

## Informal Child Adoption and Legal Uncertainty in Local Communities in Indonesia

Nadiah Azzahra Bachdlar<sup>1\*</sup>, Frangky Suleman<sup>2</sup>, Wira Purwadi<sup>3</sup>, Firmansyah Pratama Alim<sup>4</sup>

### \*Correspondence:

Email:  
nadiah.bachdlar@iain-manado.ac.id

### Affiliation:

<sup>1</sup> Institut Agama Islam  
Negeri Manado, Indonesia

<sup>2</sup> Institut Agama Islam  
Negeri Manado, Indonesia

<sup>3</sup> Institut Agama Islam  
Negeri Manado, Indonesia

<sup>4</sup> Universitas  
Dumoga Kotamobagu,  
Indonesia

### Article History:

Revised: 15 March, 2025

Revised: 11 May, 2025

Accepted: 17 June, 2025

### Keyword:

Child adoption,  
Court appointment,  
Islamic law,  
Social justice,  
Local communities.

### Abstract

This study examines informal child adoption practices in Girian Permai Village, Bitung City, Indonesia, where children are adopted through family agreements without court approval as required by national law. Using a normative-empirical legal approach that combines statutory analysis, field observation, and semi-structured interviews with five foster parents and a local official, this research finds that low legal literacy, perceived high procedural costs, and the dominance of kinship-based customs contribute to the persistence of informal adoptions. Such practices create legal uncertainty for children, including the lack of formal recognition in family registries, inheritance rights, and access to administrative services such as health insurance and education. From an Islamic legal perspective, informal adoption raises concerns over lineage (*nasab*), guardianship, and inheritance, which may lead to long-term social and legal vulnerability. This study emphasizes the need for harmonizing formal law and local practices through community-based legal education, simplified court procedures, and collaboration with religious and traditional leaders to ensure child protection and social justice.

*Studi ini mengkaji praktik adopsi anak informal di Desa Girian Permai, Kota Bitung, Indonesia, di mana anak-anak diadopsi melalui perjanjian keluarga tanpa persetujuan pengadilan sebagaimana disyaratkan oleh hukum nasional. Menggunakan pendekatan hukum normatif-empiris yang menggabungkan analisis undang-undang, pengamatan lapangan, dan wawancara semi-terstruktur dengan lima orang tua asuh dan seorang pejabat setempat, penelitian ini menemukan bahwa literasi hukum yang rendah, biaya prosedural yang dirasakan tinggi, dan dominasi kebiasaan berbasis kekerabatan berkontribusi pada persistensi adopsi informal. Praktik semacam itu menciptakan ketidakpastian hukum bagi anak-anak, termasuk kurangnya pengakuan formal dalam pendaftaran keluarga, hak warisan, dan akses ke layanan administrasi seperti asuransi kesehatan dan pendidikan. Dari perspektif hukum Islam, adopsi informal menimbulkan kekhawatiran tentang garis keturunan (*nasab*), perwalian, dan warisan, yang dapat menyebabkan kerentanan sosial dan hukum jangka panjang. Studi ini menekankan perlunya harmonisasi hukum formal dan praktik lokal melalui pendidikan hukum berbasis masyarakat, prosedur pengadilan yang disederhanakan, dan kolaborasi dengan tokoh agama dan adat untuk memastikan perlindungan anak dan keadilan sosial.*

## INTRODUCTION

The practice of child adoption is a complex legal and social issue, reflecting the interaction between formal legal systems, religious values, and local cultures (Cotterrell, 2017). In Indonesia, child adoption has gained a solid legal foundation, primarily through Law Number 35 of 2014 concerning Child Protection and Government Regulation Number 54 of 2007 concerning implementing Child Adoption. The regulation emphasizes that the adoption of a child must go through a court determination to ensure legal protection for the child, as well as ensure that the adoption process is carried out in the best interest of the child (Kasdi & Anwar, 2019; Nurlaelawati & van Huis, 2019). However, in social reality, the implementation of adoption is often not in line with these formal rules (Wardhani *et al.*, 2022). In various areas, including Girian Permai Village, Bitung City, the practice of adopting children without a court determination is still prevalent. This shows the tension between positive state laws and social practices passed down from generation to generation.

The phenomenon of informal child adoption cannot be separated from the complexity of people's motivations, which include emotional needs, economic factors, spiritual reasons, and cultural pressure. Married couples who do not have children, large families who want to help their relatives who are unable to take care of children, and individuals who adopt children as a form of compassion often choose the informal route because it is considered faster, cost-effective, and by local values (Iqbal, 2020; Maryam *et al.*, 2022). However, this approach leaves significant legal issues. Without a court order, the legal status of adopted children becomes blurred: they do not legally obtain inheritance rights, do not have a clear natural relationship, and cannot be guaranteed legal protection in the future in the event of family conflicts (Rahman, 2024). This condition is contrary to the principles of social justice, especially in protecting children's rights as a vulnerable group that must receive special attention from the state and society (Collins, 2017; Stevens *et al.*, 2020).

More than just an administrative matter, the adoption of a child without formal legality is also contrary to the provisions of Islamic law. In the Islamic perspective, child adoption is known as *tabanni*, which has been limited by Sharia since the beginning (Kutty, 2024; Yassari, 2015). The Qur'an expressly prohibits the confinement of adopted children to their adoptive fathers, as stated in the Qur'an. al-Ahzab verses 4-5, which states that Allah does not make adopted children biological children and commands Muslims to call them by the name of their biological father (Mohd & Kadir, 2020). The Compilation of Islamic Law (KHI) also limits the rights of adopted children, who only obtain inheritance rights through a mandatory will (KHI Article 209), do not have the right of marital guardianship, and do not automatically become *mahram*. Therefore, if the community continues to carry out the adoption of children outside the legal channels, they indirectly violate the provisions of sharia and can cause legal *haram* to children in the future (Kasdi & Anwar, 2019).

The low level of legal literacy among rural communities is one of the main factors in the rise of adoption without a court order. According to the legal system theory put forward by Lawrence M. Friedman (2011), the effectiveness of law is primarily determined by three components: legal substance, legal structure, and legal culture. The absence of one of the three will result in inequality in applying the law in society.

In the case of child adoption in Girian Permai, although the legal substance was available, the weak legal structure (access to the courts) and the low legal culture (the community's awareness and understanding of the law) caused informal practices to continue. This strengthens the argument that the issue of child adoption is not only a legal-formal issue, but also a matter of social justice and local governance that is inclusive of local wisdom (Gauri, 2009; Ngira, 2019).

Thus, child adoption without a court determination in Girian Permai must be studied more comprehensively. This research seeks to explain the practices that occur in society and assess their legal consequences from the perspective of Islamic law and positive law. This article departs from two main questions: (1) How does the practice of child adoption without a court determination occur in Girian Permai Village? Moreover, (2) What are the legal consequences for the nasab, inheritance, guardianship, and mahraramah of adopted children from the perspective of Islamic law? With an interdisciplinary approach and a social justice perspective, this research is expected to contribute conceptually and practically to formulating inclusive, religious, and constitutional child protection policies.

## **METHODS**

This study uses a normative-empirical legal approach to comprehensively understand the practice of child adoption without a court determination in Girian Permai Village, Bitung City. This approach combines the study of written legal norms (positive law and Islamic law) with observation of their implementation in the community's social life. The normative approach examines relevant laws and regulations, such as Law Number 35 of 2014 concerning Child Protection, Government Regulation Number 54 of 2007, and the Compilation of Islamic Law (KHI). Meanwhile, an empirical approach is used to explore the social practices of people who carry out informal child adoption through field data collection (Salloch et al., 2012).

This research method is descriptive-qualitative, aiming to describe and understand social phenomena and their legal consequences in depth. Primary data was obtained through direct interviews with five adoptive parents who live in Girian Permai Village and one local government official, namely the Head of the Village. The interview technique was semi-structured, with open-ended question guidelines that allowed researchers to explore the interviewees' experiences, perceptions, and legal understanding of child adoption. In addition to interviews, participatory observation techniques are also used to observe firsthand how the practice of child adoption is carried out in their social environment, in terms of procedures and the basis of the decision (Moleong, 2021).

On the other hand, secondary data is collected through literature studies that include legal texts, official documents, and scientific literature. The legal materials studied included three categories. First are primary legal materials, namely laws and regulations such as the Child Protection Law, Government Regulation No. 54 of 2007, and provisions in the Compilation of Islamic Law. Second, secondary legal materials, namely the opinions of legal experts, academic books, and scientific journals relevant to child adoption and child protection from a positive and Islamic legal perspective.

Third, tertiary legal materials, namely legal dictionaries and encyclopedias, support understanding the basic concepts.

The data analysis process is carried out through qualitative analysis techniques with the stages of data reduction, data presentation, and conclusion drawn. The data obtained from the field and literature studies are first reduced, that is, filtered and selected only those relevant to the focus of the research. Furthermore, the data is presented as a systematic narrative to show the relationship between social practices, legal regulation, and Islamic values. Finally, conclusions were drawn based on the main findings associated with the theoretical framework and research objectives. This analysis process aligns with Huberman & Miles (2014) interactive model, which emphasizes the interconnectedness between data, analysis, and interpretation in socio-qualitative research.

This research was conducted for two months, from December 16, 2024, to February 16, 2025. The research location focused on Girian Permai Village, Bitung City, North Sulawesi, which was chosen purposively because it has a relatively high level of intensity in the practice of child adoption without going through the court. The researcher seeks to maintain the validity of the data by triangulating sources and methods, namely by comparing the results of interviews, observations, and administrative documents such as birth certificates and family cards obtained from the village and informants.

## RESULT AND DISCUSSION

### ***The Reality of the Practice of Informal Child Adoption in Girian Permai Village***

The practice of informal adoption in Girian Permai Village, Bitung City, reflects a social reality that is deeply rooted and widely accepted by the local community. Child adoption is generally carried out without going through a religious court, even though Law No. 35 of 2014 concerning Child Protection and Government Regulation No. 54 of 2007 concerning implementing Child Adoption explicitly require a court determination. The fundamental reason for this phenomenon lies in the public's perception that the court mechanism is complicated, costly, and does not provide practical benefits to their daily lives. Therefore, people prefer a family mechanism that is verbal and based on moral agreement as the main way to raise a child. This phenomenon signifies a structural gap between state law and local social practices, where formal legal norms do not function optimally due to the low accessibility of law at the grassroots community level (Akbar *et al.*, 2021; Salloch *et al.*, 2012).

The motivations for informal adoption in this study area are emotional, social, and cultural, reflecting a combination of family psychological needs and social pressures in the community. Married couples who have no children consider adoption as a way to supplement their home life (Joshi, 2017; Liao, 2016). At the same time, extended families are often encouraged to help relatives who cannot care for their children. Sometimes, motivation arises from empathy for orphans or abandoned children, so adoption is considered a noble social charity (Mohd & Kadir, 2020; Stevens *et al.*, 2020). Field evidence obtained from interviews with five adoptive parents shows that the adoption process is simple: it is only in the form of handing over the child, accompanied by informal conversations between families, without

official documents or legalization from the authorities. This social rationality shows that for local people, compassion and social solidarity are more important than formal legal certainty, so they do not need to go through state legal procedures (Brunkhorst, 2005).

The empirical findings of this study reveal that none of the informants fully understand the legal consequences of child adoption without a court order. All the adoptive parents interviewed admitted that they had never received legal socialization from religious courts or local social services. The Head of Girian Permai Village admitted that the practice of informal child adoption has become a hereditary habit and has rarely been legally questioned. The synergy between legal substance, legal structure, and legal culture determines the effectiveness of law. In the context of this study, the legal substance is available in the form of laws and government regulations (Pomaza-Ponomarenko *et al.*, 2024). However, the legal structure has not reached the community because access and costs are considered high. In contrast, the legal culture of the community still relies on family norms and local customs. Consequently, positive law fails to shape social behavior, and informal practices continue unimpeded (Adhilia *et al.*, 2025; Jainah, 2021; Salloch *et al.*, 2012).

The phenomenon of informal child adoption in Girian Permai creates tension between legal certainty and a sense of social justice. From a state law perspective, adoption without a court determination has no legal force. It creates administrative uncertainty, e.g., an adopted child cannot be included in the Family Card as a legal child, does not obtain inheritance rights from the adoptive parent, and does not have access to other civil rights such as social security or insurance. However, from a social perspective, this practice is considered fair and reasonable because it was born from a family agreement based on good intentions and social solidarity. This tension underscores that substantive justice in the local context often clashes with procedural justice in the country's legal system. Within the framework of social jurisprudence, this condition demands legal harmonization that can bridge formal law's interests and society's social reality.

This phenomenon impacts family law and child protection issues and has interdisciplinary implications for governance, human rights, and social justice (Brown & Alexander, 2020). From the perspective of local government, the sustainability of informal child adoption practices reflects the weak role of legal structures in protecting children's rights at the village or sub-district level. From the perspective of Islamic law, the practice of *tabanni* that equates adopted children with biological children has the potential to cause problems of *nasab*, *mahraman*, and inheritance, so that in *shari'i* it causes legal *mudharat* in the future (Kasdi & Anwar, 2019). Meanwhile, from the perspective of children's rights and social justice, adopted children taken without a court determination are in a vulnerable position, because formal legal guarantees in the event of internal family conflicts do not protect them (Dailey & Rosenbury, 2018; Fredman, 2016). Thus, the issue of informal child adoption must be seen as a multidimensional legal issue that demands synergy between normative, social, and cultural approaches so that the resulting legal policies can respond to the needs of the community substantively.

The final consequence of this practice is the formation of a space of legal uncertainty that has the potential to harm adopted children as the most vulnerable



parties. Without a court determination, the child does not have legal legitimacy as a subject of complete state protection, so all his rights depend on the good faith of the adoptive parents. In the long term, this uncertainty risks legal marginalization and social injustice, especially regarding inheritance rights, guardianship status, and access to public services. Therefore, this phenomenon underscores the urgency of community-based legal and policy reforms, which include simplifying adoption procedures in court, community-based legal education, and integrating local wisdom into legalization mechanisms. Only through a participatory and inclusive legal harmonization strategy can the national legal system ensure substantive justice for adopted children while strengthening public trust in state law.

### ***Inequality Between State Law and Public Legal Awareness***

The phenomenon of informal child adoption in Girian Permai Village confirms the sharp disparity between the state legal norms and the social practices of the local community. On the one hand, Indonesia's positive law has provided a clear legal framework through Law No. 35 of 2014 and Government Regulation No. 54 of 2007, affirming that child adoption must obtain a court determination to ensure legal certainty and protection of children's rights. However, on the other hand, local communities rely more on family and customary mechanisms as a means of social ratification of child adoption. The main reason for this discrepancy is society's perception that state legal procedures are complicated, bureaucratic, and expensive, while kinship practices are considered simpler and relevant to their social needs (Chelcea, 2016; Steenberg, 2021). This reflects a structural gap that makes it difficult for state law to penetrate the social space of grassroots communities.

Low legal literacy is a significant factor that causes inequality between formal norms and social practices. The community understands child adoption as a legally customary practice if it has received the blessing of the family without considering its formal legality. The results of the interviews show that most adoptive parents consider the parenting, affection, and fulfillment of the child's needs to be enough to make the child a full family member. From the perspective of legal sociology, this condition shows the weakness of legal culture, which is one of the important elements of legal effectiveness according to Lawrence M. Friedman (2011). Without a strong legal culture, regulations are only a normative text incapable of shaping social behavior, so informal practices continue even when they are contrary to positive law.

Field evidence shows that the public's ignorance of the obligation to determine the court has a direct impact on the legal status of adopted children. Children who are adopted informally cannot be included in the Family Card as legal children, do not have access to valid population documents, and have difficulty obtaining administrative rights such as insurance, education, and social security. In some cases, when the adoptive parents pass away, the adopted child does not get inheritance rights because they do not have a legal basis as an heir. This finding is in line with the view of Wolfgang Friedmann (2023) that the implementation of law in society depends on the legal structure and legal awareness of the community, and failure to do so will create a space for legal uncertainty. This uncertainty is a latent risk in any informal child adoption practice.

The inequality between state law and public legal awareness gives birth to a space of legal uncertainty that can potentially cause severe social impacts. Adopted children who are taken informally are in a position of legal and social vulnerability, as their status is entirely dependent on the good faith of the adoptive parents. In the context of children's rights as legal subjects, this condition violates the principle of preventive and repressive legal protection, which is the state's obligation (Drozдова et al., 2016). In the event of family conflict, divorce, or inheritance disputes, adopted children are at risk of legal marginalization, where their existence is ignored due to a lack of formal legal evidence. This phenomenon shows that inequality is not only a procedural issue, but also a social justice issue because children, as a vulnerable group, do not receive the guarantees of rights they should have (Spencer et al., 2019).

This inequality demands an interdisciplinary analysis because it touches on the legal, social, cultural, and human rights dimensions. From a positive legal perspective, weak regulatory implementation shows the need to improve legal accessibility through simpler procedures and more affordable costs. From the perspective of Islamic law, this practice can cause problems of *nasab*, *mahraman*, and inheritance rights, thus potentially causing legal *mudharat* that is contrary to Sharia principles. Meanwhile, from a social and human rights perspective, children who are adopted without state legal recognition are in the zone of social vulnerability because they have no formal legal protection against potential exploitation or neglect of their rights. Thus, the inequality between state law and people's legal awareness cannot be seen as a partial problem, but as a systemic challenge that requires a strategy of legal and social harmonization.

In the long run, this inequality can lead to a degradation of public trust in the national legal system if the state is not effectively providing solutions. Communities will continue to rely on informal mechanisms, while adopted children will remain in a weak legal position. For this reason, community-based legal reform strategies, such as community legal education, legal empowerment programs, and simplifying procedures for determining child adoption in court, are needed. Integrating traditional and religious leaders into the legalization mechanism is important to ensure that the legal process parallels local wisdom.

### ***Islamic Law's Perspective on Child Adoption***

From the perspective of Islamic law, adoption of children or *tabanni* has a normative basis that is fundamentally different from the concept of adoption in Indonesian positive law. Islamic sharia emphasizes that the adoption of children is allowed only in the context of parenting and protection (*kafalah*), not in the context of equating the status of adopted children with biological children. This is based on Allah's command in QS. al-Ahzab verses 4–5, which reject the adoption of a child by his adoptive father and obligate the maintenance of the child's *nasab* to his biological parents. The rationality of this sharia is to maintain the clarity of the *nasab* as part of *hifz al-nasab* (protection of offspring), which is one of the *maqāṣid al-sharī'ah* (Bima, 2023). In other words, Islam views child adoption not just as a social matter, but as a legal and moral issue that concerns the identity and honor of the family.

The prohibition of assigning adopted children to adoptive parents has far-reaching legal implications. Adopted children should not change the name of their

biological father in their legal identity, because the determination of false nasab will cause chaos in the lineage, guardianship, and inheritance. The Compilation of Islamic Law (KHI) in Indonesia adopts this principle in Article 171 and Article 209, which affirm that adopted children do not become the heirs of adoptive parents, except through the mechanism of a mandatory will of a maximum of one-third of the inheritance (Kasdi & Anwar, 2019). Empirical evidence from field interviews shows that most adoptive families in Girian Permai do not understand this principle, and they treat adopted children like biological children in full, including in the use of surnames. This situation shows a gap in Islamic legal literacy that can cause legal uncertainty and violation of Sharia principles in the future.

In addition to the issue of nasab, Islamic law also highlights the implications of mahraman and guardianship in child adoption. Adopted children of the opposite sex do not automatically become mahram for their adoptive parents (Ramadhanti & Satrianingsih, 2024). In practice in Girian Permai, girls who are adopted from infancy often grow up in the household of adoptive parents without sharia restrictions, so that it has the potential to cause violations of social ethics in Islam when the child reaches puberty. In addition, adopted children do not have the right to become guardians in marriage, so if the adoption is carried out without an understanding of Islamic law, the risk of marital guardianship invalidity may arise in the future. This comment emphasizes that the adoption of informal children not only raises problems of state administration, but also opens up the potential for violations of Sharia if it is not accompanied by adequate religious education (Harry et al., 2024; Yilmaz, 2024).

The consequence of the practice of adopting children without paying attention to Islamic norms is the occurrence of incompatibility between the social structure and Sharia norms, which can give birth to legal uncertainty and social injustice. Adopted children who do not have inheritance rights will have the potential to experience economic marginalization if the adoptive parents die without preparing a mandatory will. On the other hand, abandoning the principle of mahrara poses ethical risks that can damage the family order in the future. From the perspective of social jurisprudence, this situation shows that Sharia norms that are ignored at the level of local practice can cause substantive injustices for both children and families. Therefore, harmonization between positive law and Islamic law is not just an administrative necessity, but a moral and social demand to maintain the child's rights and the family's stability (Friedmann, 2023).

The above phenomenon emphasizes the urgency of Islamic law education at the community level so that Sharia and state law can carry out child adoption. In the context of Girian Permai Village, scholars, religious leaders, and religious courts are very important in counseling nasab, mahraman, and obligatory wills. The community-based legal empowerment approach is relevant to building a legal culture that aligns with Sharia values and national legal certainty. This strategy not only prevents the erroneous practice of child adoption under Islamic law but also strengthens the integration of state law and religious law, so that child protection becomes more comprehensive.

The harmonization between Islamic law and positive law is a strategic solution to overcome the legal vulnerability of adopted children in a society that still holds strong traditional practices. Religious courts can take a proactive role through simplifying



procedures for determining child adoption and counseling on mandatory wills to the community. This collaboration needs to be strengthened with the involvement of traditional and religious leaders, so that the process of legalizing child adoption is not disconnected from the local cultural context. Thus, the national legal system will be able to guarantee legal certainty, maintain the principles of *maqāṣid al-sharī'ah*, and realize social justice for adopted children.

### ***Positive Legal Implications for Adopted Children Without Determination***

Legally positive, the adoption of a child without a court determination has an invalid legal status, because it is contrary to the provisions of Law No. 35 of 2014 concerning Child Protection Article 39 paragraph (1) and Government Regulation No. 54 of 2007 Article 20 (Rahman, 2024). This regulation expressly stipulates that the adoption of a child must be carried out in the child's best interest and through a formal legal process to obtain state legitimacy. The normative reasons behind the obligation to determine the court are to provide legal certainty and administrative protection, such as registration in the Family Card, a new birth certificate, social security, and educational rights. Without this legal process, adopted children are only socially recognized, but have no formal legal legitimacy that protects their rights in the eyes of the state (Mohd & Kadir, 2020).

The results of the study in Girian Permai Village show that adopted children who are taken informally face serious obstacles in the processing of population documents and other administrative rights. Adoptive parents cannot include the child in the Family Card as a legal child, thus having an impact on access to formal education, health services, and social security. In one case identified, an adopted child was denied school registration because he did not have official documents proving the legal relationship with his adoptive parents. This condition shows a real administrative vulnerability, where the adopted child is in a marginal position due to the absence of a formal legal basis. This evidence strengthens the argument that non-compliance with legal procedures is not only normative, but also has practical impacts that are detrimental to children's rights.

In addition to administrative vulnerabilities, adopting a child without a court order has profound implications in the civil field, particularly regarding inheritance and guardianship rights. According to positive law, adopted children can only be recognized as heirs after a court determination or through a mandatory will mechanism, as stated in the Compilation of Islamic Law Article 209 (Kasdi & Anwar, 2019). Without this legal basis, the adopted child has no legal standing in inheritance disputes and cannot file a civil claim for the inheritance of the adoptive parents. The interview's findings show that some families do not prepare inheritance or will documents, so if the adoptive parent dies, the adopted child risks not receiving any rights. These comments confirm that non-compliance with legal procedures has a long-term impact, not only on population administration, but also on the economic security and civil rights of adopted children.

The absence of a court determination creates a space of legal uncertainty that is dangerous for adopted children. Their status is unclear in the eyes of the law, so all their rights depend only on the good faith of the adoptive parents. In the event of a family conflict, divorce, or inheritance dispute, the adopted child is almost always in

a weak position because they do not have formal legal evidence. In Kutty (2024), this condition shows the failure of preventive protection because the state was not present from the beginning, and repressive protection is difficult to provide because there is no legal basis to protect adopted children. The consequence is legal marginalization, where children are beyond the scope of state protection, which is contrary to the principles of social justice and the rights of the child as a subject of law.

The positive legal implications of informal child adoption must be viewed interdisciplinarily, as the impact extends to the social, administrative, and human rights spheres. From the governance perspective, this phenomenon shows the failure to penetrate state law at the local level. From a human rights perspective, this condition violates the principle of non-discrimination and the child's best interests, as stipulated in the Convention on the Rights of the Child, which Indonesia has ratified through Presidential Decree No. 36 of 1990. Meanwhile, from a social perspective, the adoption of children without legal legitimacy expands the potential for exploitation and neglect of children's rights, as there is no legal mechanism that binds adoptive parents to formal responsibility (Bima, 2023; Drozdova et al., 2016; Mohd & Kadir, 2020; Ngira, 2019). This analysis reinforces the urgency of reforming child adoption policies to be more inclusive, efficient, and in favor of substantive justice for adopted children.

In the long run, the adoption of children without a court determination has the potential to lower the legitimacy of state law in the eyes of the public and leave generations of adopted children without adequate legal protection. A positive legal reform strategy combining three main steps is needed to prevent this. First, simplifying the procedure for child adoption in religious courts so that it is more accessible to the lower middle class. Second, legal empowerment programs through community legal education, so that the public understands the legal consequences and benefits of formal protection. Third, synergy between the government, religious courts, and local leaders is needed to ensure that the legalization process does not contradict local wisdom. With these measures, the state can remove the space of legal uncertainty, improve the protection of children's rights, and at the same time build social trust in the national legal system by the vision of social jurisprudence and inclusive justice carried out by this journal.

### ***The Need for Legal Harmonization and a Social-Based Approach***

The phenomenon of informal child adoption in Girian Permai Village emphasizes the urgency of legal harmonization between the state's formal legal system and the socio-cultural practices of the community. The inequality that has occurred so far shows that positive law is top-down, but not entirely accepted at the grassroots level due to the low accessibility of the law, high procedural costs, and the perception that the judicial process is irrelevant to the community's social needs. Within the framework of social jurisprudence, the success of a legal system is determined not only by the existence of formal norms, but also by its ability to interact with local social and cultural norms. Therefore, legal harmonization is the key to eliminating the space for legal uncertainty while ensuring substantive justice for adopted children.

Legal harmonization efforts must adopt a social-participatory approach, involving community leaders, religious leaders, village officials, and religious courts in one legal service ecosystem. The results of the interviews show that most adoptive parents are reluctant to go through court proceedings because they are considered expensive and cumbersome, and do not understand the legal consequences of informal child adoption. Thus, community-based legal education is a strategic step to increase legal literacy and foster public awareness about the urgency of legalizing child adoption. Field evidence shows that when communities are provided with clear information and assistance from local authorities, they are more open to considering legal avenues, as the process is no longer perceived as a social and financial burden.

The legal empowerment approach has proven effective in the context of community-based legal reform in various developing countries. According to Hilbink & Salas (2021), this strategy focuses on empowering people to use the law to protect their rights, not just become the object of state policy. In the context of Girian Permai, the application of this model can be in the form of free legal consultation programs in urban villages, assistance in making adoption documents, and integration of legal socialization with social or religious activities. This comment confirms that the power of law lies not only in regulations, but also in the capacity of society to understand and use them. Thus, legal empowerment becomes an effective bridge in harmonizing state law with entrenched social practices.

Legal harmonization also requires the integration of local wisdom so that the process of legalizing child adoption does not conflict with the social values that exist in the community. Customary-based family mechanisms dominate the practice of child adoption in Girian Permai, so rigid legal procedures have the potential to be rejected if they do not accommodate cultural aspects. Therefore, religious courts and local governments can adopt collaborative mechanisms involving traditional or religious leaders in the adoption verification process, so that state legalization and social legitimacy go hand in hand. The positive consequences of this model are increased community legal compliance, decreased illegal adoption practices, and the creation of a more inclusive sense of social justice.

The success of legal harmonization depends on multi-stakeholder synergy between the government, religious courts, social services, community leaders, and legal educational institutions. The government can facilitate a simple and inexpensive adoption process, religious courts provide a fast track for the determination of adoption, social services oversee the protection of children administratively, while traditional and religious leaders strengthen the social and moral legitimacy of the process. This synergy solves the problem of legal uncertainty and strengthens local governance responsive to social needs and human rights. In other words, collaboration-based legal harmonization will be a model of sustainable legal reform (Yassari, 2015).

In the long run, legal harmonization and a social-based approach will result in an inclusive, adaptive, and equitable child protection system. When people begin to trust and use state laws, the practice of informal adoption will decrease, legal uncertainty decreases, and the rights of adopted children will be comprehensively protected. In addition, this harmonization model makes an important academic contribution to developing social jurisprudence and family law in Indonesia, as it

shows how the interaction of formal law, customary law, and Islamic law can produce substantive justice across cultures. Thus, Girian Permai's experience can be a scientific reference for building a participatory national child adoption policy based on local wisdom and in line with human rights principles.

## CONCLUSION

The phenomenon of child adoption without a court determination that occurred in Girian Permai Village, Bitung City, is a concrete reflection of the weak integration between formal legal norms, Islamic Sharia principles, and local cultural practices. The people in this region are still very dependent on the family system and customs in resolving social affairs, including in terms of child adoption. The adoption process is carried out informally, through oral agreements and the handover of the child without legal documents or court involvement, which is considered something troublesome and unnecessary. However, this practice has severe consequences in terms of protecting children's rights, both in terms of positive law and Islamic law. From the perspective of state law, adopting a child without a court decision has no legal force. It cannot be used as a basis for managing administrative rights such as population documents, inheritance rights, and social security. Meanwhile, in Islamic law, this practice is contrary to the principles of clarity of nasab, guardianship, mahraman, and distribution of inheritance. Adopted children cannot be assigned to their adoptive parents, do not automatically become mahram, and do not have inheritance rights except through a mandatory will, as stipulated in QS. al-Ahzab verses 4–5 and Article 209 of the Compilation of Islamic Law. In addition, the weak legal literacy of the community causes neglect of children's rights. It can potentially cause legal uncertainty in the long term, especially if internal conflicts arise in the family. The absence of a legal structure responsive to the conditions of local communities is a reinforcing factor for informal legal practices that are far from the protection of the state and the principles of justice.

Therefore, systemic and structured efforts are needed to address this problem through an integrative and participatory approach. The government, primarily through religious justice institutions and social services, must implement community-based legal education that grassroots communities can access directly. The educational material is not only limited to legal procedures, but also explains the value of justice, protection of children's rights, and Islamic principles that underlie the arrangement of child adoption. In addition to education, the child adoption system through the courts must be simplified to be more friendly to the lower middle class. Religious courts can create fast-track or free legal consultation services to encourage people to adopt legal channels. On the other hand, collaboration between religious leaders, traditional leaders, and village government officials needs to be strengthened to synergize local cultural practices with the provisions of national and religious laws. Education on the importance of mandatory wills to protect the inheritance rights of adopted children also needs to be expanded, considering the lack of public understanding of this mechanism. In the long term, multidisciplinary academic studies need to be developed to formulate a legal model for child adoption that can answer the social needs of local communities while still upholding the principles of legal certainty, social justice, and Sharia values. Thus, the national legal

system will be more inclusive and adaptive in guaranteeing children's rights as part of a joint effort to uphold justice and sustainably ensure the welfare of society.

## ACKNOWLEDGMENT

Thank you to all parties who have contributed to the preparation of this article, especially to the informants in Girian Permai Village, Bitung City, who have been willing to take the time and share their experiences honestly regarding the practice of child adoption in their environment. The author also expressed his gratitude to the village officials and local community leaders who have provided access to data and information that is important for the success of this research.

## REFERENCES

- Adhilia, L. T. F., Wiwin, W., Aris, A., Jufri, S., Syahril, M. A. F., & Yasmin, M. (2025). Pembangunan Hukum Pada Aspek Budaya Hukum Masyarakat. *Innovative: Journal Of Social Science Research*, 5(1), 3630–3642. <https://doi.org/10.31004/innovative.v5i1.18027>
- Akbar, A. A., Ashar, S. M., & Simonson, J. (2021). Movement law. *Stan. L. Rev.*, 73, 821.
- Bima, J. T. (2023). *The Concept of Kafalat Al-Yateem and its Application on Children with Unknown Parents in Saudi Arabia*. University of Washington.
- Brown, T., & Alexander, R. (2020). *Child Abuse and Family Law*. Routledge. <https://doi.org/10.4324/9781003115168>
- Brunkhorst, H. (2005). *Solidarity: From civic friendship to a global legal community*. mit Press.
- Chelcea, L. (2016). Kinship of Paper: Genealogical Charts as Bureaucratic Documents. *PoLAR: Political and Legal Anthropology Review*, 39(2), 294–311. <https://doi.org/10.1111/plar.12195>
- Collins, T. M. (2017). A child's right to participate: Implications for international child protection. *The International Journal of Human Rights*, 21(1), 14–46. <https://doi.org/10.1080/13642987.2016.1248122>
- Cotterrell, R. (2017). *Law, Culture and Society*. Routledge. <https://doi.org/10.4324/9781351217989>
- Dailey, A. C., & Rosenbury, L. A. (2018). The new law of the child. *The Yale Law Journal*, 1448–1537. <https://www.jstor.org/stable/45222578>
- Drozдова, A. M., Gulakova, V. Y., Ivanchenko, E. A., Lesnichenko, I. P., & Tereshchenko, E. A. (2016). The Current State of the System of Mechanisms of Realisation and Protection of the Rights of the Child: Conceptual and Legal Aspects. *International Journal of Environmental and Science Education*, 11(18), 10713–10728. <https://eric.ed.gov/?id=EJ1120800>
- Fredman, S. (2016). Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights. *Human Rights Law Review*, 16(2), 273–301. <https://doi.org/10.1093/hrlr/ngw001>
- Friedman, L. M. (2011). *The human rights culture: A study in history and context*. Quid Pro Books.
- Friedmann, W. (2023). *Law in a changing society*. Univ of California Press.
- Gauri, V. (2009). How do local-level legal institutions promote development? *World Bank Policy Research Working Paper*, 5108. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1503802](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503802)
- Harry, M., Saifullah, S., Jundiani, J., & Fajarani, M. (2024). Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well-Being of Women and Children: A Case Study Conducted in Malang Regency, East Java. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(3), 1526.



- <https://doi.org/10.22373/sjhk.v8i3.19566>
- Hilbink, L., & Salas, V. (2021). Advancing human rights through legal empowerment of the disadvantaged. In *Research Handbook on Human Rights and Poverty*. Edward Elgar Publishing. <https://doi.org/10.4337/9781788977517.00035>
- Huberman, A., & Miles, M. B. (2014). *Qualitative data analysis a methods sourcebook*. Thousand Oaks, California SAGE Publications, Inc.
- Iqbal, M. (2020). *Psikologi Pernikahan: Menyelami Rahasia Pernikahan*. Gema Insani.
- Jainah, Z. O. (2021). *Budaya Hukum Penegak Hukum dalam Pemberantasan Tindak Pidana Narkotika-Rajawali Pers*. PT. RajaGrafindo Persada.
- Joshi, A. (2017). Legal Empowerment and Social Accountability: Complementary Strategies Toward Rights-based Development in Health? *World Development*, 99, 160–172. <https://doi.org/10.1016/j.worlddev.2017.07.008>
- Kasdi, A., & Anwar, K. (2019). Inheritance Distribution of Adopted Children in The Perspective of Customary Law and Islamic Law Compilation: Case Study of the Application of Inheritance Law in Kudus. *Al-Ahkam*, 29(2), 141. <https://doi.org/10.21580/ahkam.2019.29.2.4203>
- Kutty, F. (2024). Islamic Perspectives on Adoption. *The Oxford Handbook of Religious Perspectives on Reproductive Ethics*, 239.
- Liao, S. M. (2016). The Right of Children to Be Loved 1. In *What is Right for Children?* (pp. 347–363). Routledge. <https://doi.org/10.4324/9781315547442-22>
- Maryam, S., Mahyiddin, Z., & Faudiah, N. (2022). *Ilmu Kesejahteraan Keluarga*. Syiah Kuala University Press.
- Mohd, A., & Kadir, N. A. (2020). Protection of Adopted Children's Rights to Custody and Maintenance: An Appraisal of the Law Governing Muslims in Malaysia. In *The Asian Yearbook of Human Rights and Humanitarian Law* (pp. 183–204). Brill | Nijhoff. [https://doi.org/10.1163/9789004431768\\_009](https://doi.org/10.1163/9789004431768_009)
- Moleong. (2021). *Metodologi Penelitian Kualitatif*. Rosdakarya.
- Ngira, D. O. (2019). *Examining the Role of Informal Justice Systems in Child Rights Protection in Kenya: A Case Study of the Kipsigis* [Utrecht University]. <https://dspace.library.uu.nl/handle/1874/385955>
- Nurlaelawati, E., & van Huis, S. C. (2019). The status of children born out of wedlock and adopted children in Indonesia: Interactions between islamic, adat, and human rights norms. *Journal of Law and Religion*, 34(3), 356–382. <https://doi.org/10.1017/jlr.2019.41>
- Pomaza-Ponomarenko, A., Leonenko, N., Cherniahivska, V., Lehan, I., & Puzanova, G. (2024). Dynamics of legal transformtins: Assessment of impact on society and analysis of determinations of changes in the legislative sphere. *Multidisciplinary Reviews*, 7, 2024spe037. <https://doi.org/10.31893/multirev.2024spe037>
- Rahman, S. D. (2024). Perlindungan Hak Waris Anak Angkat dalam Pewarisan Harta Waris Menurut Hukum Perdata. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, 2(02).
- Ramadhanti, M. N., & Satrianingsih, A. (2024). The Law of Adopting Children in Islamic Fiqh and the Compilation of Islamic Law. *Journal of Family Law and Islamic Court*, 3(1). <https://ojs3.unismuh.ac.id/index.php/jflic/article/view/16912>
- Salloch, S., Schildmann, J., & Vollmann, J. (2012). Empirical research in medical ethics: How conceptual accounts on normative-empirical collaboration may improve research practice. *BMC Medical Ethics*, 13(1), 5. <https://doi.org/10.1186/1472-6939-13-5>
- Spencer, N., Raman, S., O'Hare, B., & Tamburlini, G. (2019). Addressing inequities in child health and development: towards social justice. *BMJ Paediatrics Open*, 3(1), e000503. <https://doi.org/10.1136/bmjpo-2019-000503>

- Steenberg, R. (2021). Legitimate corruption: Ethics of bureaucracy and kinship in Central Asia. *Studies of Transition States and Societies*, 13(1), 3–20. <https://www.ceeol.com/search/article-detail?id=960493>
- Stevens, C., Proctor, F., Rishworth, B., Boorman, A., Unwin, A., Featherstone, B., & Bilson, A. (2020). Rethinking child protection and adoption: achieving social justice in practice. *Critical and Radical Social Work*, 8(1), 125–132. <https://doi.org/10.1332/204986019X15663821773868>
- Wardhani, L. T. A. L., Noho, M. D. H., & Natalis, A. (2022). The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems. *Cogent Social Sciences*, 8(1). <https://doi.org/10.1080/23311886.2022.2104710>
- Yassari, N. (2015). Adding by Choice: Adoption and Functional Equivalents in Islamic and Middle Eastern Law. *American Journal of Comparative Law*, 63(4), 927–962. <https://doi.org/10.5131/AJCL.2015.0028>
- Yilmaz, I. (2024). *Sharia as Informal Law*. Routledge. <https://doi.org/10.4324/9781003482604>