

The validity of the birth certificate of an adopted child assigned to adoptive parents

Siti Zulaicha

UIN Maulana Malik Ibrahim Malang, Indonesia
sizucha.arahab@gmail.com

Aditya Prastian Supriadi

UIN Maulana Malik Ibrahim Malang, Indonesia
aditya.prastian@uin-malang.ac.id

Sheila Kusuma Wardani Amnesti

UIN Maulana Malik Ibrahim Malang, Indonesia
sheilakusuma@uin-malang.ac.id

Abstract:

An adoption of a child can be understood as an effort to unify a child from another person into the family of his adoptive parents. He is treated as a child in terms of education, providing a living, fulfilling his needs, but that does not mean he is treated as a descendant or biological child in other cases. The definition of an adoption is stated in Government Regulation Number 54 of 2007 concerning the Implementation of Child An adoption in Article 1 paragraph 2, which means that an adoption is a legal act that transfers the power of the biological parents or legal guardians to the power of the adoptive parents' family environment. In terms of child an adoption, it is also inseparable from the rules regarding child an adoption procedures. This type of juridical normative research, with a statutory approach to examine primary legal materials, secondary legal materials, to tertiary legal materials. The results of the study indicate that the deed must be made in a form that has been determined by the law if the birth certificate is not following with the provisions of the law then the deed is not an authentic deed. Any counterfeiting/engineering problem for any reason can be categorized as a violation of the applicable norms. First, the norm of truth and secondly the norm of order in society. This also has implications for the position of adopted children in terms of inheritance.

Keywords: adopted children; certificate of birth; inheritance

Abstrak:

Pengangkatan anak dapat dipahami sebagai upaya penyatuan seorang anak dari orang lain kedalam keluarga orang tua angkatnya. Ia diperlakukan sebagai anak dalam segi pendidikan, pemberian nafkah, pemenuhan kebutuhannya, namun bukan berarti ia diperlakukan sebagai anak nasab atau

anak kandungnya dalam hal selain itu. Pengertian tentang pengangkatan anak ini tertuang dalam Peraturan Pemerintah Nomor 54 Tahun 2007 Tentang Pelaksanaan pengangkatan anak pada pasal 1 ayat 2, yang bermakna pengangkatan anak adalah suatu perbuatan hukum yang mengalihkan kekuasaan orang tua kandung atau walinya yang sah kedalam kekuasaan lingkungan keluarga orang tua angkat. Dalam hal pengangkatan anak juga tidak terlepas dari aturan tentang prosedur pengangkatan anak. Jenis penelitian yuridis normatif, dengan pendekatan perundang-undangan guna menelaah bahan hukum primer, bahan hukum sekunder, hingga bahan hukum tersier. Hasil penelitian menunjukkan bahwa akta harus dibuat dalam bentuk yang telah ditentukan oleh undang-undang jika akta lahir tersebut tidak sesuai dengan ketentuan undang-undang maka akta tersebut bukanlah akta otentik. masalah pemalsuan/rekayasa apapun alasannya hal tersebut dapat dikategorikan sebagai pelanggaran terhadap norma yang berlaku. Pertama, norma kebenaran dan kedua norma ketertiban dalam masyarakat. Hal ini juga berimplikasi pada kedudukan anak angkat dalam hal waris.

Kata Kunci: anak angkat; akta lahir; kewarisan.

Introduction

Basically every married couple wants to have children. Besides that, children can be entertainers and arouse a sense of love from parents. With the existence of a legal marriage relationship, it will also have an impact on their offspring in the future. The definition of an adoption can be interpreted as an act of taking other people's children based on applicable legal provisions. In article 1 of the Government Regulation of the Republic of Indonesia Number 54 of 2007 concerning the Implementation of Child An adoption, what is meant by child an adoption is "A legal act that diverts a child from the sphere of authority of parents, legal guardians, or other people who are responsible for the care, education, and raise the child into the family environment of the adoptive parents".¹

An adoption of a child is an important event that must be carried out based on applicable rules, to obtain administrative order and legal certainty. As it is known that an adoption is a legal requirement which must be protected by the law as well. There is a need for legal recognition by registering the child. In Indonesia, an adoption can be carried out according to several rules, in addition to the applicable positive law, an adoption can also be carried out according to the customary law of the local community. However, whatever process the adoptive parents choose, do not let the process contradict the applicable law.

An adoption of a child is different from child care, because the an adoption of a child will have its own legal consequences. Child care is more comprehensive in nature, in contrast to an adoption. In adopting a child there are several things that must be fulfilled, including the existence of a child an adoption deed. A child who is adopted as someone's child as his child will be made a child by his adoptive parents as his biological child. Therefore, there is a need for clarity in the form of an

¹ I Ngurah Primayuda Bawananta, I Made Yudana, I made Yudana, and Ratna Artha Windari, "Pengangkatan Anak Dan Akibat Hukumnya Menurut Hukum Perdata Dan Hukum Adat Bali (Studi Kasus Di Banjar Gempinis Desa Dalang Kecamatan Selemadeg Timur Kabupaten Tabanan," *Jurnal Pendidikan Kewarganegaraan UNDIKSHA*, Vol.V no. 3 (2019): 9.

authentic deed from a notary. An adoption of a child can only be done in the best interest of both the adoptive parents and the adopted child himself. However, an adoption cannot break the blood relationship between the adopted child and his biological parents. Prospective adoptive parents must also be of the same religion as the religion or belief held by the prospective adopted child. As with raising their own children, adopted children should be treated well.

In the development of technology and information has brought a major influence in the socio-cultural system of today's society. These developments and changes are also accompanied by the development of science, including legal theory today. The development of legal science with various fields of study can be used as an analytical knife in solving various legal problems that have developed to date. The number of legal cases that occur today cannot be separated from a legal discovery in its settlement, this also applies to notarial studies, in this case the authenticity of a deed. As a public official, a notary has the authority to inaugurate various kinds of deeds under his authority.²

The making of a deed is the result of the existence of several rules to confirm a certain legal act that requires an authentic deed as evidence later in proof when it is needed in court. However, the making of a deed is not only limited to positive legal provisions, sometimes it is caused by the will of the parties to have an interest in the desired legal action. As in this article that to adopt a child, a deed of an adoption/an adoption is required but this can be a problem if it is not following the applicable rules. The purpose of making an authentic deed by a notary as an effort to minimize legal problems that arise with the an adoption of a child, in some cases this issue of an adoption can cause several problems in the future, for example in terms of inheritance distribution. This research is included in normative legal research using the statute approach. The sources of legal materials in this study are divided into three, namely primary legal materials, secondary legal materials, and tertiary legal materials. This paper also aims to review the validity of a birth certificate in which the adoptive parents assign their adopted child as a biological child, what are the juridical implications arising from the existence of the deed.

Literature review

Lineage and Inheritance Law

Nasab can be interpreted as family ties, genealogies, relatives. Relatives or family is the meaning of lineage according to Ibn Manzur from the meaning of Qorobah. But in general, the word nasab can be interpreted as a binding relationship between family members by blood ties. Lineage is very important in the legal dimension, both in civil law and criminal law. This nasab legal attachment as explained by al-Sartawi for example in child care, maintenance, education rights, wills, inheritance, and so on.³ According to marriage law in Indonesia, nasab means that there is a blood relationship between a child and his father because of a valid marriage contract. In Islamic law the determination of lineage is very

² Irfan Iryadi, "Kedudukan Akta Otentik Dalam Hubungannya Dengan Hak Konstitusional Warga Negara," *Jurnal Konstitusi*, no. 4 (2018): 798, <https://doi.org/DOI:https://doi.org/10.31078/jk1546>. 15

³ Mutiara Fahmi and Fitiya Fahmi, "Penetapan Nasab Anak Mulā'anah Melalui Tes DNA (Studi Atas Metode Istinbāṭ Yūsuf al-Qarāḍāwī)" Samarah: Jurnal Hukum Keluarga dan Hukum Islam 3 No. 1. Januari-Juni 2019 (n.d.): 151.

important because with this it can be seen the relationship between parents and their children. In the marriage law, there are several types of children, including biological children (legitimate children), adopted children, and children outside of marriage.⁴ A legitimate child is a child born from a legal marriage relationship, while an adopted child is a child of biological parents but the child transfers his responsibilities to someone else because of the provisions in the law. 2002 concerning Child Protection, and Government Regulation Number 54 of 2007 concerning Child An adoption, while illegitimate children are children born outside of a legal marriage, such children only have a kinship relationship with their mother. A legitimate child is a child born in a legal marriage, this is as regulated in Article 42 of the UUP. Meanwhile, Article 99 of the KHI also states that.⁵ In Islamic law, lineage is very important, because its existence is the basis for the determination of other laws, such as issues of living, guardianship, parenting, marriage, as well as wills, and inheritance.

The position of lineage in matters of will and inheritance is related to blood relations. In this case, Islam forbids to bequeath property to heirs who are related by blood. In that sense, a person's lineage can only be assigned to his biological parents from a legal marriage as well. Nasad in this case means kinship based on blood relations through a valid marriage contract. For that reason, the lineage of the child must be clear, so his affiliation will also clearly return to his biological parents. In Islam the law of an adoption of children is allowed and the procedure does not burden someone who does it.⁶ Whereas in our positive law the consequences arising from an adoption are changes in the birth certificate, where the certificate should not change the name of the biological parents for any reason, and adoptive parents are also obliged to notify the origin of the child when the child is an adult, so as not to unexpected things happen in the future.

In Islamic law, the an adoption of a child does not affect the marriage between the adopted child and his adoptive parents. Because in this case the adopted child is not included in the elements of kemahraman, so that between the two parties there is no attachment to inherit each other. Seeing this, the nasab relationship between adopted children and adoptive parents does not affect blood relations with their biological parents. This habit of raising children is common among Arabs.⁷ An adoption of children in Islam was first known in the time of the prophet Muhammad SAW, because at that time he adopted a child named Zaid Bin Harithah, and the Prophet did not change the lineage of his biological parents, because in Islam an adoption of children is not allowed to change the lineage of biological parents. Islam allows an adoption of children to provide a living, love,

⁴ <https://www.finansialku.com/5-jenis-anak-menurut-perkawinan-dan-hukum-indonesia/> (diakses pada Selasa, 27 Juli 2021 pukul 18.30 WIB)

⁵ Afif Muamar, "Ketentuan Nasab Anak Sah, Tidak Sah, Dan Anak Hasil Teknologi Reproduksi Buatan Manusia: Antara UU Perkawinan Dan Fikih Konvensional," *Al-Ahwal* 6, no. 1 (2013): 45.

⁶ Siti Aminah, Hanafi Arief, Hidayatullah, "Akibat Hukum Terhadap Anak Dari Akta Kelahiran Yang Mencantumkan Orangtua Angkat Menurut Hukum Islam," n.d., 10.

⁷ Abd Ghaffar, "Kewarisan Anak Angkat Dalam Perspektif Hukum Islâm," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 2, no. 1 (September 28, 2019): 62, <https://doi.org/10.19105/al-ihkam.v2i1.2615>.

education, and all kinds of other children's rights.⁸ In Islamic law the concept of an adoption does not recognize an adoption in the sense of being an absolute biological child, but it is only allowed to maintain it with the aim of fulfilling all matters relating to its needs, and this may not break the lineage between the child and his biological parents.⁹

Child An adoption Procedure

An adoption according to law is the transfer of a child from biological parents to adoptive parents as a whole and carried out according to the applicable rules. In this case, the obligations towards the child will be transferred to the adoptive parents, however, the biological parents still have a relationship with their child. Islamic law justifies and recognizes the an adoption of a child but in this case it is not permissible to change the lineage, and does not change the law in terms of inheritance and guardianship. According to M. Budiarto, an adoption of children in Islamic law is under with the following provisions:¹⁰

1. Not breaking the blood relationship between the adopted child and his biological parents and family.
2. The adopted child does not have the position of heir from his adoptive parents, but remains the heir of his biological parents, as well as the adoptive parents are also not domiciled as heirs of his adopted child.
3. Adopted children are not allowed to use the names of their adoptive parents in terms of lineage.
4. Adoptive parents cannot act as guardians in the marriage of their adopted child

An adoption institutions are common in our society. To guarantee the need for the increasing legal need for parents who want to adopt a child, in this case it can be obtained through a court order. Because in principle, an adoption must go through existing legal procedures with the aim of providing legal certainty. Orderly administration, to avoid causes that will arise in the future.

An adoption of a child can be understood as an effort to unify a child from another person into the family of his adoptive parents. He is treated as a child in terms of education, providing a living, fulfilling his needs, but that does not mean he is treated as a lineage child or biological child in other cases. The definition of an adoption is stated in Government Regulation Number 54 of 2007 concerning the Implementation of Child An adoption in Article 1 paragraph 2, which means that an adoption is a legal act that transfers the power of the biological parents or legal guardians to the power of the adoptive parents' family environment.¹¹

⁸ Djanuardi Djanuardi, Hazar Kusmayanti, and Linda Rachamainy, "Sosialisasi Hak Mewaris Anak Angkat Berdasarkan Hukum Islam Dan Hukum Adat Untuk Mencapai Keadilan Keluarga," *Jurnal Pengabdian Dharma Laksana* 3, no. 2 (January 6, 2021): 154, <https://doi.org/10.32493/j.pdl.v3i2.8840>.

⁹ Fahrudin Ali Sabri, "ADOPSI (Sebuah Tawaran Hukum Islâm Menuju Kebaikan Masa Depan Anak Terlantar)," *Al Ihkam: Jurnal Hukum & Pranata Sosial* 6, no. 2 (August 1, 2013): 201, <https://doi.org/10.19105/al-ihkam.v6i2.309>.

¹⁰ Ika Putri Pratiwi, "Akibat Hukum Pengangkatan Anak Yang Tidak Melalui Penetapan Pengadilan," *Kumpulan Jurnal Mahasiswa Fakultas Hukum* 0, no. 0 (May 23, 2016): 23, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1691>.

¹¹ Wahyu Utami dan Peni Rinda Listyowati, "Analisis Yuridis Kedudukan Anak Angkat Yang Berstatus Anak Kandung Berdasarkan Akta Kelahiran," *Prosiding, Konferensi Ilmiah Mahasiswa Unissula (Kimu)* 3, 2020, 359.

Government Regulation Number 54 of 2007 concerning the Implementation of Child An adoption in Chapter III Article 12 describes the requirements for adopted children as follows: 1). If the child is not yet 18 years old; 2) child is a neglected child or neglected child; 3) being in family care or in a childcare institution; 4) and require special protection. These are some of the requirements for prospective adopted children. In this rule, the purpose of adopting a child is in the best interest of the child as an effort to realize their welfare and protection of the child.¹²

An adoption of children in western civil law is known as an adoption, in this case the source of an adoption law is the Staatsblad of 1971 Number 129 (Stb. 1917 No. 129) dated March 29, 1917, this rule is a complementary rule in the Civil Code which does not recognize an adoption issues. , because in the Civil Code it is only explained about the an adoption or an adoption of children out of wedlock.¹³ An adoption regulated in the provisions of Stb. 1917 No. This applies only to the Chinese community, this is regulated in articles 5 to 15. In its development, the government made several regulations in the process of adopting children. An adoption of children for the Chinese group uses the Civil Code with a notarial deed, this is different from the indigenous group, where in the indigenous group the process of adopting children must go through a court decision following what has been regulated in PP. 54 of 2007. In the case of an adoption that will have a juridical impact, the most important thing is to carry out the procedures for adopting children under the applicable regulations.

Although in the Civil Code the issue of child an adoption is not regulated because the Civil Code only regulates the issue of acknowledging children out of wedlock in Book I Chapter XII Part Three, in articles 280 to 289 regarding the recognition of children out of wedlock. This is certainly different from the issue of an adoption/an adoption of children. There are various factors when someone adopts a child, including the desire to have a child for married couples who do not have children, wanting to add another type of child from existing biological children, sympathy for some children who have been neglected due to poverty, or orphans, and so on.¹⁴ The process of adopting a child must also be considered with applicable law. As the function of law itself is for administrative order and the achievement of legal certainty. Under the applicable procedures. The process of adopting a child with the applicable rules must be based on a court decision. This is following the Article 47 paragraph (1) of Law no. 23 of 2006 concerning population administration which states that: "The registration of child an adoption must be carried out based on a court order where the applicant lives."

Inheritance System

There are various kinds of rules that regulate the relationship between humans and other humans, one of which is in the law of inheritance. When a

¹² Ni Made Delonik Regia, "Perbandingan Hukum Pengangkatan Anak Menurut Staatblad 1917 Nomor 129, Pp Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak, Dan Hukum Adat Bali" (skripsi, Universitas Mataram, 2018), 7, <http://eprints.unram.ac.id/7450/>.

¹³Ruth Tria Enjelina Girsang, 234

¹⁴ Prabowo Setyo Aji, "Pelaksanaan Penerbitan Catatan Pinggir Pada Akta Kelahiran Sebagai Akibat Pengangkatan Anak Dan Akibat Hukumnya," *Pandecta: Research Law Journal* 9, no. 2 (December 1, 2014): 240, <https://doi.org/10.15294/pandecta.v9i2.3578>.

person dies, there is a rule regarding inheritance for his heirs. The property left by someone who dies requires arrangements regarding who is entitled to receive the property. Inheritance is the process of transferring one's inheritance to the heirs. This is also regulated in article 1833 paragraph (1) of the Civil Code which explains that: "the heirs by law, get ownership rights over all goods, all rights, and all obligations of the deceased."¹⁵ The rule of law that regulates the consequences of a person's death in Indonesia is known as inheritance law. This inheritance law regulates the rules on how to regulate the distribution of inheritance for someone who has died to his heirs. A. Plito said that inheritance law is a series of provisions relating to the death of a person and the legal consequences in terms of material matters, namely the transfer of inheritance from a person who has died to his heirs, both in the relationship between themselves and with other parties.¹⁶

There are several inheritance systems that exist in Indonesia apart from Islamic law and western civil law in this case the Civil Code, there is also inheritance law in indigenous peoples, namely:¹⁷

- a. Individual inheritance system, is a system of distribution of inheritance individually to their respective share of the property, after the share is received it becomes the property of each individual and cannot be interfered with by other parties. Generally, this inheritance system is adopted by people who understand parental kinship
- b. collective inheritance system, is an inheritance system that does not divide inheritance to individual heirs, but the assets are managed jointly within the scope of a large family, so that the property is not divided. This inheritance system can maintain the integrity of the family and property intact, not eliminating their origins. This is subject to mutual agreement.
- c. Majorat inheritance system, this system does not transfer property to each heir, however, the eldest/eldest child is the sole heir. Whether this system is good or not depends on the eldest son in managing his property. If you can manage it well, then the other heirs can enjoy it well too. It also depends on the mutual agreement between the heirs.¹⁸

In the Civil Code there is no definition of inheritance law, but there are only various concepts regarding inheritance, people who are entitled to receive inheritance, and those who are not entitled to receive it. However, in the KHI article 171 letter a of Presidential Instruction Number 1 of 1991 it is stated that "inheritance law is the law that regulates the transfer of ownership rights to heirs' property (tirkah), determining who is entitled to become heirs and how much of each." Inheritance law is regulated in Book II of the Civil Code, the number of articles governing it is 300 articles, starting from article 830 of the Civil Code to Article 1130 of the Civil Code.¹⁹ In an inheritance law, adopted children are not

¹⁵ Oemar Moechtar, *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan Di Indonesia*, 1st ed. (Jakarta: Prenadamedia Group, 2019), 5.

¹⁶ Ali Afandi, *Hukum Waris, Hukum Keluarga, Dan Hukum Pembuktian* (Jakarta: Rineka Cipta, 2004), 6.

¹⁷ Soerjono Soekanto, *Hukum Adat Di Indonesia*, Cet.X (Jakarta: Raja Grafindo Persada, 2010), 262.

¹⁸ Maimun Nawawi, *Pengantar Hukum Kewarisan Islam* (Surabaya: Pustaka Radja, 2016), 189, <http://repository.iainmadura.ac.id/id/eprint/24>.

¹⁹ Salim HS, "Pengantar Hukum Perdata Tertulis (BW)" (Jakarta: Sinar Grafika, 2008), 137.

included as heirs, because people who are entitled to become heirs according to law are.²⁰

- a. Blood relatives, both legal and out of wedlock
- b. The husband or wife who has lived the longest.

If the first group exists, then the next group does not get anything from an inheritance of the heir. On the other hand, if all the groups of heirs do not exist, then all an inheritance becomes the property of the state. The state is obliged to pay off the debt of the deceased heir as long as the property is sufficient.²¹

Results and Discussion

The Validity Of Birth Certificates For Adopted Children Whose Lineage Is Assigned To Adoptive Parents

Protection and legal certainty contained in PP No. 54 of 2007 on the status of the deed of an adoption made by a Notary in the process of adopting a child through a court decision, this is to ensure legal certainty, and protection in terms of child an adoption. The definition of a birth certificate, according to the Legal Dictionary compiled by Drs. M. Marwan, S.H. and Jimmy P., S.H., are: *Birth certificate is an authentic certificate issued by a civil registry office that has perfect legal force before a judge, provides legal certainty, ensures a person's legal role and has an unlimited validity period; a deed made by a civil registry employee that contains an explanation of the birth of a child and is proven in the civil registry register.*

From the definition above, we can see that a birth certificate is an authentic certificate issued by the relevant agency or agency that is authorized to make it. The certificate contains some information related to a person's birth, which includes the identity of the owner of the certificate, and the identity of his parents.²² This deed aims to provide legal certainty in all matters, both for the identity of the child, and in other legal positions, for example as evidence. The an adoption of a child based on the applicable rules before the prospective adoptive parents submit an application to the District Court or the local Religious Court must first obtain a recommendation from the local social service, this is as regulated in Article 14 paragraph (3) of the Minister of Social Affairs RI No. 110/HUK/2009 concerning the Requirements for An adoption of Children. These requirements must be met first before submitting an application for an adoption in court. Juridically the definition of an application is a problem that is submitted in court to obtain a determination of a problem.

Article 55 of the Marriage Law explains that “the origin of a child can only be proven by having an authentic birth certificate issued by an authorized official. If the birth certificate is not available, a determination of the origin of a child can be requested to the court after a careful examination based on evidence that has met

²⁰ Dijelaskan pada pasal 832 KUHPerdara tentang orang-orang yang berhak menjadi ahli waris. Selanjutnya ahli waris karena hubungan darah ini dijelaskan kembali pada pasal 852 KUHPerdara. Plito, membagi ahli waris menurut undang-undang dalam empat golongan, yaitu: 1) Golongan pertama, terdiri dari suami/isteri dan keturunannya; 2) golongan kedua, terdiri dari orang tua, saudara dan keturunan saudara; 3) Golongan ketiga, terdiri dari leluhur lainnya; 4) golongan keempat, terdiri dari sanak keluarga dan lainnya.(Plito, 1986)

²¹ Salim HS, Pengantar Hukum Perdata Tertulis (BW), 140

²² <https://www.hukumonline.com/klinik/detail/ulasan/lt5188a4eccc621/risiko-hukum-mengubah-keterangan-dalam-akta-kelahiran/>

the requirements. On this basis, the birth registration agency in the jurisdiction of the court can issue a birth certificate for the child. However, this can be a problem if the deed made by the authorized official is not following the conditions that must be met. Article 1868 of the Civil Code is the source of the birth of authentic deeds and implicitly contains orders to the legislature to make a law governing public officials and the form of authentic deeds. This can be seen from the formulation of the article which states that an authentic deed is a deed made in the rules that have been determined by law and is brought before the authorized official for that. This article explains the limitations of what is meant by an authentic deed, namely:²³

1. The deed must be made before a public official
2. The deed must be made in the form determined by law
3. The public official must have the authority to make the deed

In article 15 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of a Notary, hereinafter referred to as the Law on the Position of a Notary in paragraph (1), it is stated that a notary has the authority to make an authentic deed regarding all acts, agreements, and stipulations made required by law or required by the interested party to be stated in an authentic deed.²⁴ In Law Number 23 of 2006 concerning Population Administration, it is explained about the an adoption of children as follows: Registration of child an adoption in the territory of the Unitary State of the Republic of Indonesia is regulated in Article 47 based on a court order at the place of residence of the applicant. no later than 30 days after receipt of a copy of the court order, then the civil registration official makes a margin note on the birth certificate register and the birth certificate quote.

Basically children have basic rights that have been regulated in law, as attached in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in article 5 it is explained that each child has the right to get a name and status. citizenship. Self-identity as stated in Article 27 and Article 28 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 is stated in the form of a birth certificate. There are children whose existence is recognized de jure because of a birth certificate, or there is an identity, but there are also many children who are de facto but de jure are not recognized by the state. The importance of legal protection for children is related to the welfare of the child. Children whose births are not registered in state documents and they do not have a certificate, their rights as a community cannot be fulfilled, this can be called a non existent individual.²⁵

Then what about the child's birth certificate, in which case the birth certificate is falsified? Is this deed included in the authentic deed? Seeing the problems in this research, the birth certificate made has been issued by an authorized official, and the official has the authority to issue the deed, but the problem is at point b the

²³ Irfan Iryadi, "Kedudukan Akta Otentik Dalam Hubungannya Dengan Hak Konstitusional Warga Negara," 802.

²⁴ Ruth Tria Enjelina Girsang "Perlindungan Hukum Dan Kepastian Hukum Terhadap Anak Angkat Yang Proses Pengangkatannya Melalui Akta Notaris Di Luar Sistem Pengangkatan Anak Angkat/Adopsi Yang Aktanya Wajib Dibuat Dengan Akta Notaris (STB.1917 NO 129) Law Review," 232, accessed July 6, 2021, <https://ojs.uph.edu/index.php/LR/article/view/844/338>.

²⁵ Triyuni Soemartono and Sri Hendrastuti, *Administrasi Kependudukan Berbasis Registrasi* (Jakarta: Yayasan Bina Profesi Mandiri, 2011), 112.

certificate must be made in the form determined by law and the problem in this research, the certificate the birth is not following what is stipulated by law, where the status of the adopted child who should have gone through the court ruling process is not passed, and the writing of the biological child in the birth certificate is an engineered identity. In fact, the issuance of the certificate in addition to using the parents' data, in this case using a marriage book, must also be based on a birth certificate from either a midwife or other maternity home. But why can a birth certificate be issued if one of them has not been fulfilled, this is a big problem for population administration activists. In addition, the existence of management in court is also considered a problem because it has to incur costs, the process is difficult, and it takes a long time, so that our society does not follow the procedure. Waiting for a decision from the court on an application for an adoption is also not easy. This needs to be a correction so that in the future this arrangement will be even better. There needs to be socialization in our society that the management of child an adoption is not as complicated as many people imagine, so that our society is aware of the importance of following the applicable procedures, as well as providing legal understanding so that they avoid legal entanglements that they do not know about.

If you look back at the importance of this lineage issue, then this issue should be kept pure. In the sense not to damage the lineage of the child. This is very guarded in Islam. In the KHI article 171 letter h, it is explained that an adopted child is a child who in the maintenance of his daily life, education costs, and so on, transfers his power and responsibility from his biological parents to his adoptive parents based on a court decision. So in this case there is a decision from the court. If this procedure is followed by the prospective adoptive parents, then the deed of an adoption can be said to be an authentic deed according to law.²⁶

Islam views that one's efforts to adopt a child so that separating him from his biological parents cannot change the nature of the child itself, so that there is no fraud and abuse of the child's status in terms of lineage. The Quran recommends calling the child by the name of his biological father. With the aim of no mixing or falsification of lineage in life. Moreover, if the act is based on elements of lies, then Islam views this as a lie. Unlike the case with the applicable positive law, the process of issuing a deed must go through the actual procedure. The stages must be followed, if you change any of the stages then the deed is invalid. Law Number 1 of 1974 has clearly explained that a legitimate child is a child born in a legal bond, namely marriage. This is explained in article 42. So even though the biological child is written in the deed, the procedure that is followed is not under the law.

The Legal Position Of An Adopted Child Assigned To His Adoptive Parents In Terms Of Inheritance

There are various factors that encourage someone to adopt a child, but all of these factors do not have to change the identity of an adopted child into a biological child. As happened in several cases where the adopted child must refer to the lineage of the biological parents, not the adoptive parents, but what if this is ignored by the prospective adoptive parents, where the adoptive parents change the identity

²⁶ Abdurrahman, "Kompilasi Hukum Islam Di Indonesia," Universitas Indonesia Library (Akademika Pressindo, 2007), 121.

of the adopted child into a biological child, so that in the future there will be some of the problems faced, one of which was about the authenticity of the birth certificate in terms of proof in court, and the status of adopted children in terms of inheritance, when the adoptive parents died.

There are several legal problems that are often faced by our society, one of which is the issue of this adopted child. Various inheritance problems that arise in our society are due to several factors, including the ignorance, and ignorance of the community regarding the existing inheritance law, or because of the desire to get as much inheritance as possible so that there is a desire to dominate in excess. This inheritance problem is something that can be resolved in a familial way if only the heirs agree on a fair distribution so that this can minimize conflicts that may arise during the distribution of inheritance later.²⁷

However, a person who is entitled to an inheritance must meet the requirements as an heir, namely:

- a. The existence of blood relations, both legitimate children, and illegitimate children who receive recognition from their father, and can be proven medically. This is in line with the decision of the Constitutional Court Number: 46/PUU-VIII/2010 concerning the Judicial Review of the Provisions of Article 43 of Law Number 1 of 1974 concerning Marriage.
- b. The heir must be present when the testator dies, except for what is stated in Article 2 of the Civil Code which means: "The child in a mother's womb is considered to have been born as the interests of the child wanted it, when the child dies at birth, then he is considered to have never existed. ."
- c. People who become heirs are not included in the person who is not worthy, incompetent, or refuses to inherit.²⁸

The issue of wills or inheritance is part of the many problems that occur in our society. According to Syahrur, when fiqh is applied in everyday life, it causes various problems, including: prioritizing inheritance and legal issues, but putting aside other things, in this case the will and the legal basis that accompanies it, forcing the abolition of wills, both in the word of God and in the law. Hadith, the third mixes between two different concepts, namely Al-hazz (allocate on inheritance) and al-nashib (part of will), resulting in confusion in understanding an inheritance verse and the will verse.²⁹

In the case of an adopted child whose status has changed to become a biological child, this is evidenced by the existence of a birth certificate, when there is a conflict with other heirs, in this case the biological child or other heirs. In an inheritance law contained in the Civil Code, the parties must be able to prove that they are part of the heirs. The problem of adopted children who are assigned to adoptive parents is basically this can damage the lineage. In the Fiqh of Mawaris

²⁷ Oemar Moechtar, *Perkembangan Hukum Waris dan Praktik Penyelesaian Sengketa Kewarisan di Indonesia*, 8

²⁸ Berdasarkan ketentuan pasal 1023 BW, bahwa seorang ahli waris berhak menerima secara murni atau menolak warisan yang ia terima.

²⁹ Rahadian Kurniawan Musda Asmara and Linda Agustian, "Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial," *De Jure: Jurnal Hukum Dan Syar'iah* Vol. 12, no. No. 1 (2020): 23, <https://doi.org/DOI: http://dx.doi.org/10.18860/j-fsh.v12i1.7580>.

applies the principle that lineage is for the father.³⁰ In this case a person is considered to have a kinship relationship with another person only if the liaison is the father. For example, a grandson is considered to have a kinship relationship with his grandfather only if the liaison in this case is the child's father. Basically kinship because there is a blood relationship, so in this case a person has a kinship relationship both with his father and with his mother. The consequence in this case is that the kinship with the mother is no less strong than the kinship with the father. This statement is also supported by a number of verses regarding inheritance and the prohibition of marrying certain women.

Even though an adopted child is included as a biological child because of a birth certificate, it does not necessarily make the adopted child's position as a biological child. There are various ways to determine a person's lineage in this case through a predetermined procedure from various schools of thought, including:³¹

- a. Through legal marriage,
- b. Through an acknowledgment or lawsuit against a child, in this case there are conditions that must be met, among others, the child who conveys the confession is really unclear about his lineage because his father and mother are unknown, and the man who acknowledges the child's lineage can confirm that the child it is not the result of adultery
- c. Through evidence, in this case the ulama are of the opinion that the witness must know the condition and history of the child. This provision is following the problem of evidence that must be proven, one of which is by witnesses in the law of evidence in the Civil Code.
- d. Through estimates, for example with medical assistance. In this case, DNA (Deoxyribo Nucleic Acid) tests can be used which are able to obtain clarity on the identity of a child to determine their offspring.

If you look at several ways to determine a person's lineage, in this case the determination of lineage as evidenced by a birth certificate must also be accompanied by actual evidence when a dispute occurs in the future. This problem appears several times in our society, due to several factors. First, because people don't want to bother in making a certificate or other identity, many of our people are unfamiliar with the law so that problems like this are considered trivial. Similarly, when entering a person's identity in their family members (KK), people generally easily enter their family data, even though there are also those who are included in the KK are not family. This is what can be referred to as identity falsification or identity engineering.

A birth certificate that shows a person's identity cannot be considered as an ordinary certificate which in this case is only limited to including a person's name. Because this also has implications for other problems, for example in terms of inheritance. When someone finds out that he is someone's biological child, because in the deed he is written as a biological child, especially if his adoptive parents never tell him the origin of the child. Can this be justified by law? If you return to the problem of forgery/engineering for whatever reason, it can be categorized as a

³⁰ Akhmad Jalaluddin, "Nasab: Antara Hubungan Darah Dan Hukum Serta Implikasinya Terhadap Kewarisan," June 2012, 78, <http://publikasiilmiah.ums.ac.id/handle/11617/2341>.

³¹ Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia*, 6 (Jakarta: Kencana, 2016), 275.

violation of the applicable norms. First, the norm of truth and secondly the norm of order in society. If you see this, the position of an adopted child cannot be equated as a biological child. Thus, the share of the adopted child must be following with its portion in terms of inheritance. However, in the provisions of Article 832 of the Civil Code there is also an inheritance system according to a will (testament), this is a statement by an heir about what he wants, occurs after he dies and can be revoked by him if he wishes. The importance of lineage, one of which is to provide children's rights and achieve justice and order in administration. Let our society not think that such acts are commonplace. So that the purpose of law for orderly administration will be difficult to achieve.

Conclusion

The deed must be made in the form determined by law if the birth certificate is not following the law, where the status of the adopted child who should have gone through the court decision process is not passed, and the writing of the biological child in the birth certificate is an engineered identity, the certificate it is not an authentic deed. In fact, the issuance of the certificate in addition to using the parents' data, in this case using a marriage book, must also be based on a birth certificate from either a midwife or other maternity home. But why can a birth certificate be issued if one of them has not been fulfilled, this is a big problem for population administration activists. In addition, the existence of management in court is also considered a problem because it has to incur costs, the process is difficult, and it takes a long time, so that our society does not follow the procedure. Waiting for a decision from the court on an application for an adoption is also not easy. This needs to be a correction so that in the future this arrangement will be even better. There needs to be socialization in our society that the management of child an adoption is not as complicated as many people imagine, so that our society is aware of the importance of following the applicable procedures, as well as providing legal understanding so that they avoid legal entanglements that they do not know about. Even though an adopted child is included as a biological child because of a birth certificate, it does not necessarily make the adopted child's position as a biological child.

Bibliography

- Abdurrahman. "Kompilasi Hukum Islam Di Indonesia / Abdurrahman." Akademika Pressindo, 2007.
- Afif Muamar. "Ketentuan Nasab Anak Sah, Tidak Sah, , Dan Anak Hasil Teknologi Reproduksi Buatan Manusia: Antara UU Perkawinan Dan Fikih Konvensional." *Al-Ahwal* 6, no. 1 (2013).
- Ali Afandi. *Hukum Waris, Hukum Keluarga, Dan Hukum Pembuktian*. Jakarta: Rineka Cipta, 2004.
- Amiur Nuruddin and Azhari Akmal Tarigan. *Hukum Perdata Islam Di Indonesia*. 6. Jakarta: Kencana, 2016.
- Aji, Prabowo Setyo. "Pelaksanaan Penerbitan Catatan Pinggir Pada Akta Kelahiran Sebagai Akibat Pengangkatan Anak Dan Akibat Hukumnya."

- Pandecta: Research Law Journal* 9, no. 2 (December 1, 2014): 243–56.
<https://doi.org/10.15294/pandecta.v9i2.3578>.
- Asmara, Rahadian Kurniawan Musda and Linda Agustian. “Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial.” *De Jure: Jurnal Hukum Dan Syar’iah* Vol. 12, no. No. 1 (2020).
<https://doi.org/DOI:http://dx.doi.org/10.18860/j-fsh.v12i1.7580>.
- HS, Salim. “Pengantar Hukum Perdata Tertulis (BW).” Jakarta: Sinar Grafika, 2008.
- Oemar Moechtar. *Perkembangan Hukum Waris Praktik Penyelesaian Sengketa Kewarisan Di Indonesia*. 1st ed. Jakarta: Prenadamedia Group, 2019.
- Soerjono Soekanto. *Hukum Adat Di Indonesia*. Cet.X. Jakarta: Raja Grafindo Persada, 2010.
- Triyuni Soemartono and Sri Hendrastuti. *Administrasi Kependudukan Berbasis Registrasi*. Jakarta: Yayasan Bina Profesi Mandiri, 2011.
- Djanuardi, Djanuardi, Hazar Kusmayanti, and Linda Rachamainy. “Sosialisasi Hak Mewaris Anak Angkat Berdasarkan Hukum Islam Dan Hukum Adat Untuk Mencapai Keadilan Keluarga.” *Jurnal Pengabdian Dharma Laksana* 3, no. 2 (January 6, 2021): 153–61. <https://doi.org/10.32493/j.pdl.v3i2.8840>.
- Ghaffar, Abd. “Kewarisan Anak Angkat Dalam Perspektif Hukum Islâm.” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 2, no. 1 (September 28, 2019): 56–83.
<https://doi.org/10.19105/al-lhkam.v2i1.2615>.
- I Ngurah Primayuda Bawananta, I Made Yudana and , Ratna Artha Windari. “Pengangkatan Anak Dan Akibat Hukumnya Menurut Hukum Perdata Dan Hukum Adat Bali (Studi Kasus Di Banjar Gempinis Desa Dalang Kecamatan Selemadeg Timur Kabupaten Tabanan,” 2019.
- Irfan Iryadi. “Kedudukan Akta Otentik Dalam Hubungannya Dengan Hak Konstitusional Warga Negara.” *Jurnal Konstitusi* 15, no. 4 (2018).
<https://doi.org/DOI:https://doi.org/10.31078/jk1546>.
- Iswanto, Fikri. “Keabsahan Nasab Berdasarkan Akta Kelahiran Menurut Hukum Islam Dan Hukum Positif,” July 24, 2020.
<https://repository.uinjkt.ac.id/dspace/handle/123456789/51675>.
- Jalaluddin, Akhmad. “Nasab: Antara Hubungan Darah Dan Hukum Serta Implikasinya Terhadap Kewarisan,” June 2012.
<http://publikasiilmiah.ums.ac.id/handle/11617/2341>.
- Girsang, Ruth Tria Enjelina “Perlindungan Hukum Dan Kepastian Hukum Terhadap Anak Angkat Yang Proses Pengangkatannya Melalui Akta Notaris Di Luar Sistem Pengangkatan Anak Angkat/Adopsi Yang Aktanya Wajib Dibuat Dengan Akta Notaris (Stb.1917 No 129) Law Review.” Accessed July 6, 2021. <https://ojs.uph.edu/index.php/LR/article/view/844/338>.
- Pratiwi, Ika Putri. “Akibat Hukum Pengangkatan Anak Yang Tidak Melalui Penetapan Pengadilan.” *Kumpulan Jurnal Mahasiswa Fakultas Hukum* 0, no. 0

- (May 23, 2016).
<http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1691>.
- Regia, Ni Made Delonik. "Perbandingan Hukum Pengangkatan Anak Menurut Staatblad 1917 Nomor 129, Pp Nomor 54 Tahun 2007 Tentang Pelaksanaan Pengangkatan Anak, Dan Hukum Adat Bali." Skripsi, Universitas Mataram, 2018. <http://eprints.unram.ac.id/7450/>.
- Sabri, Fahrudin Ali Sabri Fahrudin Ali. "ADOPSI (Sebuah Tawaran Hukum Islâm Menuju Kebaikan Masa Depan Anak Terlantar)." *Al Ihkam: Jurnal Hukum & Pranata Sosial* 6, no. 2 (August 1, 2013): 201–16. <https://doi.org/10.19105/al-ihkam.v6i2.309>.
- Siti Aminah, Hanafi Arief, Hidayatullah. "Akibat Hukum Terhadap Anak Dari Akta Kelahiran Yang Mencantumkan Orangtua Angkat Menurut Hukum Islam." *Http://Eprints.Uniska-Bjm.Ac.Id/3115/1/Artikel%20siti%20aminah.Pdf*, n.d.
- Wahyu Utami dan Peni Rinda Listyowati. "Analisis Yuridis Kedudukan Anak Angkat Yang Berstatus Anak Kandung Berdasarkan Akta Kelahiran." *Prosiding Konferensi Ilmiah Mahasiswa Unissula (Kimu)* 3, 2020.