



The Practice of Adoption in the Sasak Community and Its Implications for Marriage Law in Indonesia

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Abstract: Adopting a child is a tradition that has long been practiced by Arab society and continues to this day. The practice of adopting children when Islam came was then perfected by the Prophet Muhammad PBUH so that it has a basis in Islamic law. This study explores adoption practices in contemporary Sasak society and their implications for reformulating Islamic Marriage Law. This research uses a normative juridical approach analyzed with the theory of *maqāṣid al-sharī'ah*. The data analyzed are laws, legal regulations, and decisions of religious courts on the island of Lombok, West Nusa Tenggara regarding child adoption cases and norms regarding child protection as normative legal material. These data sources are collected through documentation techniques and analyzed using data compaction, display, and conclusion-drawing stages, employing analogical and teleological legal interpretation approaches. The study identifies three classifications of adopted children based on marital status and the presence of biological parents: legitimate children, illegitimate children, and children with unclear status. The research upholds the Islamic legal principle that adoption does not sever the child's lineage from their biological parents, even if their existence is unknown, and does not establish a lineage between the adopted child and their adoptive parents. The study has three implications for Islamic marriage law in Indonesia: including adoption provisions in the Marriage Law, eliminating the article that allows polygamy as a solution for childless couples, and adding requirements for marriages involving "unclear children" as authentic evidence to prove no blood relation between the prospective bride and groom, thus preventing invalid marriages.

Keywords: Adoption, fasid marriage, *maqāṣid al-sharī'ah*, Islamic law and Islamic family law

Abstrak: *Mengadopsi anak merupakan tradisi yang sejak lama telah dipraktikkan oleh masyarakat Arab yang terus dilakukan sampai saat ini. Praktik adopsi anak ketika Islam datang kemudian disempurnakan oleh Nabi Muhammad Saw, sehingga memiliki landasan dalam hukum Islam. Penelitian ini bertujuan untuk menggali data terkait praktek adopsi pada masyarakat Sasak kekinian dan implikasinya terhadap upaya reformulasi Hukum Perkawinan Islam. Penelitian tersebut menggunakan pendekatan yuridis normative dianalisis dengan teori maqāṣid al-sharī'ah. data yang dianalisis adalah undang-undang, aturan hukum dan putusan pengadilan agama di pulau Lombok, Nusa Tenggara Barat tentang perkara pengangkatan anak dan norma-norma tentang perlindungan anak sebagai bahan hukum normatif. Keduanya dikumpulkan melalui teknik dokumentasi dan dianalisis melalui tahapan pemadatan data, display data dan penarikan kesimpulan dengan memanfaatkan bantuan pendekatan tafsir hukum analogis dan teleologis. Penelitian ini menemukan tiga klasifikasi status anak angkat berdasarkan status perkawinan dan eksistensi orangtua kandungnya menjadi tiga (1) anak sah (2) anak tidak sah dan (3) anak tidak jelas. Penelitian ini tetap menguatkan prinsip hukum Islam tentang adopsi yang tidak memutus hubungan nasab anak dengan orang tua kandungnya sekalipun belum diketahui eksistensinya sekaligus tidak menyambungkan nasab anak angkat dengan orangtua angkatnya. Penelitian memiliki 3 implikasi terhadap hukum Perkawinan Islam di Indonesia (1) memasukkan materi tentang adopsi dalam UU Perkawinan (2) Menghapus pasal yang menjadikan poligami sebagai jalan keluar bagi pasangan yang tidak memiliki keturunan (3) menambah poin syarat sah perkawinan bagi anak dengan status “anak tidak jelas”, baik laki maupun perempuan, berupa adanya bukti autentik yang menunjukkan tidak adanya hubungan darah antara dua calon mempelai, guna menghindari terjadi pernikahan fasid.*

Kata Kunci: *Adopsi, nikah fasid, maqāṣid al-sharī'ah, hukum Islam dan hukum keluarga Islam*

Introduction

Adopting children is an ancient tradition that has evolved into a contemporary model of child protection. The concept and practice of adoption existed among the Arabs before Islam, and Muhammad PBUH exemplified it through his upbringing and adoption of Zaid bin Haritsah.¹ Interpretation scholars consider this practice the reason behind the revelation of verses 4-5 of Surah al-

¹ Ahmad Syukran Baharuddin et.al., “Biological Forensics in Preserving Lineage (Hifz Al-Nasab/Nasl),” *UMRAN-International Journal of Islamic and Civilizational Studies* 2, No. 2 (2015), p. 11-29. Ali Abubakar, et.al., “The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Hifz Al-Nafs as Law `Illat,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 1 (2021).

Ahزاب.² In Indonesia, legal events related to adoption have taken place since the Dutch colonial era, governed by the *Burgerlijk Wetboek* (BW) as the applicable Dutch law in the country. The concept and practice of adoption under Dutch law, as regulated in the *Staatsblad* (State Gazette) No. 129 of 1917, closely resemble the pre-Islamic concept of *tabanny*.³ Interestingly, certain regions in the archipelago, such as Bali and the ethnic Chinese community,⁴ already had customs that aligned with the pre-Islamic *tabanny* practices.

The Sasak people, the predominant ethnic group on the island of Lombok, with an Islamic identity⁵, acknowledge the concept and practice of *akonan*. In the Sasak community, *akonan* represents the idea of child protection through care (*hadhanah*) and adoption. Adoption in the Sasak community of Lombok mainly involves children within the immediate family. This preference arises from the patrilineal family system prevalent among the Sasak tribe, where the family is divided into *koren* or *korenan* and *soroh* or *sorohan*.⁶

Several studies regarding adoption have been conducted and published in various journals. One of them is Heriawan who researches direct child adoption from a child protection perspective. This research does not link adoption to Islamic law; instead, this report looks at adoption practices from a child protection perspective. This study found that adopting children in Indonesia has been carried out under the applicable laws and regulations. However, family law still has ambiguity regarding subsequent legal consequences, such as guardianship and inheritance rights. This is due to the absence of norms in the Child Protection Act.⁷

Adawiyah Nasution wrote about the consequences of the child adoption law according to child protection in terms of Islamic law in practice in Indonesia. Adawiyah found that the legal consequences of adoption generally arise from a court ruling that (1) does not terminate the bloodline relationship of the adopted child with their biological parents, and what is transferred is the guardianship

² Muhammad Jamil, "Nasab dalam Perspektif Tafsir Ahkam," *AHKAM: Jurnal Ilmu Syariah*, 16.1 (2016), p. 123.

³ In *Staatblaad* 1917 No. 129, due to adoption laws, the adopted child gains the adoptive father's name and is considered as if they were born from the adoptive parents' marriage, becoming the legal heir of the adoptive parents.

⁴ Florianus Yudhi Priyo Amboro and Suriani Suriani, "Hak Waris Anak Adopsi Ditinjau Dari Kuhperdata Dan Hukum Waris Adat Tionghoa Di Kota Tanjungpinang," *Journal of Judicial Review* 20, No. 1 (2018), p. 135–148.

⁵ Suprpto Suprpto, "Sasak Muslims and Interreligious Harmony: Ethnographic Study of the Perang Topat Festival in Lombok-Indonesia," *Journal of Indonesian Islam* 11, No. 1 (2017). Jumarim, *Peran Sosial Perempuan Sasak di Lombok* (Mataram: Sanabil, 2019), p. 28.

⁶ Ahmad Abd Syakur, *Islam Dan Kebudayaan: Akulturasi Nilai-Nilai Islam Dalam Budaya Sasak* (Yogyakarta: Adab Press, Fak. Adab UIN Sunan Kalijaga, 2006), p. 220.

⁷ Muhammad Heriawan, "Pengangkatan Anak Secara Langsung Dalam Perspektif Perlindungan Anak," *Jurnal Katalogis* 5, No. 5 (2017).

rights; (2) the establishment of a civil relationship between the adopted child and their adoptive parents through the obligatory will mechanism; and (3) protection for adopted children can be guaranteed against legal guardianship and inheritance through a mandatory will from their adoptive parents.⁸

Muniroh and Nasution related to child adoption in Indonesia that (1) the child's rights must be protected, as the five things in *maqāṣid al-sharī'ah* (2) The legal consequences are that the child is found to be an individual, he is an orphan so his religious treatment is the same as the child orphan. Meanwhile, for adopted children, their legal status can be assessed through recognition by their adoptive parents, such as guardianship of the child, then adopted children have the right to be looked after by their adoptive parents because there are no lineage guardians. (3) Meanwhile, its relevance to the development of Islamic law is that in maintenance, children have the same protection and educational status as their adoptive parents.⁹

Bintoro et.al., emphasized that adoption of children in the customary law and Islamic law systems in Indonesia has different legal consequences in family law. In customary law, adopted children have the same position, including inheritance, as biological children, whereas in Islamic law there is no concept of adopted children, however, for the purposes of the Compilation of Islamic Law, it provides the opportunity for society to adopt children.¹⁰

Jumarim and Masnun researched child adoption in Sasak society from a Juridical-Sociological perspective; This article finds two things. First, sociologically, the practice of *akonon* in the Sasak community has developed from simply caring for children to adopting them. Second, from a juridical point of view, the trials of adoption cases by the judges of the Religious Courts, in their legal considerations, do not carefully examine each case but tend to be general. Namely, the granting of requests for adoption takes into account the principles of Islamic law in the field of adoption: (1) adoption is an act of *ta'awun* in Islam, and (2) adoption does not sever a child's lineage from their biological parents nor connect the lineage of the adopted child with the adoptive parents. This paper builds upon previous writings by focusing on a different study, namely, the

⁸ Adawiyah Nasution, "Caused by Law of Children's Law According to Law Number 23 of 2002 Concerning Child Protection," *Jurnal ilmiah Penegakan Hukum* 6, No. 1 (2019).

⁹ Siti Muniroh and Khoiruddin Nasution, "The Adoption of Found Child According to Islamic Law and Law No. 3 of 2006 on Religious Courts in the Perspective of Maqasid Al-Shari'ah," *Jurnal Millah* 21, No. 1 (2021), p. 89-112.

¹⁰ Rahadi Wasi Bintoro, et.al., "Determination of The Authority to Adjudicate Child Adoption for Muslims in Indonesia," *Jurnal Dinamika Hukum* 21, No. 3 (2022), p. 480.

adoption of "unclear children" and its implications for Islamic family law and marriage law.¹¹

This research is different and wants to continue previous research which focused more on juridical sociology studies. Meanwhile, this research focuses more on normative juridical studies using the *maqāṣid al-sharī'ah* theory.¹² Based on data obtained from previous research, this follow-up research uses a normative legal research approach that focuses on library research. The data primarily consists of legal data and legal materials. The legal data encompasses research reports on the culture of adoption on Lombok Island and the decision files of the Religious Courts on child adoption cases. On the other hand, the legal materials encompass norms derived from *fiqh*, laws, and regulations concerning children, family, and marriage. Both legal data and materials undergo analysis using the models and stages developed by Miles, Huberman, and Saldana. These stages include data condensation, data display, and conclusion drawing.¹³

Within the study of *ushul fiqh*, the concept of *maqāṣid al-sharī'ah* initially faced disagreements among mujtahid priests but was still practised by all imams, albeit under different terms such as *mashlahah mursalah*, *istishlah*, and *istihsan*. Over time, it evolved into a substantial theory or proposition (*qath'i*), specifically *qath'i al-madhmuni*, within the types of *qath'i* propositions. According to Imam al-Syatiby, *maqāṣid al-sharī'ah* comprises three levels: *dharuriyyat* (primary), *hajiyyat* (secondary), and *tahsiniyyat* (tertiary).¹⁴ Imam al-Gazali defines *maqāṣid al-sharī'ah* or *maslahah al-dharuriyyah* as a *qath'i* requirement for preserving human beings, both individually and collectively, in this world and the hereafter.¹⁵ It encompasses five principles or basic needs (*ushul al-khamsah*): *hifz al-dien* (preserving religion), *hifz al-nafs* (preserving the soul), *hifz al-'aql* (preserving the intellect), *hifz al-mal* (preserving property), and *hifz al-nasab* or *hifz al-nasl*¹⁶ (preserving offspring).¹⁷ Contemporary scholars of *Maqāṣid al-Sharī'ah*, such as Ibn Asyur, have also incorporated universal human

¹¹ Jumarim Jumarim and Masnun Tahir, "Telaah Yuridis dan Sosiologis Terhadap Budaya Pengangkatan Anak di Lombok Nusa Tenggara Barat," *Istintbath: Jurnal Ilmu Hukum dan Ekonomi Islam*, (2020).

¹² Juhaya S. Praja, *Teori Hukum dan Aplikasinya*, Bandung: Pustaka Setia, 2018. Faishal Agil Al Munawar, "Abd Al-Majīd Al-Najjār's Perspective on Maqāṣid Al-Sharī'ah," *Juris: Jurnal Ilmiah Syariah* 20, 2 (2021).

¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2013, p. 141.

¹⁴ Abdurrahman Kasdi, "Maqasyid Syari'ah Perspektif Pemikiran Imam Syatibi Dalam Kitab Al-Muwafaqat," *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam* 5, No.1 (2016), p. 45.

¹⁵ Andi Herawati, "Maslahat Menurut Imam Malik Dan Imam Al-Ghazali (Studi Perbandingan)," *Diktum: Jurnal Syariah Dan Hukum* 12, No. 1 (2014), p. 42–53.

¹⁶ Achmad Beadie Busyroel Basyar, "Perlindungan Nasab Dalam Teori Maqashid Syariah," *Maqashid: Jurnal Hukum Islam* 3, No. 1 (2020), p. 1–16.

¹⁷ Muhammad bin Muhammad bin Muhammad Al-Ghazali, *Al-Mustashfa Min Ilm Al-Ushul* (Beirut: Darul Fikr, 1990), p. 251.

values into the theory. These values, including fitrah (*al-fitrah*), tolerance (*al-samahah*), equality (*al-musawah*), and freedom (*al-hurriyyah*),¹⁸ Hold significant importance in the search for laws from their sources.

Adopted Children in Islamic Law

Article 1 paragraph (9) of Law No. 23 of 2002 on Child Protection, and Article 1 paragraph (2) of Government Regulation No. 54 of 2007 regarding the Implementation of Child Adoption, define adopted children as "children whose rights are transferred from their family environment, including parents, legal guardians, or other responsible individuals, to the adoptive family. This transfer is based on a court decision or order." On the other hand, Article 171 letter (h) of the Compilation of Islamic Law (CIL) (*Kompilasi Hukum Islam/KHI*) provides a different definition of adopted children as "children who are financially supported for their daily needs, education, and other necessities, and this responsibility is transferred from their biological parents to their adoptive parents through a court decision."

Four keywords can be identified concerning adopted children from these two definitions. First, the transferred rights or responsibilities of the adopted child include daily care, financial support, education, and upbringing. Second, these rights or responsibilities transfer through a court decision from the biological parents or family of origin to the adoptive parents. Third, implicitly, the biological parents or family of origin still hold specific responsibilities towards the adopted child, such as identity rights, rights as guardians in marriage, inheritance rights, and the right to be loved, respected, and cared for. Fourth, conversely (*mafhum mukhalafah*), the adoptive parents have the responsibility to fulfil all the rights of the adopted child that have been transferred.

According to Chaq, four types of marriages lead to the natural birth of children: legal marriage, illegitimate marriage, *syibhu wath'in* marriage, and *li'an* marriage. Each type of marriage determines the lineage of the child. In a legal marriage, children are attributed to their biological parents and respective families. In illegitimate and *li'an* marriages, children are attributed solely to their biological mothers and maternal families. Regarding *syibhu wath'in* marriages, the child is attributed solely to their biological father and paternal family. Therefore, regardless of the type of marriage, every child born maintains blood relations with both their parents and their respective families, including their father's family and their mother's family.

Based on the above explanation, the researcher can derive three definitions pertaining to the status of adopted children, namely "legitimate,"

¹⁸ Lalu Supriadi bin Mujib, *Maqasid al-Shari'ah dari Masa al-Syathibi Sampai dengan Ibn Ashur: Rasionalisasi Hukum Islam dalam Merespon Relasi Muslim dan Non Muslim*, in Muhammad, *Horizon Ilmu: Reorientasi Paradigmatik Integrasi Keilmuan*, (Mataram: UIN Mataram Press, 2022), p. 269–281.

"illegitimate," and "unclear" adopted children. Firstly, Article 42 of Law No. 1 of 1974 defines a legitimate child as children born in or resulting from legal marriages as Marriage and Article 99 of the Compilation of Islamic Law. However, the concept of legal marriage, as defined by the Marriage Law, needs more clarity due to the consistency between the two paragraphs of Article 2. While paragraph 1 clearly states that marriage is valid when conducted according to the laws of each religion and belief, it does not require registration. On the other hand, paragraph 2, which addresses marriage registration, can be interpreted merely as a recommendation or sunnah. Even after Presidential Instruction No. 1 of 1991 was issued concerning the Compilation of Islamic Law (CIL), the definition of a valid marriage still needs to be clarified. Article 4 of CIL explicitly states that a valid marriage is conducted under Article 2, paragraph (1) of Law No. 1 of 1974 regarding marriage, without including paragraph (2), which deals with marriage registration. Meanwhile, articles 5 and 6 of CIL explain the registration of marriages using three unclear keywords: (1) registration as an effort to ensure orderly administration, (2) marriage certificate as the sole authentic document of marriage, and (3) unregistered marriages lacking legal validity.

As mentioned above, the debate arises from using two legal terms: "*shihhah*" and "legal." In the study of *ushul fiqh* or Islamic jurisprudence, *shihhah* is interpreted as the opposite of *buthlan* and *fasid*. *Shihhah* refers to the legal status of a person who fulfils the legal elements of *taklifi* and *wadh'i*, while being void, *buthlan*, or *fasid* otherwise. A *shihhah* marriage or *al-nikah al-shahih* is a marriage that satisfies the legal elements of *taklifi*, encompassing all the pillars of marriage, as well as fulfilling the elements of *wadh'i*, which include *sabab* and *mani'*. Islamic marriage is deemed valid or *shihhah* when the marriage contract incorporates the pillars and fulfils the conditions of *sabab* and *mani'*. Neither the *fiqh* books nor the Marriage Law and CIL explicitly mention the requirement of marriage registration or documents, such as a marriage certificate, as pillars or conditions for a valid marriage. Consequently, the CIL introduced *isbat nikah* to validate religiously good marriages that lack legal force or are considered legally invalid. This aligns with the essence of Constitutional Court decision No. 10/VIII/2010, which states that a religiously valid marriage without a marriage certificate can be substantiated through scientific and technological means, forming the basis for establishing biological paternity.

Thus, this paper creates a particular category for adopted children. The first one is legitimate child which contains three meanings. (1) A legitimate child is a child born as a result of the marriage of his biological parents legally (according to religious law) and legally or registered, as evidenced by authentic documents in the form of a marriage certificate (Marriage Law and CIL). (2) legitimate children are children born from legal marriages (according to religious law) but not registered or *unregistered marriages* (CIL and Supreme Court

Decision No. 10). (3) A legitimate child is a child born from a legal and registered marriage; after his birth, the marriage of his parents is annulled because it is known that he does not meet the requirements or is also known as a *fasid* or void marriage (CIL articles 70-71). Legitimate children have complete family and civil relations with their parents, including their biological mother, biological father, and their families.

The second category is illegitimate child which encompasses three distinct meanings. Firstly, it refers to a child born outside the bounds of a legal marriage. This could entail an invalid marriage, commonly associated with adultery, rape, or sexual harassment. Secondly, an illegitimate child pertains to a child born to a married woman (wife) whose husband or *li'an* denies the pregnancy and existence of the child, resulting in the child being referred to as *mula'annah*. The third category is an illegitimate child, a child born from a *syibhu wath'in* marriage.¹⁹

These three categories do not specifically include children whose parents or biological father or mother and their families are unaware of their whereabouts and marital status. If the parent's whereabouts are known, their marital status can be determined, thus establishing clarity regarding the status and lineage of their children. However, if the parent's whereabouts are unknown, their marital status remains uncertain, classifying the child as abandoned. In the context of adoption, the child's status is also unclear. Legitimate children have an identifiable lineage and responsible parties: their parents and families. Similarly, an illegitimate child's lineage is based on, and the responsibility lies with their biological mother or father and their family. If the child's situation is unclear, it becomes the duty of the party who discovers the child, the government, or other willing parties to provide care and support.

Table 1: Differences in the Characteristics of Legal Children, Illegal Children and Unclear Children

No	Child Status	The characteristics
1	Legitimate child	The process of pregnancy, childbirth, and <i>the aqiqah</i> was witnessed by the extended family of their parents
2	Illegal child	The pregnancy, childbirth and naming process is confidential among the biological mother's family.
3	The child is not clear	Not known by their parents, even children, until they grow up do not know their parents.

¹⁹ Yuni Harlina, "Status Nasab Anak Dari Berbagai Latar Belakang Kelahiran (Ditinjau Menurut Hukum Islam)," *Jurnal Hukum Islam* 25, No. 1 (2014). p. 73.

Generally, legally adopted children undergo childbirth with the assistance of medical or paramedical professionals, accompanied by their immediate and extended family members from both the mother's and father's sides. From infancy, these children receive care and nurturing from their biological parents within the extended family setting. On the other hand, children born out of wedlock or conceived through adultery typically undergo a similar birth process as legally recognised children. However, their care is usually limited to the biological mother and her immediate family, or sometimes individuals unrelated to the biological family who are willing to act as caregivers and adopt them. Regarding children with an "unclear" status, it is unknown whether they received assistance during the birth process from other individuals, whether willingly or through coercive means, as there is a lack of information on the involvement of other parties. Nonetheless, these children are safely born and left in an abandoned state as newborns, their identities concealed and their lives preserved. Those who discover or receive such children are responsible for their care and protection. They may be handed over to state institutions, such as health centres or hospitals, under the supervision of Social Services.

Adoption and Lineage in Sasak Society in Islamic Law

In Indonesia, various legal sources in the form of laws and regulations provide a definition of adoption and establish norms regarding the status of adopted children. These include Presidential Instruction No. 1 of 1991 concerning CIL, Law No. 23 of 2002 concerning Child Protection, and PP No. 54 of 2007 concerning implementing Child Adoption. According to Article 171 letter (h) of the CIL, an adopted child is defined as a child whose daily living and educational expenses, among others, are entrusted to their adoptive parents through a court decision, transferring responsibilities from their biological parents.

The definition of an adopted child in the CIL aligns with the definitions stated in the Child Protection Law and its derivative regulations.²⁰ The Child Protection Law introduces a new definition of child protection, encompassing activities to ensure well-being and safeguard children's rights. It strives to create an environment where children can live, grow, develop, and participate optimally while protected from violence and discrimination.²¹ Furthermore, the PP on Child Adoption defines adoption as a legal process that removes a child from the care of their biological parents, legal guardians, or other responsible individuals and

²⁰ Article 1 paragraph (9) Law, Number 23 of 2002 concerning Child Protection and Article 1 paragraph (2) Government Regulation No. 54 of 2007 concerning Adoption defines an adopted child as a child whose rights are transferred from the environment of the family of parents.

²¹ Article 1 paragraph (2) Law, Number 23 of 2002 concerning Child Protection

places them within the family environment of their adoptive parents, who assume the responsibility for the child's care, education, and upbringing.²²

Additional regulations concerning adoption under Islamic law are absent in the legislative norms of Indonesia, following the discussion of Article 62 of the Marriage Bill in the DPR-RI in 1973.²³ The CIL solely addresses the inheritance status of adopted children and the regulations pertaining to adoptive parents through the mechanism of obligatory wills. However, a Fatwa issued by the MUI, namely Fatwa Number U-335/MUI/1984, provides some guidance on adopting children in Islam. According to the Fatwa: (1) Islam recognises legitimate lineage (*nasab*) for children born within a lawful marriage. (2) Adoption, which involves severing the child's lineage (*nasab*) from their biological parents, is considered against Islamic law. (3) However, adopting children without altering their lineage and religion is an act driven by social responsibility, aimed at providing care, nurturing, and education with love, treating them as one's children. This is regarded as a praiseworthy deed and is recommended in Islam. (4) The adoption of Indonesian children by foreign nationals violates Article 34 of the 1945 Constitution and diminishes the nation's dignity.²⁴

Although the MUI fatwa on child adoption is not explicitly included in the legal considerations for enacting laws and regulations concerning the protection and adoption of children in Indonesia, the substance of Article 39, paragraphs (1) to (5) of the Child Protection Law does not contradict, and aligns with, the MUI fatwa on child adoption. These provisions state that adoption should not sever the blood relationship between the adopted child and their biological parents. Furthermore, prospective adoptive parents must share the same religion as the religion adopted by the child, and if the child's origin is unknown, the child's religion should follow the local majority's religion. Similar provisions can be found in PP No. 54 of 2007 concerning the Implementation of Adoption, specifically in Articles 2 to 6, which outline various requirements relating to adopted children and adoptive parents.

However, based on juridical and empirical evidence from the case files of the Religious Courts on Lombok Island regarding child adoption cases, unresolved issues still lack a definitive norm-based solution within the existing laws and regulations on child adoption in Indonesia. One crucial issue pertains to adopted children whose biological parents are the State. According to Law No. 23 of 2002 on child protection and PP No. 54 of 2007 on the Implementation of Child Adoption, adoption should not disrupt the adopted child's lineage with their biological parents and family. This norm aligns with Islamic law in the realm of

²² Article 1 paragraph (2) PP No. 57 of 2007 concerning Implementation of Child Adoption.

²³ See Amak FZ, *Proses Undang-Undang Perkawinan* (Bandung: Al-Ma'arif, 1976).

²⁴ Haedar Faradz, "Pengangkatan Anak Menurut Hukum Islam," *Jurnal Dinamika Hukum Islam* 9, No. 2 (2009), p. 154-159.

child adoption, as it adheres to four principles: not severing the child's bloodline relationship with their biological parents, granting the adopted child the rights of a biological child, designating adoptive parents as marriage guardians for their adopted children, and allowing adopted children to assume the identity of their adoptive parents.²⁵

According to the Islamic law, the prohibition on marriage (*al-maharamfial-nikah*) for women is based on blood relations or heredity, marriage relationships, and sibling relationships. On the other hand, the Islamic law strongly emphasises the importance of fostering social solidarity among religious communities and humanity. One area where cooperation is crucial for the welfare of society is the protection of children.²⁶ The Islamic law specifies the categories of children entitled to protection, including those who are poor, destitute, orphaned, and *ibnu sabil*. The Islamic law presents a model of protection that involves providing economic support through *zakat*, *infaq*, and *shadaqah*.²⁷ In Indonesia, there are various examples of children who are poor, destitute, or orphaned.

Child protection goes beyond the mere provision of sustenance and extends to physical and spiritual care, encompassing aspects such as housing, parenting, education, health, and religion. The family plays a vital role in fulfilling these needs for children. However, the State's involvement through social institutions must improve, particularly in providing religiously sensitive treatment for each child. To address this, the Government of Indonesia has enacted Law No. 23 of 2002 on Child Protection, which outlines two models of child protection: care and adoption.

Individuals or legal entities, such as orphanages and family care centres can carry out parenting. On the other hand, child adoption involves individuals and families obtaining legal custody of children through court decisions. In Islamic law, child adoption, known as *tabany*, is permissible as long as it adheres to four conditions set forth by the MUI fatwa: (a) the severance of legal ties between the adopted child and their biological parents, (b) the establishment of mutual inheritance rights between the adopted child and the adoptive parent, (c) the use of the adoptive parent's identity by the adopted child, and (d) the adoptive parent assuming legal guardianship of the adopted child.

²⁵ Haedar Faradz, *Pengangkatan Anak...*, p. 154-159.

²⁶ Fajri M Kasim et.al., "The Protection of Women and Children Post-Divorce in Sharia Courts in Aceh: A Sociological Perspective," *Ahkam: Jurnal Ilmu Syariah* 22, No. 2 (2022), p. 411-432. Djawas, Mursyid, "The Alimony Obligation of a Civil Servant and Non-Civil Servant Father towards Children Post-Divorce (The Study on Aceh Syar'iyah Court Decision Study of 2019)," *El-Ussrah: Jurnal Hukum Keluarga* 6, No. 1 (2023), p. 91-113.

²⁷ Mahdi Syahbandir, et.al., "State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 2 (2022), p. 554-577.

A husband and wife who are legally married and do not have children or offspring, whether due to infertility or otherwise, do not make this a reason for polygamy as stipulated in Law No. 1 of 1974 concerning Marriage and Compilation of Islamic Law, but through adoption regardless of gender and origin. Suppose the Ulama make the absence of offspring for a husband and wife as a reason for permitting polygamy, which has the possibility of abandoning human children due to the difficulty of sharing the soul in one human *race*. In that case, couples who are infertile or do not have children can become their children's adoptive parents. Poor-poor (neglected) without knowing their biological parents and families as adopted children is a new way to build a *lineage* other than offspring, *semenda* and breastfeeding.

The decision of the Lombok Island Religious Courts treats adoption equally in its legal considerations. This applies to cases involving parties who have family relations, particularly children with healthy and harmonious biological parents and adoptive parents who are legally married and have not previously adopted a neglected child whose birth parents and family are unaware of the adoption. The case is still under trial, and the request has been granted as a stipulation by the panel of judges. The decision incorporates norms that govern preserving the child's bloodline relationship with their biological parents while also recognising the rights of adoptive parents to assume parental responsibilities and fulfil the children's rights.

In paragraph (2) of *Surah al-Nisa*, Allah SWT explains the importance of caring for orphans and managing their assets. Then, in the beginning of verse (3), Allah employs the word "*inna*" as a conditional marker to continue the discussion from the previous verse regarding the protection of certain orphans through polygamous marriages. The term "*al-nisa*" refers explicitly to clear women, namely widows who have orphaned children. This is limited to a specific number of 2, 3, or 4. However, if there is concern about potential injustice towards widowed women and orphans due to polygamy, then monogamous marriages should be preferred. Thus, after the Uhud war, which resulted in the martyrdom of many companions, the solution for protecting the war orphans was to provide family care by legally marrying their mothers in polygamous or monogamous unions.

Characteristics of Child Adoption Cases in the Sasak Community

Under the authority granted to the Religious Courts for handling adoption cases by Law No. 3 of 2006, which amends Law No. 7 of 1989 concerning the Religious Courts, there have been two documented cases of child adoption on Lombok Island since 2007. The number of cases has steadily increased, reaching an average of nine between 2016 and 2018. The table below provides the distribution of these adoption events based on the regions and locations where the Religious Courts submitted, heard, and decided the events.

Table 2: Number of Child Adoption Cases in Religious Courts throughout Lombok Island period 2007 -2018

No	Location	Number of Sample Cases in Year								Sub-Total
		2007	2012	2013	2014	2015	2016	2017	2018	
1	PA* Praya			2	2	3	4	5	4	20
2	PA GRM	1	1	1				1	3	7
3	PA Mataram						5	4	2	11
Total		1	1	3	2	3	9	10	9	38

Data Source: *Religious Court Lombok, 2007-2018.*

The data above indicate a progression in the *akonon* pattern within the Sasak community, transitioning from parenting to adoption. Aside from this pattern's evolution, it can also be interpreted as a reflection of the collective nature of the Sasak people, who demonstrate adherence to laws and regulations. There are at least four characteristics associated with adopting in the Sasak community, as observed in child adoption cases handled by the Religious Courts across Lombok Island. These characteristics are as follows: Firstly, the adopted children: Based on the marital status and the presence of parents, either the father or the mother, the adopted children in the Sasak community can be categorised into three groups: "legitimate child," "illegitimate child," and "unclear child." Out of the 38 adoption cases, 20 cases involved adopted children with the status of "legitimate child," 11 cases involved the status of "illegitimate child," and the remaining 7 cases had the status of "unclear child."

Secondly, the individuals involved: In adopting children within the Sasak community, there are three relationships between the biological parents and the adoptive parents: kinship, close kinship, and humanity. Family relations in the *akonon* system in the Sasak community are divided into two categories: kinship within the boundaries of *al-maharim* fi al-nikah and close kinship outside those boundaries. Children with legitimate and legal child status predominantly experience the first form of relationship. Kinship relations are interpreted as not being an immediate family but residing in geographically adjacent areas or being neighbours, fostering intensive social interactions and friendships. The second model of relationship is standard for illegitimate children or those born out of adultery.

In some cases, the relationship is based solely on humanity, without family or kinship ties. Such relationships are formed to fulfill human instincts, the innate desire to help one another, and the natural inclination to have offspring or children within a family. This third model of relationship is primarily practised

by married couples who do not have children and wish to provide care for unclear or illegitimate children.

Thirdly, Parental Motivation and Judicial Arguments; concerning motivation can be observed from two parties: biological parents and adoptive parents. At least 6 points were recorded as motivations or written reasons for adoptive parents: (1) The desire to provide love and affection to the child, (2) A trigger to have offspring, (3) Pragmatic interests for the child to be listed as a dependent for salary purposes, (4) Fulfilling the instinct of having children in the household. On the other hand, the motivations of biological parents for giving up their children for adoption include (1) The intention to help each other fulfil the instinct of having offspring, (2) Financial considerations due to having many children, (3) Concern for the welfare of the children.

Fourthly, the arguments of the judges; in general, all decisions regarding child adoption cases in the Religious Courts on Lombok Island are supported by arguments based on statutory regulations and sources of Islamic law, such as the Quran, Hadith, Fatwas issued by the Indonesian Ulema Council (MUI), and expert opinions found in *fiqh* books. As for the arguments based on laws and regulations, include: (1) Law No. 7 of 1989 concerning the Religious Courts, as amended by Law no. 3 of 2006 and Law No. 50 of 2009, (2) Law No. 1 of 1974 concerning marriage, (3) Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law (CIL), (4) Law No. 23 of 2002 concerning Child Protection, and Government Regulation No. 54 of 2007 concerning the Implementation of Child Protection, (5) Circular Letter (SEMA) No. 3 of 2005 issued by the Supreme Court of the Republic of Indonesia regarding adoption, and (6) Decree of the Indonesian Minister of Social Affairs No. 41/HUK/KEP/VII/1984 and Minister of Social Affairs Regulation No. 110/HUK//2009 concerning the requirements for child adoption.

Meanwhile, the arguments derived from the Quran, Hadith, and the opinions of scholars (Ulama), which are frequently cited, include: (1) Verses 2 and 32 of *Surah Al-Maidah*, supporting the applicant's request for adoption as a righteous act of charity, and verses 4, 5, and 40 of *Surah Al-Ahzab*, which prohibit severing the adopted child's lineage from their biological parents and emphasize their connection to their adoptive parents. Also, the Indonesian Ulema Council issued the fatwa U-335/MUI/84 regarding adoption.

Adoption and Lineage of Adopted Children of the Sasak Community

Each child must have a lineage that includes both biological parents, the mother, and father, determined by the type of marriage that led to their birth. In Islamic law, lineage has implications for marriage, guardianship, and inheritance. Consequently, lineage can only be established through legal marriage. While blood relations can be identified and proven through a scientific approach in all types of marriages, they only result in the classification of "*al-maharim fi al-*

nikah" and do not grant marriage guardianship or inheritance rights. This arrangement may contradict Islamic principles or *maqashid al-shari'ah*, particularly *hifz al-nafs* (preservation of life). However, in children born out of wedlock, whether through adultery or rape, their lineage is linked solely to their biological mother, absolving their biological father of any responsibility as a provider.

In the context of adoption practice, which has evolved from the *akonan* pattern, there are two facets concerning the legal status of children within the Sasak community. First, prior to the changes made by Law No. 3 of 2006 to Law No. 7 of 1989 concerning the Religious Courts, when a Sasak family informally adopted a child according to customary practices without following the legally regulated adoption procedures in Indonesia, the child's legal status could be ambiguous under national law. This ambiguity can affect the child's inheritance, education, and legal protection rights.

Child adoption within the Sasak community has transformed over time, influenced by the introduction of Law No. 3 of 2006, which amended Law No. 7 of 1989 concerning the Religious Courts. This amendment streamlined the concept of child adoption, shifting the focus from the principle of child protection to child adoption. This principle highlights that children's rights can be better guaranteed when the term "child adoption" is used, as it encompasses broader measures to safeguard their well-being rather than merely seeking to protect their lives.

In this context, adoption serves as a solution that adheres to the principle of preserving a child's lineage with their biological parents while not establishing a new lineage with their adoptive parents. For adopted children categorised as "legitimate children" or "illegitimate children," their lineage still exists in the form of their biological parents or mother, thus maintaining the principle of preserving the child's lineage with their parents. However, what about adopted children with an "unclear child" status? Whose lineage will they retain?

To address this question, the author presents three arguments. Firstly, as developed by Islamic scholars, the theory of *mafqud* (disappearances) can offer a solution. Adopted children with an "unclear child" status have biological parents who gave birth to them, but their status is still considered *mafqud* (missing) until there is certainty regarding their whereabouts. Adoptive parents are responsible for locating the biological parents, while the biological parents should facilitate their adopted child by providing genuine evidence proving the absence of a blood relationship with the prospective partner. This serves as an additional requirement for a valid marriage.

Secondly, the theory of *al-Laqiith* (foundling) is introduced. According to Wahbah Al-Zuhaily that refers to a child who has been lost or abandoned by their parents due to concerns about financial burdens or the shame associated with being a product of an illicit relationship (*zina*). Consequently, there is limited or

unclear information about their biological parents (father or mother).²⁸ In various cases observed in Indonesia, abandoned children are discovered in different circumstances, such as being abandoned in public places, found in someone's yard, taken in by an orphanage, or adopted by couples who do not have biological children of their own.

Al-Zuhaily further explains the legal status of *al-Laqiith* and its consequences in various legal aspects. Firstly, the person who finds the child (*al-Multaqiith*) holds greater rights over *al-Laqiith*. If the finder possesses wealth, they can engage in charitable acts by using their resources to support and provide for the child or report the situation to the government. Secondly, the guardianship of *al-Laqiith* regarding their personal affairs, such as marriage and transferring wealth, does not rest with the finder (*al-Multaqiith*) but is under the judiciary's jurisdiction.²⁹ *Al-Laqiith* may not be considered a "son" or "daughter" of the adoptive father. However, the relationship between the adoptive parents and *al-Laqiith* may be akin to that of a nursing mother. If *al-Laqiith*, who is under two years of age, is breastfed by an adoptive mother following the conditions specified in *al-rada'ah* (breastfeeding), the child is still regarded as someone who cannot be attributed to the adoptive mother as their legal mother. This arrangement establishes the mahram relationship between the child and the nursing mother, involving only a part of their family, without conferring *nasab* rights, marital guardianship, or inheritance.³⁰

(3) *Al-Laqiith* possesses an independent status. *Al-Laqiith* (found child) is attributed with a religious status according to the religion of the community where they were discovered or the religion of the person who found them. (4) The lineage of *Al-Laqiith* is treated as that of an individual whose lineage is unknown. Hence, if *al-Multaqiith* or another person acknowledges and claims *Al-Laqiith* as their child, such recognition can be accepted based on *al-istihsan*'s perspective without requiring additional witnesses. However, from the standpoint of *qiyas* (analogy), this recognition cannot be accepted except in the presence of *bayyinah* (witnesses).³¹

In the present era of advanced technology, concrete evidence such as DNA test results holds significance as one of the *bayyinah* in establishing a person's blood relation. This provides a compelling argument for including legal requirements for marriage concerning unclear or found children (*Al-Laqiith*), specifically by incorporating authentic evidence that demonstrates the absence of a blood relationship with the prospective partner. This is crucial to prevent

²⁸ Wahbah Al-Zuhaily, *Fiqh Islam Wa Adillatuhu*, Vol. 6, Translation by Abdul Hayyie Al-Kattani et al, (Jakarta: Gema Insani, 2011), p. 724.

²⁹ Wahbah Al-Zuhaily, *Fiqh Islam...*, p. 725.

³⁰ Zanariah Noor, "Al-Laqit: The Rights of the Foundlings under Islamic and Civil Law in Malaysia," *Jurnal Syariah* 27, No. 1, (2019), p. 1-26

³¹ Wahbah Al-Zuhaily, *Fiqh Islam...*, p. 727.

consanguineous marriages (*fasid* marriages), as adoptions within the Sasak tradition of Lombok commonly occur among families and relatives.

The third aspect is jurisprudence. Jurisprudence represents legal outcomes formulated by judges. While lawmakers draft laws in the form of statutory regulations, judges develop laws through jurisprudence. When adjudicating an unclear child case, judges must consider a comprehensive perspective³² that harmonises or integrates the *mafqud* and *al-Laqiith* theories. Additionally, they should take into account the adoption practices ingrained in the customs of the Sasak people.

As per Mahadi's perspective, jurisprudence does not pertain solely to the judge's rulings but rather encompasses the legal framework derived from the judge's decisions. Jurisprudence comprises a collection of judgments rendered by judges that share similarities in addressing similar issues. Mahadi draws a parallel between jurisprudence and the concept of "ijma" in Islamic law.³³ In Islamic law, "ijma" denotes the consensus among scholars in formulating legal judgments based on their interpretation and analysis of Islamic legal sources. Therefore, Mahadi highlights the resemblance between jurisprudence and "ijma", involving a sequence of decisions or agreements that generate applicable laws.

During the period from 2007 to 2018, seven (7) decisions made by religious courts across Lombok regarding cases of unclear child adoption indicate a consistent approach taken by judges based on the same considerations and rulings in similar cases, particularly concerning the issue of unclear adoption within the Sasak community. According to Muhadi, the consistency in judges' decisions can establish jurisprudence in child adoption. This jurisprudence can serve as a guiding source for judges when adjudicating similar cases in the future, particularly in anticipation of the absence of legal norms on children with unclear status in the Marriage Law, the Child Protection Law, regulations regarding child adoption, the Islamic Law Compilation (CIL), and other relevant legislations.

Adoption as a Charity with a *Maqāṣid al-Sharī'ah* Perspective

Akonan, originally a form of parenting within the Sasak community, has now evolved into adoption. The act of parenting can be regarded as a charitable deed, but adoption encompasses a comprehensive approach to child protection. This approach aligns with the intention of Allah as mentioned in Surah Al-Maidah, frequently cited by judges as a supporting argument for their decisions. This positive progression in adoption practices necessitates a dual response. Firstly, it brings about positive implications for social movements advocating

³²Jasser Auda, *Maqasid Al-Syariah as Philosophy of Islamic Law. A Systems Approach, The International Institute of Islamic Thought, London-Washington*, Biddles Limited, King's Lynn United Kingdom, 2007, p. 219-223.

³³ Enrico Simanjuntak, "Peran Yurisprudensi dalam Sistem Hukum di Indonesia," *Jurnal Konstitusi* 16, No. 1, (2019), p. 89.

child protection. Secondly, it contributes positively to social movements to prevent violence against children and women by offering adoption as an alternative to polygamy for families without offspring. This observation contrasts with the content of the Marriage Law, which hesitates to address the concept of adoption explicitly and still presents polygamy as a solution for families without children (Marriage Law and CIL).

From another perspective, adopting children under Islamic law aims to safeguard the child's best interests. According to Djaja, various motivations drive individuals to adopt children. These include compassion towards abandoned children or those whose parents are unable to care for them, the desire to have children for the purpose of nurturing and providing for them, the belief that having children at home will lead to having biological children of their own, seeking companions for existing children, augmenting the workforce, and preserving marital bonds or family happiness.³⁴

Maslahah arguments emphasising humanity, as stated by the author, serve as sufficient grounds for accepting child adoption. Even as the practice of *akon* transitioned into adoption, Religious Court judges recognised this motivational argument as a basis for deliberation in adoption cases. The 38 child adoption cases in the Lombok Religious Court demonstrate that this motivation underpins the decisions in these cases and reflects the realisation of *idée des rechts* and *maqāsid al-sharī'ah* in their respective dimensions.

We observe a correlative intersection when we correlate the six motivations with *maqasid as-shariah* and *idée des Rechts*. In terms of upholding religious preservation (*hifz al-din*), adoption must occur within a single religion.³⁵ Concerning the care of the soul (*hifz an-nafs*), this is evident in the motivation to provide financial support and ensure the well-being of the children. Normatively, this motivation is reflected in Article 39, paragraph 1.³⁶ Furthermore, in preserving lineage (*hifz an-nasl*), this is reflected in the motivation to have offspring, the mutual assistance in fulfilling the desire for children, and the instinct of having children within the household. Normatively, this motivation is reflected in Article 49 of the Law on Religious Courts,³⁷ Article 39, paragraphs 2, 2a, and 4a of the Law on Child Protection,³⁸ and Article 19 of the Compilation of Islamic Law.³⁹

³⁴ Djaja S. Meliala, *Pengangkatan Anak (Adoption) di Indonesia* (Bandung: Trasi, 2008), p. 5.

³⁵ Article 39 of Law. Number 35 of 2014 Amendments to Law no. 23 of 2002 concerning Child Protection.

³⁶ Article 39 of Law, Number 35 of 2014 Amendments to Law No. 23 of 2002 concerning Child Protection.

³⁷ Law, Number 3 of 2006 concerning Religious Courts.

³⁸ Article 39 of Law, Number 35 of 2014 Amendments to Law No. 23 of 2002 concerning Child Protection.

³⁹ Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law.

Moreover, safeguarding assets (*hifz al-mal*) is reflected in the motivation for pragmatic interests, ensuring that children are recognised as dependents and guaranteeing their welfare. Normatively, this motivation is reflected in Articles 176-193 and Article 209 of the Compilation of Islamic Law.⁴⁰ Lastly, preserving reason (*hifz al-'aql*)⁴¹ is reflected in the motivation for the well-being of the children. Children thrive when raised in an economically stable family environment with proper access to education. Normatively, this motivation is reflected in Article 171 of the Compilation of Islamic Law.⁴²

The correlation between *maqasid* and the inherent motivation recognised by the Sasak people is further supported by regulations, transforming it into an instrument that ensures protection⁴³, justice, welfare⁴⁴, and legal certainty in the relationship between a child, biological parents, and adoptive parents, all without jeopardising the *nasab* status and guardianship system.

This represents the utmost protection for children, who often become victims of their parent's actions. Children suffer due to their parent's infidelity, denial, accusations of adultery (*li'an*), being born from a mother who endured rape and abuse by the man who should be their father, or being abandoned to conceal their parents' disgrace. Why must children bear the consequences of their parent's actions? Is it because parents, being fallible human beings, are prone to sin and mistakes? Alternatively, perhaps it is due to the State's inadequate norms.

The adoption tradition of the Sasak people implies an application that Jasser Auda categorizes based on the level of necessity, using a traditional classification system of essentials (*daruriyat*), needs (*hajjiyat*), and luxuries (*tahsiniyat*). These needs are considered fundamental to human life itself. Consequently, human life is endangered when the mind is unstable, when actions are not taken to safeguard the well-being of souls, health, and the environment, or when economic crises arise.⁴⁵ Thus, individuals falling within this need classification would choose adoption over polygamy because their primary requirement is to have a child. Similarly, adoption is a solution for couples facing infertility due to specific uterine or sperm cell conditions.

⁴⁰ Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law.

⁴¹ Misnan, "Problematika Anak Angka dalam Perspektif Hukum Islam" *Taqnin: Jurnal Syariah dan Hukum* 2, No. 2, (2020), p. 29.

⁴² Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law.

⁴³ Law, Number 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection.

⁴⁴ Law, Number 4 of 1979 concerning Child Welfare.

⁴⁵ Jasser Auda, *Maqasid Al-Shariah A Beginner's Guide*, The International Institute of Islamic Thought, London-Washington, Cromwell Press, United Kingdom, 2008, p. 4.

Conclusion

Adoption represents a virtuous act of charitable giving, allowing individuals to assist one another in fulfilling their innate desire to have offspring and contribute to creating a healthy, resilient, intelligent generation. As a form of pious charity, adoption must adhere to the fundamental principles of Islamic law, which dictate that the child's lineage should not be attributed to their biological parents, and the adopted child's lineage should not be tied to their adoptive parents. Instead, adoption serves as a benevolent act that satisfies the inherent human instinct while ensuring the child's well-being and upholding their rights. Thus, the child receives both immaterial and material rights from both their biological and adoptive parents while also being obligated to respect, obey, and pray for the well-being of both sets of parents. The shift in societal attitudes towards child protection, transitioning from orphanages and foster care to adoption, necessitates a positive response from the government. This response should involve the reformulation of the Marriage Law, encompassing provisions related to adoption, eliminating polygamy as a solution for infertile families, and introducing legal requirements for marriage that include providing authentic evidence to prove the absence of blood relation between the bride and groom when dealing with children of "unclear" status. Such measures aim to prevent invalid marriages and promote the welfare of children.

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