



Hiding the Origins of Adopted Children

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Abstract

Concealing the ancestry of adopted children is a legal issue with serious implications, both from a criminal law and Islamic law perspective. This practice not only has the potential to violate statutory provisions but also contradicts the principle of clarity of lineage, which is highly respected in Islamic teachings. This study aims to analyze the legal status and consequences of concealing the ancestry of adopted children from the perspective of Indonesian criminal law and Islamic law. The research method used is normative legal research with a statutory and conceptual approach, through a review of laws and regulations, the Compilation of Islamic Law, and relevant legal literature. The results show that under Indonesian criminal law, concealing the ancestry of adopted children can be classified as a criminal offense, either as embezzlement of ancestry, false recognition of a child, or adoption that does not comply with legal procedures, which has implications for criminal sanctions. Meanwhile, from an Islamic legal perspective, concealing the ancestry of adopted children is a prohibited act because it damages the clarity of lineage, which impacts aspects of guardianship, inheritance, and the legal status of the child. Islam emphasizes that adoption is permitted only for foster care (*kafalah*), without changing the child's identity or lineage. Therefore, both criminal law and Islamic law emphasize the importance of transparency and honesty in adoption to protect children's rights and maintain legal order.

I. INTRODUCTION

Concealing the ancestry of adopted children is a crucial legal issue, both in Indonesia and from an Islamic perspective. Under Islamic law, adoption, or *tabanni*, does not change the child's lineage and does not automatically grant inheritance rights to the adoptive parents. This is intended to maintain clarity of lineage, which is crucial for determining inheritance rights and guardianship relationships. This clarity is also crucial for protecting children's rights, particularly regarding identity and inheritance rights.

However, in practice, the ancestry of adopted children often remains hidden, which can impact children's rights, including inheritance and identity rights. Several cases have shown actions to change or conceal the biological identity of adopted children, which violates existing legal provisions, both in Islamic law and Indonesian positive law.

Furthermore, Indonesian law also regulates adoption through the Child Protection Law, which requires transparency regarding the origins of adopted children and provides criminal sanctions for concealing or falsifying their origins. This indicates a tension between social practice and law that needs to be addressed to more effectively protect the rights of adopted children. Although adoption is considered a positive social step, it raises a number of legal questions, both in the context of criminal law and Islamic law. In Indonesia, the status of adopted children under criminal law is regulated by the Child Protection Law, which recognizes the rights of adopted children, but with certain limitations that differ from those of biological children. Meanwhile, under Islamic law, adopted children do not have a blood relationship with their adoptive parents, which has implications for inheritance and guardianship rights.

Despite this, the status of adopted children remains recognized in terms of care and education. Therefore, challenges arise regarding the legal consequences of adoption, particularly regarding inheritance rights and legal identity, particularly regarding whether adopted children can inherit property from their adoptive parents. Furthermore, potential legal issues, both within the context of criminal law and Islamic law, have also received increased attention. Therefore, it is important to understand the status, legal consequences, and perspectives of both legal systems regarding concealing the origins of adopted children.

II. RESULTS AND DISCUSSION

A. Overview of Adopted Children

1. Understanding Adopted Children

Adopted children in Islamic terms are usually called *tabanni*. A figure, Ali Al Sayis, defines an adopted child as a child who is called a child even though he is not actually his child. Sheikh Mahmud Syaltud differentiates the meaning of an adopted child which is divided into two, namely first, someone who takes someone else's child who is then treated like his biological child and is also provided with love, support, education and other needs even though legally the child is not his biological child. Second, he incorporates another person's child as a legitimate child into his family, so that he has legal rights and rules like a child. (Ichsan & Dewi, nd).

Thus, an adopted child can be interpreted as taking or adopting another person's child and then caring for him as if he were one's own child, both in terms of care, upbringing, and education and other needs. This adoption is divided into two types, namely: First, the granting of adopted child status can be exactly the same as a legitimate child in all rights and obligations, such as the right to receive support, get a proper education and also inheritance, so that there is mutual inheritance between the adopted child and his adoptive parents. Second, the granting of adopted child status is not as a legitimate child, but because of a sense of responsibility and social, he is cared for and educated with full affection. (Ichsan & Dewi, nd).

2. Adopted Children in Islam

The legal basis for adopting a child is based on the Al-Qur'an Surah Al-Ahzab Verses 4 and 5 as follows: "Allah did not make a person have two hearts in his sockets, He did not make your wives whom you *zihar* as your mothers, and He also did not make your adopted children your (own) biological children). These are only words in your mouth. Allah says something that is right and He shows you the (right) way. Call them (the adopted children) by (using) the name of their father. That is what is fair in with Allah. If you do not know their fathers, (call them as) your brothers in religion and your followers.) There is no sin on you if you make a mistake about it, but (what is sin is) what your heart intends. (Ministry of Religion of the Republic of Indonesia, 2019).

Through the explanation of the verse of the Qur'an above, the author also cites evidence from the hadith which forms the legal basis for the law of adoption. Among these are: The hadith narrated by Ibn Umar ra.

"From Umar ra., he said: Indeed, Zayid bin Harithah was a slave who was freed by the Messenger of Allah, and we called him Zayid bin Muhammad, so the verse came down, "Call them by the name of their (biological) father, that is fairer in the sight of Allah swt. Then the Prophet saw. said: You are Zayid bin Harithah." (HR. Bukhari)

Hadith narrated by Abu Dzar ra:

"From the Ashes Dzar ra he said: Indeed, he heard the Messenger of Allah say "No one admits (honoring himself to someone who is not his father, while he knows that he is not his father, but he has disbelieved." (HR. Bukhari and Muslim.)

From the explanation above, several laws regarding the status of adopted children can be understood as follows: First, adopting an adopted child means that the child loses the bloodline relationship (*nasab*) with his biological father and mother. This kind of adoption is contrary to Islamic law. Second, adopting a child without changing the bloodline status and is done out of a sense of social responsibility to care for, love, and educate the child with affection, is permitted. Third, adopted children according to Islamic law are not given the same legal status as

legitimate children. Fourth, giving adopted children the same legal status as legitimate children is prohibited by Islamic law.

In Islam, there's a term known as *Tabbani*, which in the modern era is better known as adoption. *Tabbani* literally and linguistically means someone who takes in another person's child and treats it as their own. This is done to provide affection, sustenance, education, and other needs. Legally, the child is not their own. (Ichsan & Dewi, nd).

Meanwhile, in the *Jahiliyah* tradition, adoption was a common legal practice. Furthermore, the status of an adopted child was equated with that of one's own biological child. This involved taking another person's son to raise and placing him in the adoptive father's family. Because his legal status was equal to that of a biological child, there was a mutual inheritance relationship upon the death of one of them.

From the perspective of Islamic law, there are several things that need to be considered when determining an adopted child. First, from the perspective of Islamic law, adopted children cannot use the name of their adoptive father, as explained in *Surah Al-Ahzab* verses 4 and 5. Second, the adoptive father and adopted child, adoptive mother and adopted siblings are not related by blood. They can live in the same house, but must comply with the provisions of *mahram*, in Islamic law, including not being allowed to see 'awrah, performing seclusion, fathers or adoptive brothers not being guardians of the marriage for adopted daughters, and so on. Third, they do not inherit from each other.

Under Islamic law, adoption has no legal consequences regarding blood relations, guardianship, or inheritance with the adoptive parents. The child remains the heir of their biological parents, and the child retains their biological father's surname.

According to Islamic jurisprudence scholars, in Islam there are three factors that cause someone to inherit from each other: kinship or descent (*algarabah*), legal marriage (*al-mushahaharah*), and guardianship between a slave and his guardian who freed him, or mutual

assistance between a person and the person he inherited during his lifetime. Adopted children are not included in the three categories above, meaning they are not related or descended from their adoptive parents, nor born from a legal marriage with their adoptive parents, and not due to a guardianship relationship. Therefore, they and their parents inherit from each other. If they inherit, the right to inherit only applies to them and their biological parents on a reciprocal basis. (Harun Nasroen, 1996).

Why is Islam so strict in regulating adopted children? One reason is to ensure that the inheritance rights of the heirs fall into the hands of those entitled to them. In Islam, foster or adopted children are not entitled to inherit property. However, Islamic law does not completely preclude adopted children from receiving a portion of their adoptive parents' property. Adopted children are entitled to a mandatory will, which does not exceed one-third (see Article 209 of the *Compilation of Islamic Law*).

3. Adopted Children According to Law and KHI

The regulation of child adoption in legislation in Indonesia's diverse (plural) society is not easy and has faced much controversy. From the post-proclamation era until the beginning of the reform era, there was only one article governing child adoption, namely Article 12 of Law Number 4 of 1979 concerning *Child Welfare*. Even that article's provisions were limited to the purpose of child adoption. (Rais et al., 2016).

From the time of the proclamation to the time of reform, there were no laws adequately governing adoption in Indonesia. In the reform era, these regulations began to be implemented with the enactment of Law Number 23 of 2002 concerning *Child Protection*.

This law regulates various efforts made in the context of protecting, fulfilling the rights and improving the welfare of children, which also regulates the adoption of children. From a child protection perspective, basically, from a legal perspective, the adoption of children can only be tolerated if it is solely carried out

for the sake of the child's welfare as stated in Article 12 paragraph (1) of Law No. 4 of 1979 concerning

Child Welfare in conjunction with Article 39 paragraph (1) of Law No. 23 of 2002 concerning Child Protection. This is of course inseparable from child protection efforts as required by Article I paragraph (2) and Article 3 of Law No. 23 of 2002, namely to guarantee and protect the child concerned and his/her rights so that he/she can live, grow, develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination. This is clearly very relevant to the true purpose of allowing child adoption from an Islamic legal perspective, where child adoption is only permitted when there is sufficient urgency, solely for the best interests of the child concerned.

The regulations in Indonesia, which relate to child adoption, are contained in Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection in Article 1 paragraph 9 which states that an adopted child is a child whose rights are transferred from the sphere of authority of the family of the parents, legal guardian, or other person responsible for the care, education, and raising of the child, into the family environment of the adoptive parents based on a court decision or determination. (Law (UU) Number 23 of 2002 concerning Child Protection, nd).

The definition of an adopted child according to the Law is a child whose rights are transferred from the family sphere of the parents, legal guardian, or other person responsible for the care, education, and upbringing of the child, to the family sphere of the adoptive parents based on a court decision or ruling. The regulation of child adoption is regulated in Articles 39, 40, and 41.

Important things regarding the child adoption arrangements are as follows:

- a. Adoption can only be carried out in the best interests of the child and is carried out based on local customs and the provisions of applicable laws and regulations. (Article 1 number 9 of

Law Number 23 of 2002 concerning Child Protection.

- b. Adoption does not sever the blood relationship between the adopted child and his biological parents. (Article 39 Paragraph (2) of Law Number 23 of 2002 concerning Child Protection)
- c. Prospective adoptive parents must have the same religion as the prospective adopted child. If the child's origin is unknown, the child's religion must be adapted to the religion of the majority of the local population. (Article 39 Paragraph (3) of Law Number 23 of 2002 concerning Child Protection).
- d. Adoption of a child by a foreign citizen can only be done as a last resort, Article 39 Paragraph 4 of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection)
- e. Adoptive parents are obliged to inform their adopted child about his/her origins and biological parents, taking into account the readiness of the child concerned. (Article 39 Paragraph (4) of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.
- f. The government and community provide guidance and supervision in the implementation of child adoption. (Article 41 of Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection)

Likewise, in the Compilation of Islamic Law, which also pays attention to adopted children, it is explained in Article 171 letter h of the KHI, which states that an adopted child is a child whose responsibility for his daily living, education costs and so on is transferred to his parents. (Compilation of Islamic Law, 1991).

B. Legal Protection

1. Legal Consequences of Adopted Children According to Islamic Law

According to Islamic law, adoption is essentially a foster care measure, with the goal of preventing the child from being neglected or suffering during their growth and development. The following are the

legal consequences of adoption under Islamic law:

a. Lineage

Islamic jurists say that lineage is a solid foundation for building a household that can bind individuals together based on blood ties. Terminologically, the term lineage refers to descent or family ties through blood ties, whether upward (father, grandfather, mother, grandmother, and so on), downward (children, grandchildren, and so on), or lateral (siblings, uncles, and so on) (Andi Syamsu).

In this regard, a father is also prohibited from denying his offspring and it is unlawful for a woman to assign (surregate) a child to someone who is not her biological father. Rasulullah SAW, said: "Any woman who gives birth to a child through adultery, Allah ignores her and Allah will never let her into heaven. And any man who denies his child's lineage, while he knows it, then Allah will prevent him from entering heaven..." (HR. Abu Dawud, an-Nasa'i, al-Hakim, Ibnu Majah, and Ibnu Hibban from Abu Hurairah). On the other hand, it is also forbidden for a child to commit himself to a man other than his own father. In this case, Rasulullah SAW, said: "Whoever commits himself to a man other than his father, even though he knows that he is not his father, heaven is forbidden to him." (HR. Al-Bukhari, Muslim, Ahmad bin Hanbal, Abu Dawud, and Ibn Majah from Sa'd bin Abi Waqqas). From the perspective of Islamic law, the lineage of a child to the father can occur due to three things.(Syamsu Alam Andi & Fauzan, 2008):

- 1) Through legal marriage
- 2) Through a fasid marriage
- 3) Lineage of children from questionable sexual relations.

In the context of questionable sexual intercourse, what is meant by questionable sexual intercourse (*wath'i al-syubhat*) is intercourse that occurs outside of a valid or invalid marriage and is not the result of adultery. Questionable sexual intercourse can occur due to

misunderstanding or misinformation. For example, a man who was previously unknown to him, on his wedding night, finds a woman in his room and has sexual intercourse with her, but it is later proven that the woman is not his married wife.(Winda & Firdausiyah Vita, nd).

Therefore, it is very clear that there is no blood relationship between an adopted child and his adoptive parents. Therefore, legally, an adopted child can be married by his adoptive parents or other family members because the Qur'an emphasizes that among the women who are forbidden to marry are the former wives of his biological children, not the former wives of his adopted children.(Winda & Firdausiyah Vita, nd).

b. Guardianship

The term guardianship comes from the Arabic derivative of the root word, *waliya*, *wilayah* or *walayah*. The word *wilayah* or *walayah* has more than one etymological meaning, including help, love (*mahabbah*), power or ability (*al-sulthah*), which means someone's leadership over something. Based on this etymological understanding, it can be understood that guardianship is a form of protection with full authority based on responsibility and love, to provide assistance for someone's inability to carry out legal acts, both related to property and themselves.

Islamic jurisprudence scholars state that those who must be under guardianship are those who are not yet or are not capable of acting legally. They are: (Syamsu Alam Andi & Fauzan, 2008):

- 1) Small child,
- 2) Crazy or stupid person,
- 3) A fool, according to the agreement of the jurists, is a judge, because determining whether someone is under guardianship is in his hands.

From the three points above, the explanation above shows that adopted children do not fall under the guardianship category mentioned above. Under Islamic law, adoption does not sever the guardianship relationship between the biological parents and the child who has been adopted by others. In Islamic law, a child's lineage follows that of their biological parents.

c. Inheritance

Under Islamic law, adoption has no legal consequences regarding blood relations, guardianship, or inheritance with the adoptive parents. Adopted children remain heirs of their biological parents, and the child retains the name of their biological father. According to the Bondowoso Religious Court website, adoption under Islamic law has the following impacts on inheritance: (Muthiah Aulia et al., 2015):

- 1) Adoptive parents must educate and care for their adopted children as best as possible;
- 2) An adopted child does not become the heir of his adoptive parents so he does not inherit from his adoptive parents. Likewise, adoptive parents do not become heirs of their adopted children (QS. Al-Ahzab 33: 4-5);
- 3) Adopted children may receive assets from their adoptive parents through a will. Likewise, adoptive parents may receive assets from their adopted children through a will. The size of the will cannot exceed 1/3 of the inheritance (209 KHI);
- 4) Adoptive parents who do not receive a will are given a mandatory will of up to 1/3 of their adopted child's inheritance;
- 5) Adopted children who do not receive a will are given a mandatory will of up to 1/3 of their adoptive parents' inheritance.

2. Legal Consequences of Adopted Children According to Positive Law

As explained previously, adopted children have their own status, and therefore, they also have their own legal consequences. This can be seen in several of the regulations mentioned above, including:

a. Lineage (Blood Relations)

- 1) In Staatsblad 1917:129, Chapter II article 7 paragraph 2 which equates biological children with adopted children, has implications for equal rights and obligations between biological children and adopted children, including:
 - a) Adopted children legally get their name from their adoptive father.

- b) An adopted child is a child born from the marriage of adoptive parents.
- c) Adopted children become the heirs of their adoptive parents.
- d) Due to adoption, all civil relations based on descent due to birth are severed.

2) Article 171 (h) of the Indonesian Criminal Code (KHI) states that an adopted child's status is limited to being cared for and cared for by the adoptive parents. Therefore, according to the KHI, adoption does not have any legal consequences for the adopted child or the adoptive parents. The relationship between the two is limited to a maintenance relationship (Laws of the Republic of Indonesia, 2014).

3) Then, in Law No. 35 of 2014, Article 39, paragraph 2, concerning amendments to Law No. 23 of 2002 concerning Child Protection, the article states that adoption cannot sever blood ties, implying that adoption has no legal consequences. The relationship between adoptive parents and adopted child is limited to a maintenance relationship.

b. Guardianship

In terms of guardianship between adopted children and adoptive parents according to positive law, it can be seen in Law No. 35 of 2014 Article 1 paragraph 9. Starting from the definition of this article, it can be understood that guardianship of adopted children has been transferred from their biological parents to their adoptive parents. So, adoptive parents have the right and responsibility for the guardianship of their adopted children, including guardianship of assets. Therefore, when the adopted child has reached adulthood, the adoptive parents are obliged to provide accountability for the management of their adopted child's assets. Article 33 of Law No. 23 of 2003 concerning Child Protection states that (Syamsu Alam Andi & Fauzan, 2008):

- 1) If a child's parents are not capable of carrying out legal acts, or their residence or whereabouts are unknown, then a person or legal entity who meets the requirements

can be appointed as the guardian of the child concerned.

- 2) To become a guardian of a child under his/her guardianship, this is done through a court order.
- 3) The guardian appointed as a child's guardian must have the same religion as the child's.
- 4) For the benefit of the child, the guardian is obliged to manage the child's assets.
- 5) Provisions regarding the requirements and procedures for appointing a guardian are further regulated by Government Regulation.

C. An Analysis of Hiding the Origins of Adopted Children from the Perspective of Criminal Law and Islamic Law

1. Criminal Law Perspective

After looking at the existing regulations, hiding the origin of an adopted child is a criminal act, namely in Law No. 23 of 2022, Article 79. Any person who carries out child adoption in conflict with the provisions as referred to in Article 39 paragraph (1), paragraph (2), and paragraph (4), shall be punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Hiding the origins of adopted children may also be subject to several provisions:

a. Embezzlement of Origin (Article 277 of the Criminal Code)

Anyone who intentionally conceals the origins of a person shall be subject to a maximum prison sentence of six years.

b. False Child Confession (Article 278 of the Criminal Code)

Anyone who claims a child as his own when he knows that he is not the father of the child, is threatened with a maximum prison sentence of three years.

c. Adoption Without Procedure (Article 79 of Law No. 23 of 2002 concerning Child Protection)

Any person who adopts a child in violation of applicable provisions may be punished with a maximum prison sentence of five years and/or a maximum fine of IDR 100,000,000.00.

Concealing the origins of an adopted child can harm the child's rights, including

inheritance and identity rights, and has the potential to undermine the existing legal system. This is due to fraud or identity falsification. Relevant articles may relate to the falsification of documents or information that leads to the concealment of important facts about the child's status. Fraud against another party, such as providing false information about the child's origins to a third party (such as a school, hospital, or social institution), can be subject to criminal sanctions in accordance with the provisions of the Criminal Code (KUHP).

2. Islamic Legal Perspective

In Islamic law, hiding the origins of adopted children is related to the issue of clarifying their lineage (heredity). Islam places great emphasis on the importance of clarity of nasab to determine the legal status of a child, such as inheritance rights and inheritance obligations. Hiding the origins of an adopted child or replacing his or her lineage with an incorrect lineage is contrary to the principles of justice and truth in Islamic law.

In Islamic teachings, adoption must be carried out while maintaining the authenticity of the lineage. Hiding the origins of an adopted child contradicts the following principles:

a. Prohibition of Attributing One's Birth to Adoptive Parents

Islam prohibits attributing the lineage of adopted children to their adoptive parents. This is confirmed in the Qur'an, Surah Al-Ahzab verses 4 and 5: "Allah did not make your adopted children your children." "Call them (the adopted children) by entrusting them to their fathers."

b. Obligation to Notify the Origin of Adopted Children

Adoptive parents are required to inform the person concerned about the origins of their adopted child, especially when the child is going to get married, so that there are no mistakes in guardianship and marriage.

c. Legal Consequences in Inheritance and Guardianship

Adopted children do not have the right to inherit their adoptive parents'

property, except through a mandatory will (a maximum of one-third of the property). Furthermore, in marriage, the guardianship remains with the biological parents or a male sibling.

Thus, hiding the origins of an adopted child in Islam not only violates the principles of honesty and justice, but can also have detrimental legal consequences for the child.

Some provisions in Islamic law that may be relevant in this context are:

- 1) The Prophet Muhammad's hadith states that a child's birth must be registered with someone who has legitimate lineage. For example, the hadith states, "The child belongs to the legitimate lineage, to those who acknowledge it" (Narrated by Bukhari and Muslim).
- 2) Inheritance jurisprudence: Hiding an adopted child's lineage can lead to unclear inheritance rights. In Islam, a child who is not a blood relative (not a biological child) cannot inherit property from the adoptive parents, unless there is a will or specific rights granted by the adoptive parents.

D. Social and Ethical Consequences

Beyond the legal perspective, concealing an adopted child's origins can have significant social repercussions. For example, a child who doesn't know their origins may feel a loss of identity and unaccepted in a particular society. From an ethical perspective, transparency in this regard is highly valued, as it relates to the child's right to know their origins.

III. CONCLUSION AND SUGGESTIONS

A. Conclusion

Under criminal law, concealing the parentage of an adopted child is punishable by law under the statute of limitations on forgery or fraud. This is because concealing the identity or parentage of an adopted child can mislead relevant parties, such as those involved in inheritance rights, guardianship, or other family relationships. Those found guilty of concealment may be subject to strict criminal sanctions, in accordance with applicable laws, to maintain transparency and legal justice, particularly regarding the protection of children's rights.

Meanwhile, in Islamic law, the basic principles governing adoption are clarity of lineage and inheritance rights. Islam does encourage the practice of adoption (*kafalah*) as a solution for guiding and caring for children in need, but it still emphasizes the importance of clarity of lineage so that the rights of adopted children can be properly guaranteed. Hiding the origins of an adopted child contradicts the principle of lineage justice in Islam, because in this religion's view, every child must have a clear identity, both regarding family relationships and the rights inherent in that child, especially in matters of inheritance and guardianship. Thus, in both criminal law and Islamic law, concealing the origins of an adopted child can have serious legal consequences, both for the adopted child themselves and for those involved in the practice. Overall, both legal systems emphasize the importance of clarity and transparency in adoption, while prioritizing the protection of the child's rights as a legitimate individual.

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