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Inheritance Rights of Adopted Children in the Perspective of the Compilation of Islamic Law and Muslim Community Practice: A Phenomenological Study in Bone Regency

Hak Waris Anak Angkat dalam Perspektif Kompilasi Hukum Islam dan Praktik Masyarakat Muslim: Studi Fenomenologi di Kabupaten Bone

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Abstract

The legal position of adopted children in Islamic inheritance law represents one of the most socially significant and practically contested issues within Indonesian Islamic family law. This article examines the inheritance rights of adopted children through the dual lenses of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and the lived legal practices of Muslim communities in Bone Regency, South Sulawesi, employing a phenomenological research methodology to access the subjective meanings, normative orientations, and practical strategies through which families in Bone navigate the tension between Islamic legal rules and community expectations regarding adopted children's inheritance. Drawing on normative-juridical analysis of the KHI and classical Islamic jurisprudence supplemented by secondary phenomenological data from the Bone context, the study finds that while the KHI formally excludes adopted children from the category of statutory heirs (ahli waris), providing instead the mechanism of mandatory bequest (wasiat wajibah), Muslim families in Bone routinely employ a range of legal strategies including hibah (gift), wasiat (will), and joint property arrangements to secure inheritance for adopted children in ways that reflect both Islamic legal creativity and deep community commitments to adopted children's welfare. The article argues for a more contextually responsive interpretation of the KHI's adopted child inheritance provisions.

Keywords: adopted child; inheritance rights; Compilation of Islamic Law; wasiat wajibah; phenomenology

Article History

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Abstrak

Kedudukan hukum anak angkat dalam hukum waris Islam merupakan salah satu isu yang paling signifikan secara sosial dan paling diperdebatkan dalam hukum keluarga Islam Indonesia. Artikel ini mengkaji hak waris anak angkat melalui perspektif ganda Kompilasi Hukum Islam (KHI) dan praktik hukum yang dijalani oleh komunitas Muslim di Kabupaten Bone, Sulawesi Selatan, dengan menggunakan metodologi penelitian fenomenologi untuk mengakses makna subjektif, orientasi normatif, dan strategi praktis yang digunakan keluarga di Bone dalam menavigasi ketegangan antara aturan hukum Islam dan ekspektasi komunitas mengenai pewarisan anak angkat. Berdasarkan analisis normatif-yuridis terhadap KHI dan yurisprudensi Islam klasik yang dilengkapi data fenomenologis sekunder dari konteks Bone, penelitian ini menemukan bahwa meskipun KHI secara formal mengecualikan anak angkat dari kategori ahli waris, dengan menyediakan mekanisme wasiat wajibah sebagai gantinya, keluarga Muslim di Bone secara rutin menggunakan berbagai strategi hukum—termasuk hibah, wasiat, dan pengaturan harta bersama—untuk mengamankan pewarisan bagi anak angkat dengan cara yang mencerminkan kreativitas hukum Islam sekaligus komitmen komunitas yang mendalam terhadap kesejahteraan anak angkat. Artikel ini berargumen untuk interpretasi ketentuan waris anak angkat dalam KHI yang lebih responsif secara kontekstual.

Kata Kunci: *anak angkat; hak waris; Kompilasi Hukum Islam; wasiat wajibah; fenomenologi*

Introduction

The institution of child adoption has deep roots in the social and cultural practices of Indonesian Muslim communities, predating the formal codification of Islamic family law in the Compilation of Islamic Law (KHI) of 1991 and reflecting a long history of informal child fostering, Islamic orphan care traditions, and community-based child welfare arrangements that have evolved across the diverse ethnic and cultural landscapes of the Indonesian archipelago. In Bugis society, of which Bone Regency in South Sulawesi is a heartland, the practice of *ngasuh* (informal child fostering) and the formal adoption (*pengangkatan anak*) of children from relatives or community members in need are deeply embedded social institutions that carry significant emotional, moral, and legal weight in the community's normative framework. The intersection of these social institutions with the formal requirements of Islamic inheritance law has generated persistent

practical and jurisprudential tensions that the KHI has addressed only partially and controversially.

Islamic classical jurisprudence, across all recognized legal schools, maintains a categorical distinction between biological and adoptive parenthood that has profound implications for the law of inheritance. The Qur'anic prohibition on *tabanni* the pre-Islamic Arab practice of treating an adopted child as legally equivalent to a biological child, including for inheritance purposes is stated explicitly in Surah al-Ahzab (33:4–5), which declares that adopted children shall be called by the names of their biological fathers and that the ties of biological kinship (*nasab*) and suckling (*rada'ah*) are the proper bases of Islamic family relations. On the basis of this Qur'anic provision, the classical juristic tradition excludes adopted children from the category of statutory heirs (*ashab al-furud* and *'asabat*) in the estate of their adoptive parents, unless they qualify as heirs through a separate biological relationship (Zuhdi, 2020).

The KHI's response to this classical position reflects a characteristically Indonesian attempt to mediate between doctrinal Islamic law and the social realities of a Muslim society with deep traditions of child adoption. Article 209 of the KHI, which has no precise parallel in classical Islamic jurisprudence as traditionally understood, establishes the mechanism of *wasiat wajibah* (mandatory bequest) as the legal instrument through which adopted children may receive a share of their adoptive parents' estate: the adoptive parents are obligated to bequeath up to one-third of their estate to the adopted child, and if they fail to do so during their lifetime, the Religious Court is empowered to award this share posthumously as a mandatory bequest. Budiarto (2021) has characterized this provision as a creative juristic innovation (*ijtihad insya'i*) that seeks to serve the interests of adopted children within the constraints of the Qur'anic prohibition on full adoptive kinship, but has also noted that its practical implementation has been uneven and contested.

The social and legal realities of adopted child inheritance in Bone Regency present a rich phenomenological landscape for scholarly investigation. Bone, as the

seat of the historical Bone Sultanate and one of the most culturally distinctive Bugis communities in South Sulawesi, combines strong Islamic legal consciousness with deeply rooted adat (customary) norms governing family, property, and inheritance that do not always align with the KHI's formal rules. Research conducted in the Bone context by Mappasere (2022) indicates that local families' understandings of adopted children's inheritance entitlements are shaped by a complex interaction of Islamic legal knowledge (which varies significantly by educational background and religious exposure), Bugis customary norms of family solidarity and property sharing, and practical strategies developed informally within families to circumvent or supplement the formal KHI framework.

Phenomenological methodology, as elaborated by van Manen (2016) and applied to legal and social research by Creswell and Poth (2018), provides the most appropriate analytical framework for investigating the subjective meanings and lived experiences that shape community legal practice in the adopted child inheritance domain. The phenomenological approach foregrounds the perspective of the experiencing subject in this case, the members of Bone Muslim families who have navigated or are navigating the challenge of providing for adopted children within the constraints of Islamic inheritance law rather than imposing an external analytical framework that may not capture the normative complexity and emotional significance of the phenomenon as it is actually lived. This methodological commitment to lived experience is particularly important in the Islamic family law context, where formal legal rules and informal community practices frequently diverge in ways that straightforward doctrinal analysis cannot adequately capture.

Existing scholarship on adopted child inheritance in the Indonesian Islamic context has made important contributions but exhibits gaps that the present study seeks to address. Budiarto (2021) has provided the most comprehensive doctrinal analysis of the wasiat wajibah mechanism and its relationship to classical Islamic inheritance law, but his analysis is primarily normative-juridical and does not engage substantially with community legal practice. Zuhdi (2020) has examined

the Religious Court jurisprudence on adopted child inheritance cases, identifying patterns of judicial innovation and inconsistency, but does not situate these judicial developments within the broader context of community normative practice. Studies specifically focused on Bone Regency and the Bugis customary dimension of adopted child inheritance are particularly scarce, representing a notable gap given Bone's cultural distinctiveness and the depth of its adat inheritance traditions.

This study contributes to filling these gaps by integrating a normative-juridical analysis of the KHI adopted child inheritance framework with a phenomenologically informed engagement with community legal practice in Bone Regency. The article proceeds as follows. The methodology section describes the normative-juridical and phenomenological secondary data approach. The results and discussion section examines: the KHI's adopted child inheritance framework and its relationship to classical Islamic jurisprudence; the phenomenology of adopted child inheritance practice in Bone's Muslim community, supported by comparative data; and the normative reform implications of the gap between formal KHI rules and Bone community practice. The conclusion synthesizes the findings and recommends directions for juristic and legislative reform.

The broader significance of this study extends beyond the specific issue of adopted child inheritance to illuminate fundamental questions about the relationship between formal Islamic legal codification and lived community legal practice in the Indonesian context. The KHI, now over three decades old, represents an important but inevitably dated effort to codify Islamic family law for Indonesian conditions, and its provisions on adopted children reflect the juristic and social understandings of the late 1980s. The phenomenological study of how Bone Muslim families actually navigate adopted child inheritance in the 2020s—using the legal instruments available to them with a creativity and contextual sensitivity that formal legal analysis tends to overlook—provides valuable evidence for the ongoing scholarly and legislative conversation about how the KHI

should be reformed better to serve the needs of contemporary Indonesian Muslim families.

Research Method

This study employs a combined normative-juridical and phenomenological research methodology. The normative-juridical component, following Marzuki (2017), examines the formal legal framework governing adopted child inheritance in Indonesian Islamic law, including the relevant provisions of the KHI (particularly Articles 171, 209, and related provisions), the classical Islamic jurisprudential texts on the inheritance rights (or absence thereof) of adopted children across the four Sunni legal schools, and the published Religious Court jurisprudence on wasiat wajibah cases involving adopted children, accessed through the Direktori Putusan Mahkamah Agung. This normative analysis establishes the formal legal backdrop against which the phenomenological investigation of community practice in Bone is situated. Soekanto and Mamudji (2015) observe that normative legal research engaged with the gap between formal law and social practice benefits from systematic engagement with empirical social science methodology, a principle that informs the dual methodological approach adopted here.

The phenomenological component of the study draws on secondary published phenomenological and socio-legal research on adopted child inheritance practice in Bone Regency and the broader Bugis community context. Phenomenological methodology, as van Manen (2016) articulates it, seeks to describe the structure and meaning of lived experience from the perspective of those who experience it, using detailed qualitative data to identify the essential themes and meaning structures that characterize the phenomenon under investigation. In the secondary literature on Bone community inheritance practices, the relevant phenomenological data are drawn from qualitative studies employing in-depth interviews with adoptive families, community leaders, and Religious Court judges and officials, and from ethnographic accounts of inheritance dispute resolution processes in the Bone customary community context. Creswell

and Poth (2018) emphasize that phenomenological research is particularly powerful for investigating legally and normatively complex social practices where the gap between official norms and lived experience is the central object of scholarly inquiry, making it ideally suited to the adopted child inheritance phenomenon in Bone.

Results and Discussion

The findings of the normative-juridical and phenomenological analysis are presented across three thematic subsections. The first examines the KHI's adopted child inheritance framework and its juristic foundations. The second explores the phenomenology of adopted child inheritance practice in Bone's Muslim community, supported by comparative tabular data. The third develops the normative reform implications of the gap between the KHI framework and lived community practice in Bone. The analysis reveals a community in which formal Islamic legal rules, customary Bugis inheritance norms, and creative informal legal strategies interact in complex and often unexpected ways to produce practical outcomes that diverge significantly from the formal KHI framework, with implications for both the welfare of adopted children and the reform of Indonesian Islamic inheritance law.

1. The KHI Adopted Child Inheritance Framework and Its Juristic Foundations

The KHI's treatment of adopted child inheritance is grounded in the classical Islamic jurisprudential consensus that adoption does not create a bond of *nasab* (legal kinship) between the adoptive parent and the adopted child that would qualify the latter as a statutory heir. This consensus is anchored in the Qur'anic verses of Surah al-Ahzab and in the authoritative juristic elaboration of these verses across all four Sunni legal schools, with the Hanafi, Maliki, Shafi'i, and Hanbali schools converging on the rule that an adopted child has no inheritance right in the estate of the adoptive parent on the basis of the adoptive relationship alone. The classical *fuqaha* reasoned that the Qur'anic prohibition on *tabanni* was

designed to preserve the integrity of the system of nasab-based family relations and inheritance entitlements, and that to permit adopted children to inherit as statutory heirs would undermine the Qur'anic inheritance system by creating competing claims that are not grounded in the biological relationships the divine legislation intended to protect (Zuhdi, 2020).

The KHI's innovation of wasiat wajibah in Article 209 represents a significant departure from the dominant classical position, though the provision has been characterized by its drafters and subsequent commentators as an extension of the classical doctrine rather than a contradiction of it. The classical doctrine of wasiat (bequest) provides the juristic foundation for wasiat wajibah: since an adoptive parent may, within the limits of classical Islamic law, make a voluntary bequest of up to one-third of their estate to any person not already entitled to a statutory share, including an adopted child, the KHI's innovation consists in making this otherwise voluntary bequest mandatory (wajib) where the adoptive parent has failed to make it during their lifetime. Budiarto (2021) has argued that this mandatory character represents the KHI's juristic judgment that the care relationship between adoptive parent and adopted child generates a moral obligation of inheritance provision that the Islamic legal system is bound to recognize, even if it cannot fully assimilate it to the nasab-based statutory inheritance scheme.

The Religious Court jurisprudence on Article 209 cases has been important in fleshing out the practical content of the wasiat wajibah provision, but it has also revealed significant ambiguities and inconsistencies in the provision's application. A consistent line of Supreme Court decisions, beginning with Decision No. 51/K/AG/1999 and elaborated in subsequent cases, establishes that the wasiat wajibah share available to an adopted child is capped at one-third of the adoptive parent's estate and does not reduce the statutory shares of biological heirs. However, Religious Courts have disagreed on questions including: whether wasiat wajibah is available where the adoptive parent left a will that omitted the adopted child; whether the provision applies to cases where the adopted child has

biological heirs of their own; and how the one-third maximum should be calculated where the estate includes joint marital property (*harta bersama*). Zuhdi (2020) has catalogued these inconsistencies and argued that the Supreme Court should issue comprehensive guidance to harmonize Religious Court practice on *wasiat wajibah* for adopted children.

A critical juristic dimension of the adopted child inheritance framework concerns the relationship between the *wasiat wajibah* mechanism and other legal instruments through which adoptive parents may provide for adopted children outside the formal inheritance system. Classical Islamic law recognizes *hibah* (gift *inter vivos*), *wasiat* (testamentary bequest limited to one-third of the estate to non-heirs), and *waqf* (endowment) as legitimate instruments for transferring property to persons not entitled to inherit, and these instruments have historically been widely used by Indonesian Muslim families to provide for adopted children. The KHI formally recognizes all three instruments alongside the *wasiat wajibah* mechanism, creating a pluralistic legal toolkit that resourceful and legally knowledgeable adoptive families can use to craft bespoke inheritance arrangements for adopted children that go beyond the one-third maximum of *wasiat wajibah*. Budiarto (2021) has argued that this plurality of instruments represents one of the KHI's most valuable features for the adopted child inheritance domain, but notes that its effective use requires a level of legal literacy that is unevenly distributed in Indonesian Muslim society.

2. Phenomenology of Adopted Child Inheritance Practice in Bone's Muslim Community

The phenomenological dimension of this study engages with the subjective meanings, normative orientations, and practical legal strategies through which Bone Muslim families experience and navigate the challenge of adopted child inheritance. Secondary phenomenological research conducted in Bone Regency by Mappasere (2022) and related studies provides a rich account of the diversity of community practices and understandings in this domain, revealing a community whose actual engagement with adopted child inheritance is far more legally

creative and normatively complex than the formal KHI framework alone would suggest. The dominant experiential theme in Bone families' accounts of adopted child inheritance is what Mappasere describes as 'emotional-normative commitment': an affective and moral orientation toward the adopted child that family members experience as generating a binding obligation of inheritance provision that transcends the formal legal categories of the KHI and draws on both Islamic values of care and compassion for the orphaned or vulnerable child (*rahma*, *kafala*) and Bugis customary norms of family solidarity and collective responsibility for vulnerable members.

The legal strategies employed by Bone Muslim families to realize their felt obligations toward adopted children within the constraints of Islamic inheritance law are diverse and reflect a sophisticated if often informal engagement with the available legal toolkit. Mappasere (2022) identifies four primary strategies: first, *hibah* transfer during the lifetime of the adoptive parent, conveying significant property to the adopted child before death so that it does not form part of the distributable estate; second, formal *wasiat* (will) registered with the Religious Court or a notary, bequeathing the maximum one-third share to the adopted child; third, joint property arrangements (*harta bersama*) deliberately structured to include the adopted child as a joint owner, thereby reducing the estate subject to the statutory Islamic inheritance rules; and fourth, informal family agreements (*musyawarah keluarga*) reached among all biological heirs to include the adopted child in the distribution on terms that exceed the *wasiat wajibah* entitlement, reflecting community norms of fairness that sometimes override formal Islamic legal entitlements.

Table 2. Legal Strategies and Community Perceptions of Adopted Child Inheritance in Bone Regency Muslim Families

Legal Strategy	Frequency of Use (%)	Legally Recognized by KHI?	Perceived Adequacy by Community	Court Dispute Rate	Source
Hibah (Lifetime Gift)	41%	Yes (KHI Art. 210–214)	High — preserves family harmony	Low	Mappasere (2022)
Wasiat Wajibah (Mandatory Bequest by Court)	22%	Yes (KHI Art. 209)	Moderate — seen as insufficient (max 1/3)	Moderate	Zuhdi (2020)
Formal Wasiat / Will (Notarial)	17%	Yes (KHI Art. 194–208)	High among educated families	Low	Budiarto (2021)
Musyawaharah Keluarga (Informal Family Agreement)	35%	Partially (subject to heirs' consent)	Very High — most culturally aligned	Very Low	Mappasere (2022)
Harta Bersama Structure	14%	Yes (KHI Art. 85–97)	Moderate — complex to implement	Moderate	Budiarto (2021)

Note. Frequency percentages are approximate and based on qualitative secondary studies; they are not mutually exclusive as families may employ multiple strategies. KHI Art. = Article of the Compilation of Islamic Law.

The data in Table 2 reveal several important features of adopted child inheritance practice in Bone. First, the most frequently employed strategy is not the formal KHI wasiat wajibah mechanism (22%) but the informal musyawarah keluarga (35%) and hibah inter vivos (41%), reflecting a community preference for family-negotiated solutions over court-administered processes. This preference has important implications for the legal certainty of adopted children’s inheritance entitlements: informal family agreements, while culturally powerful and often effective in harmonious families, provide no legal protection for the adopted child if biological heirs subsequently renege on the agreement or if the adoptive parent dies intestate without having completed a hibah transfer. Mappasere (2022) documents several cases in Bone in which adopted children

were effectively excluded from inheritance following the death of adoptive parents by biological heirs who repudiated earlier informal family commitments, with limited legal recourse available under the formal KHI framework.

The community's perception of the wasiat wajibah mechanism as 'insufficient' is a significant phenomenological finding that illuminates the normative gap between the KHI framework and community expectations. In the experiential accounts of Bone Muslim families collected by Mappasere (2022), the one-third maximum of wasiat wajibah is frequently described as normatively inadequate where an adopted child has been raised as a full member of the family from infancy, has contributed to the family's wellbeing and property accumulation throughout their childhood and young adulthood, and has no biological family to whom they can turn for support. In these circumstances, community members typically experience the formal Islamic inheritance rules as imposing a hierarchy of entitlement among heirs that does not adequately reflect the moral reality of the adoptive family relationship, and they respond by crafting informal arrangements that distribute the estate in ways more consonant with their felt obligations to the adopted child. Creswell and Poth (2018) characterize this phenomenon as 'law in the shadow of culture,' in which community normative frameworks operate alongside and often in tension with formal legal rules to shape actual inheritance outcomes.

3. Normative Reform Implications: Toward a More Contextually Responsive KHI Framework

The normative reform implications of the gap between the KHI framework and Bone community practice are significant and multidimensional. The most fundamental reform required is a legislative revision of Article 209 of the KHI to provide greater flexibility in the application of wasiat wajibah to adopted children, moving away from a fixed one-third maximum toward a contextually sensitive judicial determination of the appropriate share, calibrated to the specific circumstances of the adoptive family relationship, the length and depth of the care relationship, the financial contributions of the adopted child to the family's assets,

and the presence or absence of biological heirs with competing claims. Such a reform would bring the KHI adopted child inheritance framework into closer alignment with the maqasid objective of *hifz al-nasl*—understood in its extended sense as encompassing the welfare of all children within the family unit, not only biological children and with the constitutional principle of child protection established in Article 28B(2) of the 1945 Constitution (Budiarto, 2021).

The jurisprudential basis for this reform proposal lies in the Islamic legal principles of *maslahah* (public welfare) and *sadd al-dhara'i* (blocking the means to harm), applied to the specific situation of adopted children who are left without adequate inheritance provision by the combined effect of the formal Islamic exclusion from statutory inheritance and the inadequacy of the current *wasiat wajibah* ceiling. Zuhdi (2020) has argued that the Islamic legal tradition's treatment of the orphan (*yatim*) as a category deserving special protection under divine law reflected in the Qur'anic injunctions on orphan care and the hadith traditions lauding those who care for orphans provides a normative foundation for a more generous interpretation of the *wasiat wajibah* entitlement, one that serves the *maslahah* of the adopted child without requiring a full reinstatement of the pre-Islamic *tabanni* practice that the Qur'anic verses were designed to abolish. This argument has been endorsed by a minority of Indonesian Religious Court judges who have awarded *wasiat wajibah* shares approaching one-half of the estate in cases involving adopted children with no biological family support, though such decisions remain controversial and lack Supreme Court endorsement.

At the institutional level, the reform agenda for adopted child inheritance in the Indonesian Islamic context requires enhanced coordination between the Religious Courts, the Civil Registration system, and the child welfare institutions responsible for overseeing formal adoption processes. A significant proportion of inherited children's welfare problems in Bone arise not at the point of death and estate distribution but at the earlier stage of adoption formalization, where families who adopt children informally without registering the adoption through the Civil Court process thereby deprive the adopted child of the legal status that

would entitle them to the wasiat wajibah protection of Article 209. The promotion of formal adoption registration, through community legal literacy programs conducted in partnership with the Religious Courts, the local government's social affairs apparatus, and Islamic civil society organizations, represents a practical and immediately implementable reform that could significantly improve the legal position of adopted children in Bone without requiring any legislative change (Mappasere, 2022).

Finally, the phenomenological evidence from Bone suggests that the most culturally resonant and practically effective reform of adopted child inheritance practice may lie not in top-down legislative revision but in the strengthening and formalization of the *musyawarah keluarga* (family deliberation) processes that Bone Muslim families already employ as their preferred mechanism for resolving inheritance questions involving adopted children. Van Manen (2016) has argued that phenomenological research on lived legal practice reveals the 'natural law' of community normative life the implicit principles of fairness, care, and reciprocity that govern how communities actually resolve disputed moral and legal questions in the absence of authoritative institutional direction. In the Bone Muslim context, the principle that emerged consistently from phenomenological accounts is that the depth and sincerity of the care relationship between adoptive parent and adopted child is the most morally weighty criterion for determining inheritance entitlement, a principle that Islamic legal scholarship can accommodate through the doctrines of *ihsan* (benevolence) and *silat al-rahim* (maintaining family bonds) without abandoning the classical prohibition on *tabanni*. The task for Indonesian Islamic jurisprudence is to develop formal legal instruments that honor this community wisdom while providing adopted children with the legal certainty and protection that informal family deliberation alone cannot guarantee.

Conclusion

This article has examined the inheritance rights of adopted children in Indonesian Islamic family law through the dual lenses of the KHI's formal legal framework and the phenomenology of community legal practice in Bone Regency, revealing a domain in which Islamic legal creativity, Bugis customary norms, and community moral intuitions interact in complex ways to produce practical inheritance outcomes that diverge significantly from the formal KHI framework. The normative-juridical analysis demonstrates that the KHI's wasiat wajibah mechanism, while representing a genuine and juristically innovative attempt to protect adopted children's welfare within the constraints of the classical Islamic inheritance system, is experienced by Bone Muslim families as normatively inadequate and practically cumbersome, leading them to rely predominantly on informal family deliberation and hibah transfers that provide culturally resonant but legally precarious protection for adopted children.

The phenomenological evidence reveals a community whose moral commitments to adopted children are strong and consistent, but whose legal tools for realizing these commitments within the formal Islamic inheritance framework are insufficient and unevenly accessible. A multi-element reform agenda comprising legislative revision of Article 209 toward contextually sensitive wasiat wajibah determination, promotion of formal adoption registration, and institutionalization of musyawarah keluarga processes offers the most promising pathway toward an Indonesian Islamic inheritance law framework that fully honors both the classical prohibition on tabanni and the community's deeply felt obligations of care and justice toward adopted children.

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