



Guardianship and Inheritance Status of Found Children of Unknown Origin from the Perspectives of Islamic Law and Positive Law

Gesti Nadila¹, Edi Syafrudin², Aulia Zulzalali Wal Ikrom³

¹ Faculty of Law Universitas Tangerang Raya

² Bengkulu Regional Police State Police School (SPN)

³ Universitas Sultan Ageng Tirtayasa

Correspondence: author1@Gesti.nadila@untara.ac.id

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ABSTRACT

This research examines the guardianship status of found children (*al-la-qith*) from the perspectives of Islamic law and positive law in Indonesia, as well as analyzing the inheritance concept for found children under both legal systems. The legal status and recognition of found children is a crucial issue considering the phenomenon of babies abandoned by their parents due to economic factors or efforts to conceal shame, as well as the impact of natural disasters that result in many children being neglected and separated from their parents. This research employs library research with a normative juridical approach, collecting data from literature, books, and legislation concerning child protection. The data analysis technique used is qualitative descriptive with a comparative approach between Islamic law and positive law. The results show that according to positive law as stipulated in Article 27 paragraph 4 of Law Number 35 of 2014 concerning Child Protection, recognition of lineage or determining a child's origin can be proven through a birth certificate as an authentic deed, and applications for determining a child's origin are submitted to the Religious Court to be decided by a judge. In Islamic law, the recognition of a found child's lineage can be accepted if it meets certain conditions, namely that the child's lineage is unknown, the recognition is logical, the child who has reached puberty agrees, and there is no existing lineage relationship with another person. The state is responsible for guaranteeing the child's right to living expenses and education in accordance with Article 39 paragraph 5 of Law Number 35 of 2014. In Islamic law, taking care of a found child is a collective obligation (*fardhu kifayah*) with the legal status of an adopted child, and the marriage guardian for a female child who has reached adulthood is a judge. This research recommends harmonization between Islamic law and positive law as well as the strengthening of comprehensive protection for the rights of found children.



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INTRODUCTION

Children are a trust and a gift from Allah SWT that must always be guarded and protected because within a child are inherent dignity, honor, and human rights that must be upheld. The existence of a child is not only interpreted as a complement within a family, but also as the next generation that will determine the future of the nation and human civilization. From the Islamic perspective, a child is viewed as a Divine trust for which accountability will be demanded regarding their care, so that every parent and society has a moral obligation to protect and fulfill children's rights properly (Maria Ulfa, 2025). Children's rights have been constitutionally guaranteed through Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "every child has the right to survival, growth, and development, to participate, and to be protected from acts of violence and discrimination as well as civil rights and freedoms." Furthermore, children's rights are detailed in Articles 5 to 18 of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014, which among other things states that children have the right to know their parents as part of their right to

identity. The right to know one's parents becomes an important foundation for establishing a clear lineage, which in Islamic legal terminology is referred to as *hifdz al-nasl* or preservation of lineage (Edi Sanjaya et al., 2024).

The phenomenon of children being abandoned by their parents is increasingly prevalent in various regions of Indonesia, both in urban and rural areas, with diverse backgrounds but essentially reflecting the failure of child protection in society. Children whose origins are unknown are referred to as *al-la-qith* in Islamic law (Ahmad Warson Munawir, 1997). According to fiqh terminology, *al-la-qith* is defined as a young child who is lost or abandoned by their parents to avoid responsibility or to cover up shame, so that the child's parents are unknown (Mansur al-Buhuti, 1982). Looking at the reasons why children are abandoned, there are two main interrelated factors: first, the child is the result of adultery so the parents fear shame and burdensome social sanctions; second, the child's parents are poor and unable to provide proper support and education (Sayyid Sabiq, 1987). In addition to these two factors, natural disasters such as the tsunami in Aceh and earthquakes in various regions have also contributed to the number of neglected children separated from their parents, so that their whereabouts become unclear and they require special protection from the state and society.

In the context of legal protection for found children, the state through Law Number 35 of 2014 concerning Child Protection has regulated the mechanism for determining legal status and identity through the issuance of birth certificates based on the statement of the person who found the child. However, these provisions have not fully addressed the complex issues related to the lineage status, guardianship, and inheritance of found children whose origins are unknown. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts grants authority to Religious Courts to examine, decide, and resolve cases in the field of "Determination of a child's origin and determination of child adoption based on Islamic law." This authority is a response to the aspirations of Indonesian Muslim society to adopt children in accordance with the values of Islamic law (Andi Syamsu Alam and M. Fauzan, 2008). However, in practice, there is still a gap between existing legal provisions and the comprehensive protection needs of found children, particularly regarding legal certainty concerning their civil rights.

The recognition of a child in Islamic legal literature is called "*istilhaq*," which means the acknowledgment by a *mukallaf* (a person legally responsible for religious obligations) that he is the father of a child whose lineage is unknown (Abdul Manan, 2006). This *istilhaq* concept differs from *tabanni* (adoption) in the conventional sense, which is prohibited by Islam because it can eliminate the child's lineage from their biological father. In *istilhaq*, the recognition of a child's lineage can be done under strict conditions, namely that the child's lineage is unknown, the recognition is logical and reasonable, the child confirms it if they have reached puberty, and there is no existing lineage relationship with another person. This procedure shows that Islamic law is very cautious in establishing lineage due to its broad implications for inheritance rights, guardianship, and mahram status (Wahbah Az-Zuhaili, 2011). Meanwhile, in Indonesian positive law, the procedure for determining a child's origin through the Religious Court does not yet have standardized implementing regulations, so judges often rely solely on witness testimony without the support of scientific evidence such as DNA tests.

The issues that arise include the status or position of found children, to whom they are attributed in lineage even though their biological origins are unknown, what happens if someone claims them as their child, how guardianship works if the child is female, and how inheritance is addressed. In this context, the *maqasid al-syariah* approach becomes relevant to protect the rights of found children, including the right to life (*hifdz al-nafs*), the right to intellect (*hifdz al-aql*), the right to lineage (*hifdz al-nasl*), religious rights, and the right to receive a compulsory will from the person who raises them (Wahbah Az-Zuhaili, 2011). This *maqasid* approach emphasizes that all established laws aim to realize benefit and prevent harm, with the protection of children as a primary priority in the Islamic family law system. This research is important to provide legal clarity and contribute ideas toward the harmonization of Islamic law and Indonesian positive law in protecting found children of unknown origin. Thus, it is expected that more responsive policies will emerge that favor the best interests of the child (*the best interest of the child*), as mandated by the Convention on the Rights of the Child, which was ratified by Indonesia through Presidential Decree Number 36 of 1990.

RESEARCH METHODS

1. Type and Approach of Research

This research employs library research with a normative juridical approach. Library research was chosen as the main object of study consists of legal documents, fiqh literature, and legislation related to the guardianship and inheritance status of found children, thus not requiring direct field data collection (Soerjono Soekanto, 2020). The normative juridical approach is used to examine law as norms applicable in society, with emphasis on analysis of legislation, legal doctrine, and relevant court decisions (Peter Mahmud Marzuki, 2021). This approach enables a comprehensive comparative study between Islamic law and Indonesian positive law regarding the status of found children (Mukti Fajar and Yulianto Achmad, 2023; Bahder Johan Nasution, 2023).

2. Sources of Legal Materials

The sources of legal materials consist of three categories (Soerjono Soekanto, 2020; Zainudin Ali, 2021). Primary legal materials include the Qur'an and Hadith, the 1945 Constitution, Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014, Law Number 3 of 2006 concerning Religious Courts, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, and Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child (Zainudi Ali, 2006; Andi Syamsu Alam and M. Fauzan, 2008). Secondary legal materials include textbooks, scientific journals, articles, dissertations, and opinions of legal experts (*ijtihad* and *fatwas*) (Wahbah Az-Zuhaili, 2011; Abdul Manan, 2006; Andi Syamsu Alam and M. Fauzan, 2008; Wahyudin, 2022; Sanjaya et al., 2024; Mohammad et al., 2025; Achmad and Aisyah, 2026). Tertiary legal materials include legal dictionaries and encyclopedias (Abdul Azis Dahlan, 1996; Ahmad Warson Munawir, 1997).

3. Data Collection Techniques

Data collection uses library research through several systematic stages (Sugiyono, 2019; Emzir, 2020). First, data inventory by searching literature in libraries and electronic databases (Google Scholar, DOAJ, SINTA) using keywords such as "found children," "al-la-qith," "child guardianship," and "child protection" (Emzir, 2020). Second, data identification by selecting and sorting relevant legal materials (Sugiyono, 2019). Third, data classification by grouping materials based on source category and substantive discussion. Fourth, data verification through cross-checking various data sources. Fifth, data systematization by organizing data into a structured format.

4. Data Analysis Techniques

Data analysis uses qualitative descriptive analysis, which describes, explains, and analyzes data systematically and in depth (Sugiyono, 2019; Emzir, 2020; Suharsimi Arikunto, 2020). The analysis steps include: First, data reduction, which is the process of selecting, focusing, simplifying, and abstracting data (Sugiyono, 2019). Second, data display, which involves arranging data into structured narrative descriptions (Emzir, 2020). Third, conclusion drawing and verification using the comparative method between Islamic law and positive law (Mukti Fajar and Yulianto Achmad, 2023; Bahder Johan Nasution, 2023). Additionally, this research uses legal interpretation and *maqasid al-syariah* analysis as analytical tools to examine the objectives and wisdom behind legal provisions and to assess whether they align with the principles of benefit and child protection (Sanjaya et al., 2024; Achmad and Aisyah, 2026; Mohammad et al., 2025).

5. Research Procedures

The research procedure is carried out through seven systematic stages: First, preparation, including problem identification, formulation, and determining the research approach. Second, data collection from various sources (Sugiyono, 2019). Third, data processing by grouping and reducing data (Emzir, 2020). Fourth, data analysis using qualitative descriptive methods, legal interpretation, and *maqasid al-syariah* analysis (Mukti Fajar and Yulianto Achmad, 2023). Fifth, report writing in accordance with academic writing standards (Suharsimi Arikunto, 2020). Sixth, verification and

validation through final review and consultation with experts. Seventh, finalization of the research report for publication.

RESULTS AND DISCUSSION

1. Recognition of Lineage of Found Children (*Al-Laqith*) According to Islamic Law and Positive Law

A. Recognition of Lineage in Islamic Law

The recognition of lineage or child acknowledgment in Islamic law is an important institution that functions to provide legal certainty and comprehensive protection for found children (*al-la-qith*) whose parental identity is unknown. In classical and contemporary fiqh literature, this institution is known as *istilhaq*, which is terminologically defined as the acknowledgment by a *mukallaf* (a person who has been obligated by Islamic law) that he is the father of a child whose lineage is unknown, so that the child receives legal recognition as his descendant (Abdul Manan, 2006; Wahbah Az-Zuhaili, 2011). This *istilhaq* concept differs fundamentally from the institution of *tabanni* (adoption), which is explicitly prohibited in Islam because it can eliminate the child's lineage from their biological father, as affirmed in Surah Al-Ahzab verses 4-5, which prohibit adoption that changes lineage and identity (Sayyid Sabiq, 1987). The fundamental difference between *istilhaq* and *tabanni* lies in their objectives and legal consequences, where *istilhaq* aims to return the child's lineage to their biological father based on evidence and acknowledgment that meets the requirements, while *tabanni* actually severs the lineage relationship with the biological father and attributes the child to someone other than their father, which is a practice prohibited in Islamic law because it contradicts the principles of justice and preservation of lineage (*hifdz al-nasl*) (Andi Syamsu Alam and M. Fauzan, 2008; Abdul Manan, 2006).

In the context of lineage recognition, the majority of fiqh scholars from various schools of thought argue that a child born outside a valid marriage cannot be attributed to their biological father based on the famous Prophetic hadith: "*al-waladu lil-firasy, wa lil-'ahir al-hajar*" which textually means that the child belongs to the owner of the bed (the legitimate husband) and for the adulterer is loss and absence of rights (Sayyid Sabiq, 1987; Wahbah Az-Zuhaili, 2011). This hadith serves as the main foundation for establishing lineage in Islamic law, emphasizing that lineage relationships can only be established through a valid marriage, not through biological relationships alone. In the context of a found child whose lineage is unknown, this hadith means that a found child essentially has no clear lineage and cannot simply be attributed to anyone without recognition and fulfillment of certain conditions established by Islamic law. This is in line with the principle of *hifdz al-nasl* in *maqasid al-syariah*, which aims to protect the purity and clarity of lineage, so that every child has a clear lineage identity that is legally and socially accountable (Sanjaya et al., 2024; Mohammad et al., 2025). This principle also has a psychological protection dimension for the child, because a clear lineage provides certainty of self-identity and clarity of position in the social structure, which is very important for the mental and emotional development of found children.

According to Abdullah Ali Husein (1997) in his comparative study of family law in various Muslim countries, not every *mukallaf* can easily acknowledge a child as their legitimate child; rather, they must adhere to fundamental principles that include: first, the existence of a good status (*hasanah*) of the child without a father, meaning that the child does not have any negative records that could affect the legitimacy of the acknowledgment; second, the absence of legal singularity (*wahdah al-hukm*) in lineage issues, meaning that in one case of lineage there must be legal consistency that does not contradict various sharia provisions; third, the acknowledgment is expected to provide protection (*himayah*) for the weak party, namely the child of unknown lineage and the person claiming them if there is indeed a legitimate biological relationship; fourth, the prohibition of revoking an acknowledgment that has been given (*nafy al-inkar*), because an acknowledgment given in a conscious and voluntary state cannot be withdrawn after its truth has been established. By adhering to these principles, Islamic law has provided clear and firm guidelines regarding child lineage issues in a person's life, so that bad things such as child neglect, manipulation of lineage for inheritance purposes, or abuse of the child recognition institution for worldly interests that contradict the values of justice and truth do not occur (Abdullah Ali Husein, 1997; Fathurrahman Djamil, 1994).

The recognition of a found child's lineage in Islamic law cannot simply be accepted immediately; rather, it must meet several strict conditions established by scholars to preserve lineage purity and prevent abuse. These conditions are: first, the child being recognized is truly of unknown lineage, meaning that there is no other party claiming the child as their descendant and there is no evidence indicating the child's parents' identity; second, the recognition of the child must be a reasonable or logical acknowledgment, meaning that rationally and by age it is possible that the child is their descendant, for example, the age of the person making the acknowledgment is reasonably older than the age of the child being recognized; third, the child being recognized agrees or does not object if the child is old enough to confirm or refuse (having reached puberty and being of sound mind), because a child who has reached adulthood has the right to determine acceptance or rejection of the lineage acknowledgment directed at them; fourth, the child does not yet have a lineage relationship with another legitimate party, meaning that there is no legitimate lineage determination from another party with a stronger claim (Wahbah Az-Zuhaili, 2011; Sayyid Sabiq, 1987). These conditions show that Islamic law is very cautious in establishing lineage because of its broad implications for various legal aspects, including inheritance rights, guardianship, and mahram status related to the prohibition of marriage between close relatives (Abdul Manan, 2006; Zainudi Ali, 2006).

Allah SWT firmly states in Surah Al-Ahzab verse 5: "*Call them (adopted children) by (the names of) their fathers; that is more just in the sight of Allah. And if you do not know their fathers, then (call them) your brothers in religion and your freed slaves...*" This verse has profound meaning in the context of recognizing the lineage of found children, because it affirms that Islam fundamentally prohibits attributing a child to anyone other than their biological father and only permits referring to a child whose father is unknown as a brother in religion or *maula* (a freed slave or ally in religion) (Sayyid Sabiq, 1987; Wahbah Az-Zuhaili, 2011). The interpretation of this verse by scholars produces several important legal implications: first, lineage relationships can only be established through the biological father proven through a valid marriage or recognition that meets the requirements; second, a found child whose father is unknown cannot be attributed to the person who found or raised them, but rather retains a relationship as a brother in religion or *maula*; third, a found child without lineage cannot inherit from the person who raises them except through a compulsory will (*wasiat wajibah*) whose limit is one-third of the inheritance; fourth, a female found child who has reached adulthood and wishes to marry has the judge as her guardian because she does not have a lineage guardian from her biological father (Abdul Manan, 2006; Andi Syamsu Alam and M. Fauzan, 2008). The implementation of this verse in the contemporary context shows that Islam provides very strong protection for lineage purity and child identity, so that even if a found child is cared for and raised by someone, their relationship remains within the framework of love and protection without eliminating the child's fundamental rights as a free individual.

The practice of *istilhaq* in Islamic law also has broad social dimensions related to child protection and the prevention of neglect. In Islamic history, the practice of *istilhaq* was often carried out by the companions and the *tabi'in* to protect children of unknown parentage from neglect and unclear social status, so that they could live with dignity and have clear civil rights (Sayyid Sabiq, 1987). This shows that Islamic law not only pays attention to the formal aspects of lineage recognition, but also to substantive aspects such as child protection and welfare. In the development of contemporary Islamic law, several Muslim countries such as Egypt, Tunisia, and Malaysia have adopted the concepts of *istilhaq* and *wasiat wajibah* in the codification of their family laws to provide legal protection for found children and adopted children without eliminating their basic rights (Fathurrahman Djamil, 1994; Abdul Manan, 2006). In Indonesia, although the Compilation of Islamic Law has not yet regulated *istilhaq* in detail, Law Number 3 of 2006 concerning Religious Courts has granted authority to Religious Courts to examine cases of determining a child's origin, which can be used as a basis for recognizing the lineage of a found child if it meets the specified conditions (Andi Syamsu Alam and M. Fauzan, 2008; Zainudi Ali, 2006). Thus, the recognition of a found child's lineage in Islamic law is a very important institution with a strong theological foundation, which aims to provide comprehensive protection for found children while preserving the purity of lineage and identity, so that found children can live with dignity and have clear civil rights in society.

B. Recognition of Lineage in Positive Law

In the Indonesian positive legal system, the issue of lineage recognition or determination of a child's origin is not specifically and comprehensively regulated in a single piece of legislation, but rather is scattered across various interrelated and complementary legal provisions. Prior to the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, the authority to determine a child's origin rested with the District Courts, which often resulted in overlapping authority and legal uncertainty for Muslims who wished to adopt a child or establish a child's lineage based on Islamic law. However, after the enactment of Law Number 3 of 2006, the Religious Courts were given clear and firm authority to accept, examine, and decide cases concerning the determination of a child's origin, which substantially includes the issue of a child's lineage, including found children (*al-la-qith*) (Andi Syamsu Alam and M. Fauzan, 2008; Zainudi Ali, 2006). This authority was subsequently strengthened by Supreme Court Regulations and technical implementation guidelines governing the procedure for filing applications for the determination of a child's origin in Religious Courts, although specifically these regulations remain general and have not yet detailed the procedures for found children of unknown lineage (Abdulkadir Muhammad, 2019). The granting of this authority is a progressive step in the Indonesian judicial system because it provides legal certainty for Muslims who wish to resolve lineage and adoption issues in accordance with the principles of Islamic law, while also affirming that the state provides space for the application of Islamic law in the realm of family law for its adherents (Andi Syamsu Alam and M. Fauzan, 2008; Zainudi Ali, 2006).

According to positive law as explicitly stated in Article 27 paragraph 4 of Law Number 35 of 2014 concerning Child Protection, the recognition of lineage or determination of a child's origin can be proven with an authentic deed that has perfect evidentiary power, namely a child's birth certificate issued by the competent authority. In the case of a child whose birth process is unknown and whose parents' whereabouts are unknown, as occurs with found children, the issuance of a birth certificate for such a child is based on the statement of the person who first found them, which is then verified by police authorities and registered at the local Civil Registry Office (Law Number 35 of 2014). This provision represents the state's effort to provide legal identity for found children who do not have civil registration documents, so that these children have the right to access public services, education, and legal protection like other children (Abdulkadir Muhammad, 2019). However, it is important to note that the birth certificate issued based on the statement of the person who found the found child only functions as an identity and civil registration document, not as a determination of lineage or blood relationship with the person who found or raised them, because lineage determination requires a stricter legal process and stronger evidence in court (Zainudi Ali, 2006). This means that even though a found child has a legally valid birth certificate administratively, their lineage status remains unclear and requires a court determination if there is a party claiming to be their biological parent or wishing to adopt them.

In Indonesian judicial practice, particularly in Religious Courts, when examining applications for the determination of a child's origin, there is no specific legislation that comprehensively serves as the legal basis for the determination of a child's origin, so judges often have to use various available legal sources and jurisprudence as guidelines. Judges in Religious Courts, when examining applications for the determination of a child's origin, generally only examine the testimony of witnesses who know and confirm that a particular child is the biological child of a particular person, as well as examining other supporting evidence such as letters, photographs, or other documents that can strengthen the witness's testimony (Zainudi Ali, 2006; Abdul Manan, 2006). Witness testimony in cases concerning the determination of a child's origin is very important because it is often the only available evidence, given that found children generally do not have clear documents regarding their origins. The judge will also consider chronological and logical aspects of the acknowledgment being made, including the age compatibility between the person making the acknowledgment and the child being acknowledged, as well as the existence of physical evidence or other documentation supporting the claim (Fathurrahman Djamil, 1994; Wahbah Az-Zuhaili, 2011). However, in cases that are complex or controversial, where there is doubt or dispute regarding the child's origin, the judge is expected to follow developments in science and technology, such as genetics through DNA (Deoxyribonucleic Acid) testing or other genetic tests, as well as supporting forensic sciences to prove the biological relationship between the child and the person acknowledging them (Abdulkadir Muhammad, 2019; Andi Syamsu Alam and M. Fauzan, 2008). The use of DNA testing in cases concerning the determination of a child's origin in Indonesia

has not actually been explicitly regulated in legislation, but it has been accepted as evidence in judicial practice based on Article 1866 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), which stipulates that evidence can be in the form of writing, witnesses, presumptions, confession, and oath, as well as the principle of the judge as *subjectivus* who is free to assess and determine what evidence can be used to achieve justice (Zainudi Ali, 2006; Abdulkadir Muhammad, 2019).

Applications for the determination of a child's origin in Religious Courts are mostly filed by parents or parties who have a direct interest in the child, where the child cannot obtain a birth certificate or other civil registration documents due to various complex factors that prevent them from fulfilling administrative requirements normally. These factors include children intentionally abandoned by their parents due to economic factors, social shame, or psychological issues; children neglected by their parents so they do not have clear legal identity; children born outside a valid marriage so they cannot be registered directly without going through the ratification process; as well as children who are victims of natural disasters or social conflicts so that they are separated from their parents and lose their identity documents (Fathurrahman Djamil, 1994; Law Number 35 of 2014). This process of applying for the determination of a child's origin is very important because it has broad legal implications, including in terms of inheritance rights, guardianship rights, education rights, health rights, and other civil rights that can only be obtained if the child's legal status is clear and legally valid (Abdul Manan, 2006; Zainudi Ali, 2006). In practice, applications for the determination of a child's origin are often filed together with applications for child legitimation or adoption, depending on the conditions and needs of the interested parties. This shows that the Indonesian legal system provides room for parties to submit applications for the determination of a child's origin through available mechanisms, although there are still obstacles in its implementation in the field, such as the lack of socialization to the public, the relatively high cost of court proceedings, and the length of the judicial process that can affect legal certainty for the child concerned.

The conclusion that can be drawn from the recognition of a found child's lineage according to Islamic law and positive law in determining the origin of a child of unknown lineage shows a significant fundamental similarity, namely that both legal systems equally do not justify and do not permit the attribution of a child to anyone other than their biological father, except in very limited conditions and under very strict requirements (Abdul Manan, 2006; Andi Syamsu Alam and M. Fauzan, 2008). In Islamic law, this principle originates from sharia provisions that prohibit adoption that eliminates the biological father's lineage, as regulated in Surah Al-Ahzab verses 4-5, which affirm that adopted children should be called by their fathers' names or as brothers in religion. Meanwhile, in positive law, this principle is manifested through the provision that a found child's birth certificate does not automatically make the person who found them their legally recognized parent, and the determination of a child's origin can only be done through a strict judicial process with strong evidence (Zainudi Ali, 2006; Law Number 35 of 2014). The difference between the two legal systems lies in the mechanism and procedure for lineage determination, where Islamic law has more detailed provisions regarding the conditions for lineage recognition (*istilhaq*), while positive law still requires further regulation regarding the procedure for determining a child's origin, particularly regarding the use of medical technology such as DNA testing as valid evidence (Abdulkadir Muhammad, 2019; Wahbah Az-Zuhaili, 2011). Nevertheless, the essence of both legal systems remains the same, namely to protect the purity of lineage and child identity, provide legal certainty for found children, and prevent lineage manipulation that could harm children's rights in the future, so that found children still receive proper legal protection even though their biological lineage is unknown (Mohammad et al., 2025; Sanjaya et al., 2024).

The implications of this similarity in principle between Islamic law and positive law regarding the recognition of found children's lineage are very important for the development of child protection policies in Indonesia. First, this similarity facilitates harmonization efforts in the formation of more comprehensive legislation on the protection of found children, because there is no fundamental conflict between the two legal systems. Second, this similarity also facilitates judges in both Religious Courts and District Courts in making fair and wise decisions in cases concerning the determination of a child's origin, because they can refer to the same principles from both applicable legal systems. Third, this similarity provides legal certainty for communities who wish to adopt a child or recognize a found child,

because they know that both Islamic law and positive law share the same view on the importance of preserving lineage purity and not permitting the attribution of a child to anyone other than their biological father (Andi Syamsu Alam and M. Fauzan, 2008; Abdul Manan, 2006). However, despite this similarity in principle, concrete efforts are still needed to improve regulations and procedures for determining a child's origin in Indonesia, including clearer regulation of the use of DNA testing as evidence, simplification of application procedures for the determination of a child's origin, increased public access to legal services, and strengthening the protection of found children's rights from both Islamic law and positive law perspectives in an integrated and sustainable manner.

2. Legal Status of Found Children (*Al-Laqith*) According to Islamic Law and Positive Law

A. Legal Status in Islamic Law

According to Islamic law, the legal status of a found child is as a free human being (*hurr*). The person who finds them is obligated to provide support, education, and care for them, with the legal status of the found child being that of an adopted child (Abdul Aziz Muhammad Azzam, 2010). The ruling on taking care of a found child is *fardhu kifayah*, which is a collective obligation for the Muslim community; if some have already carried it out, then the obligation is lifted from the others (Sayyid Sabiq, 1987).

The majority of scholars agree that the person who finds the child has priority in caring for them. However, they differ in opinion regarding who has the right to act as the marriage guardian for the found child when the found child is to marry. The majority of scholars (*jumhur ulama*) hold that a judge is the one who has the right to act as guardian for those who do not have a guardian (Wahbah Az-Zuhaili, 2011). They rely on the Prophetic hadith narrated by Ibn Abbas whose authenticity is agreed upon: "*There is no valid marriage without a guardian, and the ruler is the guardian for those who do not have a guardian*" (HR. Ibn Majah and others).

However, there is a differing opinion. Imam Ibn Qudamah holds that the lineage relationship between the found child and the person who found them permits the finder to act as the marriage guardian for the found child, based on the *qoul* (opinion) of Umar and aimed at saving the child's soul (Wahbah Az-Zuhaili, 2011). Imam Ibn Qudamah's opinion is based on considerations of benefit (*maslahah*) and protection of the found child.

Regarding inheritance issues, in Islamic law, a found child or a child of unknown lineage is not entitled to inherit but rather receives a compulsory will (*wasiat wajibah*) whose maximum limit is one-third (1/3) of the inheritance, and the rules of mahram (prohibition of marriage due to kinship) do not apply (Abdul Manan, 2006; Sayuti Thalib, 2007). The compulsory will is a provision that obligates heirs to give a bequest to those who do not receive inheritance, such as adopted children or found children.

B. Legal Status in Positive Law

In positive law, a child of unknown lineage (found child) may be referred to as a neglected child. The legal status of found children in accordance with Law Number 35 of 2014 concerning Child Protection Article 39 paragraph 5 guarantees that the child is entitled to living expenses and education costs borne by the state (Law Number 35 of 2014).

The status of a found child is determined by the existence of a birth certificate, which is issued based on the statement of the person who first found them (Article 27 paragraph 4 of Law Number 35 of 2014). This Law does not specifically regulate inheritance law. In positive law, it is explained that a found child whose lineage is unclear and whose parents' whereabouts are unknown is also not entitled to inherit. If someone adopts the child as an adopted child, they also are not entitled to inherit (Abdulkadir Muhammad, 2019). Unless the testator, in this case the adoptive parent, has made a will stating that the child is entitled to receive the inheritance, then the child will receive it.

There is no difference between positive law and Islamic law regarding the issue of guardianship of found children, namely that the judge is the one who has the right to act as guardian. Likewise, in the issue of inheritance for found children, the solution is a compulsory will, which is carried out based on

the limits that have been regulated according to both Islamic law and positive law (Zainudi Ali, 2006; Sayuti Thalib, 2007).

3. Comparative Analysis between Islamic Law and Positive Law

Based on the discussion above, it can be analyzed that the provisions of Islamic law and positive law in viewing the issue of found children have similarities in some aspects and differences in other aspects. The similarities between the two lie in the principle that found children cannot be attributed in lineage to anyone other than their biological father, the judge has the right to act as marriage guardian for found children, and found children are only entitled to receive a compulsory will, not inheritance (Andi Syamsu Alam and M. Fauzan, 2008; Abdul Manan, 2006).

The fundamental difference lies in the sources and legal foundations. Islamic law is derived from the Qur'an, Hadith, and scholarly consensus (*ijma'*), while positive law is derived from legislation in force in Indonesia. In Islamic law, taking care of found children is a collective obligation (*fardhu kifayah*), while in positive law, this is an obligation of the state as regulated in the Child Protection Law (Wahbah Az-Zuhaili, 2011; Law Number 35 of 2014).

According to the author's analysis, Imam Ibn Qudamah's opinion that permits the finder to act as the marriage guardian for the found child cannot be fully agreed upon because the Qur'an and Hadith have explained that Islamic law prohibits parents from denying their own children's lineage or attributing a child to someone other than their own father. The attribution of a child must be based on justice and truth. Sometimes corruption and wrongdoing occur due to connecting lineage if the child is adopted into a family so that they feel like a stranger, not part of that family (Sayyid Sabiq, 1987; Sayuti Thalib, 2007).

Whoever adopts a found child or a child of unknown lineage without acknowledging the child as their own, then that child is not entitled to inheritance and the rules of mahram (prohibition of marriage due to kinship) do not apply. If the adopted child still has a clear lineage, then their attribution is returned to their biological father. However, if the lineage is unclear, then the child is recognized as a *maula* or brother in religion. The aim is to not change the existing reality, to preserve the rights of both father and child so they are not lost, and to complete the harmony of family ties (Abdul Manan, 2006).

4. Legal and Policy Implications

Based on the research findings, there are several legal and policy implications that need to be considered. First, there is a need for more massive socialization regarding the rights of found children, both from the Islamic law and positive law perspectives, to the wider community. Second, there is a need for synchronization between Islamic law and positive law provisions regarding the protection of found children, particularly in relation to lineage recognition and inheritance (Andi Syamsu Alam and M. Fauzan, 2008).

Third, there is a need for clearer implementing regulations regarding the procedure for determining the origin of found children in Religious Courts, including the use of DNA testing as valid evidence. Fourth, the state, through regional governments, needs to provide adequate budgets for the fulfillment of the rights of found children, especially in terms of living expenses and education (Law Number 35 of 2014).

CONCLUSION

1. The recognition of lineage of found children (*al-la-qith*) according to Islamic law and positive law is as follows:

According to Islamic law, the recognition of a found child's lineage can be accepted if it meets several conditions, namely: the child being recognized is of unknown lineage, the recognition is logical and reasonable, the child agrees or does not object if they have reached the age of maturity (*baligh*) and are of sound mind, and there is no existing lineage relationship with another person. Meanwhile, according to positive law as stipulated in Article 27 paragraph 4 of Law Number 35 of 2014 concerning Child Protection, the recognition of lineage or determination of a child's origin can be proven with an authentic deed, namely the child's birth certificate. Then an application for the

determination of a child's origin is filed with the Religious Court, so that the judge examines and decides who is entitled to take or care for them. If the case tends to be complicated, the judge is expected to follow developments in science, such as genetics, DNA testing, or other supporting sciences.

2. The legal status of found children (*al-la-qith*) according to Islamic law and positive law is as follows:

According to Islamic law, the legal status of found children (*al-la-qith*) is *fardhu kifayah*. The legal status of a found child is as an adopted child. Regarding guardianship, especially for female children who are found and have reached adulthood, the marriage guardian is the judge. However, there is a differing opinion from Imam Ibn Qudamah who states that it does not have to be the judge, but rather the person who found them may act as the marriage guardian, based on the *qoul* (opinion) of Umar. Meanwhile, in inheritance matters, found children cannot inherit from each other but rather receive a compulsory will (*wasiat wajibah*). According to positive law, a child of unknown lineage (found child) can be referred to as a neglected child. The legal status of found children in accordance with Law Number 35 of 2014 concerning Child Protection Article 39 paragraph 5 guarantees that the child is entitled to living expenses and education costs borne by the state. The status of a found child is determined by the existence of a birth certificate, which is issued based on the statement of the person who first found them. There is no difference between positive law and Islamic law regarding the issue of guardianship of found children, namely that the judge is the one who has the right to act as guardian. Likewise, in the issue of inheritance for found children, the solution is a compulsory will, which is carried out based on the limits that have been regulated according to both Islamic law and positive law.

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