the guardian, as it has received court approval. However, in religious practices, such as those at the Office of Religious Affairs (KUA), such marriages must still comply with Islamic law. Therefore, to avoid discrepancies, a legal guardian is often used when there is no legitimate lineage guardian.

Thus, Islamic law is stricter in determining who is entitled to be a marriage guardian, adhering to the principles of lineage and sharia validity. Meanwhile, civil law places more emphasis on the protection and formal legal recognition of the relationship between parents and adopted children. In Indonesian legal practice, it is essential to carefully consider these two aspects to avoid marriages that are valid under state law but invalid under religious law.

D. Conclusion

Based on the discussion above, there are fundamental differences between the two legal systems. Under Islamic law, an adoptive father does not have the authority to act as a marriage guardian due to his lack of a blood relationship with the adopted child, and the marriage guardian must be a biological male descendant. Meanwhile, in civil law, based explicitly on Staatsblad 1917 No. 129, an adopted child legally adopted by a court decision has the same legal standing as a biological child, so that, under certain circumstances, the adoptive father can act as a marriage guardian.

This difference has profound implications for the validity of a marriage. A marriage that is valid under civil law is not necessarily valid under Islamic law if it does not meet the requirements for a guardian established by sharia. Therefore,

²⁷ Hasibuan, "Kedudukan Anak Angkat dalam Hukum Islam," hlm. 100.

in the context of Indonesian society, which implements a dual legal system (religious law and state law), it is crucial to ensure that the marriage guardianship process meets both legal standards to avoid future legal or moral issues.

References

- Ahmad Zaky Nauval, Mhd Amar Adly, dan Heri Firmansyah. "Kaidah Yang Terdapat Pada Bab Wali Nikah." *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 2, no. 4 (7 Juli 2024): 131–38. <https://doi.org/10.59246/aladalah.v2i4.949>.
- Aisyah, Nur. "Anak Angkat Dalam Hukum Kewarisan Islam Dan Hukum Perdata." *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah dan Hukum* 2, no. 1 (30 Juni 2020): 101. <https://doi.org/10.24252/el-iqthisadi.v2i1.14137>.
- al-Zuhaili, Wahbah. *Fiqh al-Islam Adillatuhu*. Jakarta: Gema Insani, 2011.
- Djubaedah, Neng. *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*. Jakarta: Sinar Grafika, 2010.
- Fauziah, Evi. *Analisis Yuridis Terhadap Akad Nikah Ulang Karena Bapak Angkat Menjadi Wali Nikah Di Pernikahan Pertama (Studi Kasus di KUA Kecamatan Kartoharjo Kota Madiun)*. Surabaya: Fakultas Syariah dan Hukum Universitas Islam Negeri Sunan Ampel, 2018.
- Fauziah, Tatik. *Keabsahan Ayah Angkat Sebagai Wali Nikah Menurut Hukum Islam*. Jakarta: Program Studi Perbandingan Mazhab Fakultas Syariah Dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2023.
- Haar, Hans H.M. Ter, Wilbert D. Kolkman, dan Leon C.A. Verstappen. *Hukum tentang orang, hukum keluarga dan hukum waris di Belanda dan Indonesia*. Bali: Pustaka Larasan, t.t.
- Hasibuan, Zulfan Efendi. "Kedudukan Anak Angkat dalam Hukum Islam." *Yurisprudencia: Jurnal Hukum Ekonomi* 5, no. 1 (2019). <https://doi.org/10.24952/yurisprudencia.v5i1.1729>.
- Mustafid. *Hukum Keluarga: Perkawinan dalam Islam dan Adat*. Kota Kupang: Tangguh Denaya Jaya, 2023.
- Nanda, Rizky, dan Syarifah Gustiawati Mukri. "Studi Komparatif Antara Hukum Islam dan Hukum Perdata Belanda (BW) Tentang Wali Nikah Bagi Anak

- Angkat." *Mizan: Journal of Islamic Law* 2, no. 1 (11 April 2018). <https://doi.org/10.32507/mizan.v2i1.210>.
- Nurcana, I Dewa Nyoman Gde, dan I Kadek Adi Surya. "Kedudukan Anak Angkat Ditinjau Dari Hukum Adat Bali, Hukum Islam Dan Hukum Perdata Di Indonesia." *Unizar Law Review* 4, no. 2 (2021).
- Redaksi, Tim. *Kompilasi Hukum Islam*. Bandung: Nuansa Aulia, 2009.
- Rofiq, Ahmad. *Hukum Islam di Indonesia*. Jakarta: PT. Raja Grafindo Persada, 1998.
- Soemiyati, Soemiyati. *Hukum Perkawinan dan UU Perkawinan*. Yogyakarta: PT. Liberty, 1986.
- Soeroso. *Perbandingan Hukum Perdata*. Jakarta: Sinar Grafika, 1992.
- Syarifuddin, Amir. *Hukum perkawinan Islam di Indonesia, Antara Fiqh Munakahat dan Undang-undang Perkawinan*. Jakarta: Kencana, 2006.
- . *Ushul Fiqh Jilid 2*. Jakarta: Kencana, 2009.
- Syarifuddin, Muhammad Lutfi. "Tinjauan Umum Tentang Wali Nikah." *An-Nuha : Jurnal Kajian Islam, Pendidikan, Budaya dan Sosial* 5, no. 1 (2018).
- Winda, Winda, dan Vita Firdausiyah. "Status Anak Angkat (Adopsi) Dan Akibat Hukumnya: Studi Komparasi Hukum Islam Dan Hukum Positif." *AL-MUQARANA: Jurnal Perbandingan Madzhab* 1, no. 1 (31 Oktober 2023): 30–45. <https://doi.org/10.55210/jpmh.v1i1.286>.
- Yunita, Masna, dan Intan Sahera. "Wakalah Wali Nikah (Studi Kantor Urusan Agama Ranah Pesisir)." *Jurnal AL-AHKAM* 13, no. 1 (18 Juni 2022): 91–106. <https://doi.org/10.15548/alakhkam.v13i1.4428>.