

THE POSITION OF A STEPFATHER TOWARDS A STEPCHILD: ANALYSIS OF POPULATION ADMINISTRATIVE LAW AND ISLAMIC LAW

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Abstract

Every child has the fundamental right to obtain a legal identity through legal identity documents, especially birth certificates. However, problems arise when in practice stepfathers are often positioned as father figures who are then included in birth certificates. From a normative perspective, state administrative law explicitly recognizes only biological fathers as legal parents who can be recorded. Meanwhile, Islamic law also rejects the position of stepfathers as marriage guardians and heirs, because there is no nasab bond or blood relationship between stepfathers and stepchildren. This research uses a normative-empirical approach through the study of legislation, the Compilation of Islamic Law, and the reality of social practices in society. The results show that there is a misalignment between legal norms and social reality, causing problems in the form of unorganized population administration, unclear legal status of children, and the risk of marriage invalidity. Therefore, efforts are needed to strengthen socialization regarding the position of stepfathers from a legal perspective, so that legal certainty is maintained while paying attention to the social needs of the community.

Keywords: Stepfather, Stepchild, Population Administration, Islamic Law

Abstrak

Setiap anak memiliki hak mendasar untuk memperoleh identitas hukum melalui dokumen identitas resmi, terutama akta kelahiran. Namun, masalah muncul ketika dalam praktiknya ayah tiri sering diposisikan sebagai figur ayah yang kemudian dicantumkan dalam akta kelahiran. Dari perspektif normatif, hukum administrasi negara secara eksplisit hanya mengakui ayah biologis sebagai orang tua sah yang dapat dicatat. Sementara itu, hukum Islam juga menolak posisi ayah tiri sebagai wali perkawinan dan ahli waris, karena tidak ada ikatan nasab atau hubungan darah antara ayah tiri dan anak tiri. Penelitian ini menggunakan pendekatan normatif-empiris melalui studi perundang-undangan, Kompilasi Hukum Islam, dan realitas praktik sosial di masyarakat. Hasil penelitian menunjukkan bahwa terdapat ketidaksesuaian antara norma hukum dan realitas sosial, yang menyebabkan masalah berupa administrasi kependudukan yang tidak terorganisir, status hukum anak yang tidak jelas, dan risiko pembatalan perkawinan. Oleh karena itu, diperlukan upaya untuk memperkuat sosialisasi mengenai posisi ayah tiri dari perspektif hukum, sehingga kepastian hukum tetap terjaga sambil memperhatikan kebutuhan sosial masyarakat.

Kata kunci: Ayah tiri, Anak tiri, Administrasi kependudukan, Hukum Islam



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INTRODUCTION

Every individual has the right to obtain a valid legal identity from the state. This identity not only serves as identification but also as a guarantee of protection of basic rights, such as the right to education, health, employment, and legal certainty in marriage. The instruments used by the state to provide this identity are population documents, such as birth certificates, family cards (KK), and identity cards (KTP). The existence of these population documents is crucial because without them, an individual can experience various obstacles in accessing public services and carrying out daily life activities. In other words, population administration is a crucial foundation that ensures legal order in social and national life.¹

However, in social practice, the issue of data validity in population documents is not as simple as stated in regulations. One particularly complex phenomenon is the presence of a stepfather in a child's life. In the family context, many children lose their biological father figure, whether through divorce, separation without notice, or death. In such circumstances, the stepfather often acts as a substitute for the father's role in the child's life, providing financial support, protection, and emotional support. Over time, the child and their social environment may come to better recognize and acknowledge the stepfather as a true "father."²

This social phenomenon creates a dilemma in population administration. Legally, according to Law Number 24 of 2013 concerning Population Administration, the father's name may only be recorded on a child's birth certificate for the biological father. A stepfather has no biological relationship with the child, so he has no legal basis to be recorded as the biological father on population documents. A legal relationship can only arise if a legal adoption process is carried out through a court order. Without this procedure, listing the stepfather's name on a child's population documents is considered a violation of state administrative regulations and can even be classified as identity fraud.³

However, in practice, many families still include the stepfather's name on their child's official documents. This is usually driven by a desire to maintain a unified family identity, reduce the social stigma of fatherlessness, or simply to accommodate the fact that the stepfather has been a supportive figure since childhood. This situation demonstrates a disconnect between social needs and administrative legal requirements.

¹ Titi Darmi Ella Martina Chayati, Sri Indarti, "Sosialisasi Meningkatkan Kesadaran Masyarakat Terkait Pentingnya Kepemilikan Akta Kelahiran bagi Setiap Anak sebagai Dokumen Dasar dalam Pelayanan Publik di RT 27 Kelurahan Pagar Dewa, Kota Bengkulu," *JIMAKUKERTA* 4, no. 3 (2024): 132–40.: 133.

² Indah Sari Rahmaini, "Pola Interaksi Anak Dengan Ayah Tiri Dalam Keluarga Remarriage," *Jurnal Sosiologi Andalas* 7, no. 1 (2021): 11–23, <https://doi.org/10.25077/jsa.7.1.11-23.2021>.

³ Cobi E. M. Mamahit Wahyuni Maftucah Kalsum, Roosje M. S. Sarapun, *Tinjauan Yuridis Mengenai Adopsi Anak dalam Undang-Undang Nomor 24 Tahun 2013 tentang Administrasi Kependudukan*, 12, no. 2 (2024).

The issue becomes even more complex when it comes to marriage guardianship in Islamic law. According to the Compilation of Islamic Law (KHI) and the views of Islamic jurisprudence scholars, a marriage guardian is a prerequisite for determining the validity of a marriage. The order of marriage guardians is clearly regulated, starting with the biological father, then the paternal grandfather, then the biological brother, and so on. A stepfather is not included in the list of lineal guardians because he is not related by blood to the stepchild. Therefore, even if a child socially considers his stepfather to be his father, under Islamic law and positive law, he does not have the authority to act as a marriage guardian.⁴

Several cases in society have shown misuse or errors in this regard. For example, research conducted by Umami⁵ Researchers discovered a practice where stepfathers were designated as marriage guardians based on population documents (KK) that listed their names as the biological father. A similar case was also recorded in research in Rejang Lebong⁶, where some communities still consider stepfathers to be legitimate marriage guardians because they are listed on population documents, resulting in administrative errors. Furthermore, the author encountered a woman consulting with him about her population issues related to her stepfather and the implications for her marriage.

Previous research focused more on the status of adoptive fathers, unregistered/sirii marriages, and children born out of wedlock. Therefore, research on the status of stepfathers in children's population documents and its implications for stepchildren is crucial. This research is necessary to examine the extent to which population administration regulations regulate the inclusion of stepfathers and how Islamic law views the position of fathers. Furthermore, this study is expected to offer legal solutions that accommodate the social needs of society without compromising legal certainty and the principles of Islamic law.

Thus, the research focuses on an administrative legal analysis of the inclusion of stepfathers in children's population documents and its legal consequences for stepchildren. It is hoped that this research will provide both theoretical and practical contributions, particularly to the community, civil registration institutions, and the relevant Office of Religious Affairs (KUA).

⁴ Hadi Muhammad Nur Hidayati Riskha Fitri, *Ayah Tiri Sebagai Wali Nikah Perspektif Empat Mazhab*, 4, no. 2 (2024): 170–85.

⁵ Rita Umami, “Kedudukan Ayah Tiri Sebagai Wali Nikah Pasangan A Dan Y (Studi Kasus Di KUA Kecamatan Cileunyi Wetan Kabupaten Bandung),” in *UIN Sunan Gunung Djati* (UIN Sunan Gunung Djati, 2020).

⁶ Yosi Yosando, “Keabsahan Ayah Tiri Sebagai Wali Nikah Dalam Pandangan Hukum Islam (Studi Kasus Desa Lemeu Kecamatan Uram Jaya Kabupaten Lebong)” (IAIN CURUP, 2021).

RESEARCH METHODS

This type of research uses normative research, a legislative approach, namely a normative study of statutory regulations regarding practices in the field.⁷ The normative approach is carried out through a review of relevant regulations, such as Law Number 24 of 2013 concerning Population Administration, Law Number 35 of 2014 concerning Child Protection, and the Compilation of Islamic Law (KHI) regarding the status of stepchildren. This approach uses the theory of legal certainty and is complemented by a conceptual approach to family law, child protection, and legal administration, as well as a sociological approach that examines the practice of registering children's identities at the Civil Registration Office (Disdukcapil) and determining marriage guardians at the Religious Affairs Office (KUA). The data sources for this research consist of primary sources, in the form of laws, KHI, Constitutional Court decisions, as well as references to classical and contemporary Islamic law, and secondary sources, in the form of academic literature such as books and journals. With this combination, this research is expected to be able to provide a comprehensive analysis of the position of stepfathers in children's population documents and its implications for the position of stepchildren, both from a normative perspective and from the reality of social practices in society.

RESULTS AND DISCUSSION

1. Stepfather's Position in Children's Population Documents

Normatively, the legal framework for population administration in Indonesia, particularly in Law Number 23 of 2006 concerning Population Administration which was later updated by Law Number 24 of 2013 and Presidential Decree Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration Article 33 paragraph (1) the requirements for registering a child's birth must fulfill a birth certificate, marriage book/marriage certificate extract or other valid evidence, family card and parents' identity cards, this provision provides a clear statement that the child's identity data in official documents such as birth certificates must refer to their biological parents, namely the biological father and biological mother.

First, a birth certificate serves to provide legal certainty regarding the relationship between a child and their biological parents. This is because the birth certificate clearly lists the names of the father and mother, thus providing a legally binding basis for who has the right to be legally recognized as the child's parents. Thus, a birth certificate also determines a child's legal status, both in relation to inheritance rights, guardianship, and the parents' legal

⁷ Solikin Nur, *Buku Pengantar Penelitian Hukum*, Pertama, ed. Tim Qiara Media (CV. Penerbit Qiara Media, 2021). *Legal research* (Pasuruan: Qiara Media, 2021), 58.

responsibilities towards the child. Second, a birth certificate also serves as authentic proof of a child's identity and citizenship. Through this certificate, the state recognizes a child as a legitimate legal subject and ensures their status as an Indonesian citizen if born within Indonesian jurisdiction or to parents who are Indonesian citizens. With a birth certificate, a child can obtain various administrative rights, such as access to education, health services, ownership of other population documents, and comprehensive legal protection from the state.⁸ This regulation emphasizes that blood relationship is the legal basis that cannot be replaced by another party. Therefore, a stepfather's status does not have the legal legitimacy to be recorded as the biological father on a birth certificate or other population documents.

From the perspective of state administrative law, the inclusion of a stepfather on a child's birth certificate without following proper legal procedures is seen as a form of deviation or administrative defect because it contradicts the principle of truth and the legality of the child's identity. Article 1 paragraph 3 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia defines maladministration as any form of action or behavior that is not in accordance with the law in the provision of public services. This includes various acts, ranging from actions that clearly violate the law, the use of authority beyond the specified limits, to the abuse of authority for interests other than the original purpose. Maladministration also includes negligence, carelessness, or disregard for legal obligations that should be carried out by state apparatus or government officials.⁹

However, from a social perspective, the presence of stepfathers is often viewed as morally legitimate and worthy of recognition because they fulfill the father's role in raising and protecting children. This tension between normative aspects and social reality is a fundamental problem in population administration practices in Indonesia, creating a dilemma between law enforcement and the societal need for legitimacy for stepfather figures.

2. The Position of the Stepfather in the Perspective of Islamic Law

a. Mahram

The position of a stepfather in the family is closely linked to the concept of Al-Muharramat al-Muabbadah, a category of people who are permanently forbidden to marry. This term refers to a perpetual prohibition on marriage, meaning a man will never be permitted to marry a particular woman, and vice versa, due to the inherent relationship between them. This prohibition cannot be removed or changed by any circumstances.

⁸ Tedjo Asmo Sugeng, "Pentingnya Akta Kelahiran sebagai Identitas Anak yang Dilahirkan," *Fenomena* 21, no. 2 (2023): 1–9.

⁹ Ragil Wahyuningsih et al., "Maladministrasi Pada Dinas Kependudukan Dan Pencatatan Sipil," *Journal Juridisch* 1, no. 2 (2023): 99–115, <https://doi.org/10.26623/jj.v1i2.7908>.

In Islamic jurisprudence, there are three main reasons why marriage is forbidden, namely:

1) Prohibition due to blood relations (*nasab*).

This prohibition arises from biological relationships or direct kinship. For example, a man may not marry his mother, grandmother, daughter, granddaughter, or sister, whether biological, paternal, or maternal. This prohibition is among the most fundamental, as it aims to maintain the purity of the bloodline.

2) Prohibition due to marital relationship (*musaharah*).

Musaharah is a kinship bond that arises not from blood relations, but because of marriage. This relationship creates new family ties which are also protected by the Shari'a. Included in this category are:

- a) Father's wife (stepmother). A son may not marry a woman who was once his father's wife, even if the father is deceased or divorced.
- b) Son's wife (daughter-in-law). A father may not marry a woman who was once his son's wife.
- c) Mother-in-law. It is forbidden for a man to marry his wife's mother, even if his marriage to his wife has ended.
- d) Stepchildren. The prohibition on marrying a stepchild applies only if the mother has had sexual intercourse with the husband. If sexual intercourse has not yet occurred and the marriage ends due to divorce or death, the prohibition no longer applies.

In the context of stepchildren, this prohibition is protective. Islam views the relationship between a stepfather and stepchildren as a family bond that must be protected from possible abuse. However, because the condition is "there has been a husband and wife relationship with the mother," then if this condition is not fulfilled, the law of marrying him is prohibited.

3) Prohibition due to breastfeeding (*rada'ah*)

This prohibition arises when a child has been breastfed by a woman, so that a *mahram* relationship arises like a blood relationship. For example: a nursing mother, a nursing sibling, or a child from a nursing mother. Islam stipulates this in order to maintain honor and expand the scope of family protection.¹⁰

¹⁰ Rusdaya Basri, *FIQH MUNAKAHAT 4 Mazhab Dan Kebijakan Pemerintah*, 1st ed., ed. Awal Syaddad (CV. Kaaffah Learning Center, 2019).

According to Ibn Abdul Barr, the term mahram encompasses all men whom a woman is forbidden to marry due to the three factors mentioned above: lineage, marriage, and breastfeeding. These include, for example, a biological father, brother, husband, in-law, stepchild, foster child, or foster sibling.

Meanwhile, according to Sayyid Qutub in his commentary on *Fi Zhilalil Qur'an*, knowledge of which women are forbidden to marry is common knowledge in Islamic society. Both traditional and modern communities understand these limitations, as they are explained in detail in the *Qur'an*.

This is emphasized in *Surah An-Nisa*, verse 23, which mentions groups of women who may not be married. This verse distinguishes between two types of prohibitions:

- a) Permanent prohibition (forever forbidden). For example, marrying one's biological mother, biological child, or mother-in-law.
- b) Temporary prohibition. This prohibition applies only under certain circumstances, for example, to the wife's sister. It is forbidden for a man to marry his sister-in-law as long as his wife is still alive and legally married, but this prohibition is lifted if the marriage ends.¹¹

The prohibitions due to marital relations (*musaharah*) explained in the interpretation of the verse include:

- a) Father's ex-wife,
- b) Ex-wife child,
- c) Mother-in-law,
- d) Stepchildren (if the mother has been sexually assaulted by the husband),
- e) Brother-in-law (as long as he is still married to his wife).

Specifically, the prohibition on marrying stepchildren is explained in more depth by scholars. A stepchild is a daughter of a wife who has had sexual intercourse with her husband (stepfather). This prohibition also includes her descendants, namely, granddaughters of both sons and daughters, and applies to all generations.¹² This is intended to prevent confusion in family relationships and to maintain the honor of the household.

¹¹ Theadora Rahmawati, *Fiqh Munakahat I (Dari Proses Menuju Pernikahan Hingga Hak Dan Kewajiban Suami Istri)* (Duta Media Publishing, 2021).

¹² Sayyid Sabiq, *Fiqh Sunnah Terjemahan*, 3 (2009): 334.

Thus, it can be understood that the status of a stepfather toward his stepchild is not merely a social relationship within the household, but also involves fixed religious law. Islam recognizes stepfathers as mahrams for their stepchildren, as long as the conditions established by sharia are met. This rule demonstrates Islam's strong regard for family honor, preventing the possibility of deviant practices, and emphasizing the importance of maintaining stable relationships among family members.

b. Inheritance

According to Islamic jurisprudence, there are several recognized groups of heirs. First, there are ten male heirs, such as father, son, brother, and other male relatives. Second, there are seven female heirs, such as mother, daughter, sister, and other female relatives. Furthermore, there are five recognized heirs whose status never lapses under any circumstances. This means that they are always entitled to the inheritance without being affected by the existence of other heirs. In addition, there are eleven Ashabah heirs who receive inheritance rights due to their close relationship with the testator.¹³ These entire groups are explicitly recognized as having the right to receive someone's inheritance upon death.

However, stepchildren are not included in the list of heirs specified in Islamic law. This is because stepchildren are not related by blood to their stepfather or stepmother. From an Islamic legal perspective, the primary requirement for someone to be an heir is a legal marriage. Because stepchildren are only related through their parents' marriage to their new partners, they are not included in the list of heirs.

However, this does not mean that stepchildren are completely excluded from inheriting property. Stepchildren can still inherit, but the inheritance path is not through their stepparents, but through their biological parents. In other words, when a child enters a new family due to their mother marrying their stepfather, or vice versa, their father marrying their stepmother, the child's inheritance rights remain tied to their biological father or mother, not their stepparents.

To clarify, the stepchild position can be described in two example situations:

- 1) If the child is the mother's biological child, then when the mother dies, he or she still has the right to receive a share of the inheritance from his or her mother, even though the mother has remarried and started a new family.

¹³ Musthafa Dib Al-Bugha, *Fikih Islam Lengkap: Penjelasan Hukum-Hukum Islam Madzhab Syafi'i*, no. 17 (Media Zikir, 2009).

- 2) If the child is the biological child of the father, then when the biological father dies, he will still receive inheritance rights from the property left by his biological father.

As for stepfathers and stepmothers, stepchildren do not automatically have the right to inherit because there is no binding blood relationship between them. Therefore, the status of stepchildren under Islamic inheritance law differs from that of biological children who are directly related by blood.

Although stepchildren do not receive direct inheritance rights, a legal marriage between biological parents and stepparents creates a new legal relationship. This legal relationship does not automatically create inheritance rights, but rather creates certain obligations for the stepparent towards their stepchild, such as providing for, protecting, and educating the child. This demonstrates that Islam still provides social and moral protection to stepchildren, even though it does not make them heirs.¹⁴

In the context of positive law in Indonesia, Article 171(c) of the Compilation of Islamic Law (KHI) stipulates that a person can only be considered an heir if he/she fulfills three basic conditions, namely:

- 1) Having a relationship with the testator at the time the testator dies, either through blood relations or marital relations,
- 2) Muslim,
- 3) Not hindered by applicable legal regulations from receiving inheritance.

This provision further emphasizes that stepchildren are not considered heirs of their stepparents due to the lack of bloodline or direct marriage ties. However, stepchildren still have the right to inherit from their biological parents in accordance with the principle of bloodline.

c. Mandatory Will

According to Ibn Hazm, a mandatory will is understood as a decision issued by a judge acting on behalf of the government to take part of the inheritance of the testator, then give it to relatives who are not actually entitled to the inheritance because they are prevented by certain reasons¹⁵ This means that even if a deceased person never left a will, the court can still determine that a mandatory will exists for certain relatives

¹⁴ Lina Hutabarat & Sri Hadiningrum Ramadani Shohiro Hasibuan, Theresia Saragih, "Hak Anak Tiri Dalam Mewarisi Menurut Hukum Islam," *Cendekia: Jurnal Hukum, Sosial & Humaniora* 2, no. 1 (2024): 387–95.

¹⁵ Zakiul Fuady Muhammad Daud, "Menyoal Pemberian Wasiat Wajibah Kepada Anak Tiri (Studi Putusan Hakim Terhadap Kasus Warisan Anak Tiri)," *Jurnal As-Salam* 6, no. 1 (2022): 49–61, <https://doi.org/10.37249/assalam.v6i1.387>.

who do not have inheritance rights. Therefore, the essence of a mandatory will only touches on two main aspects:

- 1) This will is valid even if the testator never expressed a will or left a written message beforehand.
- 2) The recipients are limited to relatives who are legally prevented from receiving inheritance due to certain obstacles, for example because there are heirs who have a stronger position.¹⁶

In the Indonesian context, the implementation of a mandatory will is clearly regulated in the Compilation of Islamic Law (KHI), specifically Article 209. This article states two things: First, the inheritance of an adopted child is divided according to the provisions of Articles 176 to 193 of the KHI. However, if the adoptive parents do not have a will, then they are given a mandatory will of a maximum of one-third of the adopted child's inheritance. Second, conversely, if the adopted child does not have a will from his adoptive parents, then he is also entitled to a mandatory will of a maximum of one-third of the inheritance of his adoptive parents.

This provision confirms that adopted children who are not considered heirs under Islamic law are still guaranteed a share of the estate through a mandatory will, with a maximum limit of one-third. The purpose of this rule is to promote a sense of justice, as adopted children typically already have a very close emotional bond with their adoptive parents. Therefore, it would be considered unfair if adopted children were denied any share of their adoptive parents' inheritance.

In the development of legal discourse in Indonesia, a new idea has emerged that the mandatory will mechanism can be extended not only to adopted children but also to stepchildren. This arises because, under classical Islamic law, stepchildren have no inheritance rights whatsoever to their stepfather's or stepmother's property. However, through an analogical approach, (*qiyas*) With adopted children, stepchildren may receive a portion of the estate through a mandatory will. In other words, even if a stepchild is not an heir, they can still receive a portion of their father's or stepmother's inheritance due to the social and emotional relationship they have developed during their time together.

However, the use of *wajibah* wills for stepchildren remains controversial. This is because the legal basis for them does not derive directly from the primary sources

¹⁶ Zakiul Fuady Muhammad Daud and Raihanah Hj Azahari, "Wasiat Wajibah Kepada Anak Angkat: Analisis Terhadap Keputusan Dan Metode Penghakiman Dalam Kes No 459/Pdt.G/2013/Pta Sby," *Jurnal Fiqh* 15, no. 1 (2018): 41–60, <https://doi.org/10.22452/fiqh.vol15no1.2>.

of Islamic law, namely the Quran and Hadith, but rather from Indonesian positive law, the Compilation of Islamic Law. Scholars themselves differ in their opinions, as in Islamic inheritance law, *wajibah* wills are more often given to parents or close relatives who are barred from inheriting.

To address this difference, Islamic scholars have proposed an alternative solution. Based on the principle of Islamic jurisprudence, which states "*al-khuru'j minal khilaf mustahabb*" (exiting a dispute is recommended), if a stepfather or stepmother wishes to give property to their stepchild, the safest way is through:

- 1) Ordinary will: the testator, during his lifetime, states verbally or in writing that after his death, part of his assets (maximum one third) will be given to his stepchildren.
- 2) Gift: a stepparent directly gives part of his/her property to a stepchild while he/she is still alive, so that the ownership rights are transferred immediately without waiting for the death of the donor.

Furthermore, if a stepfather or stepmother dies without having the opportunity to leave a will or bequest, and the stepchild has lived with the stepfamily for a long time and has an emotional closeness to them, the legal heirs can hold a family consultation. The outcome of this consultation may be an agreement to give a small portion of the inheritance to the stepchild. This practice is known in Islamic jurisprudence as *tasyawur al-qismah* (division of assets agreed upon through consultation).¹⁷

Thus, although stepchildren do not have inheritance rights under classical Islamic law, the existence of mandatory wills, ordinary wills, gifts, and family deliberations provides a fairer compromise. This aligns with the social reality in Indonesian society, which demands the recognition and protection of stepchildren as part of the family, even if they are not related by blood. This provision is crucial, even though stepchildren are not legitimate heirs. The existence of a mandatory will provides a framework for social justice. Through this mechanism, stepchildren, who have been treated and cared for as their biological children throughout their lives, can still receive financial security after their stepparent's death. Therefore, while the legal status of stepchildren differs from that of biological children, Islam still provides solutions to ensure that stepchildren are not neglected in terms of their welfare and economic rights within the family.

¹⁷Zakiul Fuady Muhammad Daud, "Questioning the Granting of Mandatory Wills to Stepchildren (A Study of Judges' Decisions on Stepchildren's Inheritance Cases)," *As-Salam Journal* 6, no. 1 (2022): 58.

3. Legal Implications of Stepfather Position

a. Implications of Administrative Law

From a legal and administrative perspective, listing a stepfather's name on a birth certificate without a valid legal basis raises serious issues. First, it violates the principle of the child's identity, as it must refer to a blood relationship that can be legally proven. A child's right to know their origins is a fundamental right guaranteed by law. This is stipulated in Article 7 of Law Number 23 of 2002 concerning Child Protection, which states that every child has the right to know who their parents are and to grow, be raised, and be cared for directly by their biological parents. This provision is intended to ensure that children do not lose their identity and maintain a clear blood relationship and family tree that is legally and socially valid. Article (2) states that if, for some reason, the biological parents are unable to fulfill their obligations regarding the care and maintenance of the child, for example due to economic conditions, death, or other reasons, the child's rights are still protected through alternative care mechanisms. In this case, the law provides space for children to be cared for as foster children or even adopted by other parties, but must still follow applicable legal procedures. This aims to ensure that children's rights, both in terms of identity, welfare, and legal protection, remain guaranteed.

Therefore, substituting or listing the name of a person other than the biological parent as the father or mother on a birth certificate is prohibited. This practice not only violates population administration laws but can also be categorized as the crime of document falsification. Furthermore, it also harms the child by depriving them of their right to know their true ancestry.

Second, this inclusion has the potential to give rise to future legal disputes, particularly regarding inheritance, lineage, and civil status. From a legal perspective, stepchildren have no legal standing as heirs, no lineage, and no civil status from their stepfather. This is because the relationship between a stepchild and a stepfather is not based on blood ties (lineage), but rather is established solely through the marriage between the child's biological parent and the stepparent. However, Islam still provides a space for protection for stepchildren so that they do not lose their rights to welfare. Stepchildren can still receive a share of the new family's assets (the result of the marriage of their biological father or mother to a new partner) through other legitimate mechanisms, namely grants and mandatory bequests. Grants can be given during the stepparent's lifetime, while mandatory bequests can be given up to a third of the

inheritance after the stepparent's death.¹⁸ This is emphasized in the Compilation of Islamic Law (KHI) Article 201, which states that:

"If the will exceeds one-third of the inherited assets and there are heirs who do not agree, then the will will only be executed up to one-third of the inherited assets."

With this provision, stepchildren can receive a share through a mandatory will, but it is still limited to a maximum of one third of the inheritance, unless there is agreement from all the other heirs.

Third, this action can be categorized as maladministration, which implies the need for population data correction through legal procedures, such as a court ruling or child legitimization. According to Article 49 of Presidential Decree Number 96 of 2018 concerning the Requirements and Procedures for Population Registration and Civil Registration, child recognition can only be registered if it meets applicable legal requirements, and in principle, only the biological father has the right to recognize a child. This means that the legal relationship in terms of child recognition must be based on blood ties between the biological father and the child.

If a stepfather takes the initiative to acknowledge a child, administratively, this could potentially create legal issues, as the stepfather is not the child's biological father. Given that a birth certificate is an authentic document with the force of legal evidence, entering data inconsistent with the child's parentage could be considered a form of falsification of the authentic certificate.

This action is regulated in Article 266 paragraph (1) of the Criminal Code (KUHP), which states:

"Anyone who orders the insertion of false information into an authentic deed regarding something the truth of which must be stated in the deed, with the intention of using or ordering another person to use the deed as if the information is in accordance with the truth, is threatened, if the use can cause harm, with a maximum prison sentence of seven years."

Thus, recording the child's recognition by a stepfather on a birth certificate is not permitted because it has the potential to violate criminal law.

b. Implications for Marriage Guardianship

In general, a guardian is understood as someone who, due to their position or authority, has the authority to act for and on behalf of another person. In the context of

¹⁸ Reski Amalia Sondakh, "Kedudukan Hak Waris Anak Tiri Dalam Perkawinan Sah Menurut Hukum Waris Islam," *Lex Crimen* 6, no. 3 (2017): 29–36.

marriage, a guardian is the party who represents the bride in the marriage contract. The majority of scholars (jumhur ulama) agree that a woman is not permitted to perform a marriage contract for herself or for another person. The contract is only considered valid if it is performed by a guardian or if the guardian appoints a legitimate representative. Therefore, if a woman marries without a guardian, the marriage contract is declared null and void.

However, scholars from the Hanafi school of thought have a different view. According to them, a woman is permitted to enter into a marriage contract herself, just as she also has the right to enter into other agreements such as sales, leases (ijarah), or pawns (rahn). Imams Abu Hanifah, Zufar, Al-Sya'bi, and Al-Zuhri argue that this permissibility is conditional, namely that the prospective husband must be equal to the woman.

Meanwhile, Imam Syafi'i emphasized that the presence of a guardian is one of the pillars of marriage. In other words, without a guardian the marriage contract is invalid. In his view, a guardian should not prevent the marriage of a woman under his guardianship if she finds an identical partner. In line with that, Ibn Qudamah in the book al-Mughni also states that the presence of a guardian is an absolute requirement in the marriage contract. This opinion is based on a general hadith of the Prophet, namely that every marriage must be carried out in the presence of a guardian.¹⁹

The Compilation of Islamic Law clearly defines the role of a guardian in marriage. Article 19 emphasizes that a guardian is one of the mandatory requirements for a prospective bride. This means that without a guardian, a marriage contract cannot be considered valid under Islamic law.

Furthermore, Article 20 explains the requirements for someone who can act as a marriage guardian, namely that he must be a man who is Muslim, of sound mind ('aqil), and has reached puberty. In the provisions of the KHI, marriage guardians are divided into two types, namely nasab guardians (guardians due to blood/descent) and judge guardians (guardians appointed by the state/government through a judge).

Article 21 details the order of kinship. They are divided into four groups, ranked based on their degree of kinship with the prospective bride:

- 1) The first group is male relatives from a straight line upwards, such as father, paternal grandfather, and so on.

¹⁹Theodora Rahmawati, *Fiqh Munakahat I (Dari Proses Menuju Pernikahan Hingga Hak Dan Kewajiban Suami Istri)*.

- 2) The second group is biological brothers, half-brothers, and their male descendants.
- 3) The third group is uncles, both the father's biological brothers and half-father's brothers, along with their male descendants.
- 4) The fourth group is the grandfather's brothers, both biological and paternal, and their male descendants.

If there is more than one candidate for guardian in a group, priority is given to the closest relative. If they are of equal status, the biological guardian takes precedence over the paternal guardian. If both are of equal status, the right to be guardian is shared, but priority is given to the older parent who meets the requirements for guardianship.

Article 22 explains that if the most entitled guardian does not fulfill the requirements, for example because he is not Muslim, has a physical disability such as being mute or deaf, is too old (*udzur*), or is unable to carry out his duties, then the rights are transferred to the next guardian according to the order of kinship.

Finally, Article 23 regulates the position of a guardian judge. A guardian judge can only act if there is no lineal guardian, the whereabouts of the lineal guardian are unknown, they are difficult to obtain, are in a state of invisibility, or they refuse (*'adlal*) to marry the bride. In the case of a guardian who is *'adlal* or unwilling to marry, the transfer to a guardian judge can only be made after an official ruling from the Religious Court.

From an Islamic legal perspective, particularly as outlined in the Compilation of Islamic Law (KHI), the right to guardianship in marriage is granted only to the biological father, and if he is unable to do so, it is passed on to a male guardian in the paternal line. This provision demonstrates that blood relationship (lineage) is an absolute requirement in determining who has the right to be a guardian in marriage. Therefore, the position of a stepfather is completely unrecognized in the context of guardianship in marriage, as he has no lineage connection to the daughter he is caring for.

Consequently, even if a stepfather has raised a child from infancy, provided for them, and is even viewed by society as a legitimate father figure, he cannot marry the child off. If the biological father's whereabouts are unknown or he is unable to fulfill his role as guardian, then, based on Article 23 of the Compilation of Islamic Law, the role of guardian is automatically transferred to a judicial guardian appointed by the state through a religious court or the Office of Religious Affairs (KUA). This

mechanism emphasizes that in matters of marriage guardianship, legal legitimacy takes precedence over social legitimacy.

However, this provision often creates a social dilemma. On the one hand, Islamic law maintains the purity of lineage and the validity of marriage through strict guardianship regulations. On the other hand, reality shows that many children are emotionally closer to their stepfathers than to their biological fathers, who may be absent from their lives. When marriage takes place, the child's or family's desire to honor the stepfather as guardian often runs up against legal restrictions that prohibit this.

As a result, in practice, tension often arises between formalistic legal regulations and the social needs of families demanding recognition of the stepfather figure. This situation creates an emotional burden for both children and stepfathers, as their significant role in daily life is not recognized in the religiously and culturally significant wedding ceremony. Thus, marriage guardianship is one of the most obvious points where Islamic and administrative law clearly define the role of stepfathers, even though in social life their role is often considered equal to that of a biological father.

4. Synthesis of Law and Social Reality

Based on the analysis discussed above, it is clear that both state administrative law and Islamic law firmly reject the role of stepfather as biological father or marriage guardian. In both legal systems, the determination of a child's identity and the authority of a marriage guardian are based solely on the legitimate relationship with the biological father. In other words, the existence of a stepfather is recognized only as a social relationship through marriage to the child's mother, not as a legal figure with formal legitimacy.

However, in social practice, the role of a stepfather often extends beyond simply being a "mother's husband." Many stepfathers take over the care, education, and protection of their children from infancy, placing them on par with their biological fathers in society. This situation creates a strong social need for more formal recognition of the stepfather's role, particularly in terms of child identity and family recognition.

This misalignment between legal norms and social reality has given rise to various problems. In the realm of population administration, the practice of listing stepfathers on birth certificates has emerged, a practice legally deemed flawed. Meanwhile, in marriage practice, emotional tension arises when stepfathers, who are actually raising children, are denied the right to act as guardians. This disharmony between legal norms and social practices can ultimately harm children, both in terms of legal protection and social legitimacy.

Therefore, a more accommodating policy mechanism is needed, without conflicting with Islamic legal principles or state administrative law. One option that could be considered is including the status of "stepfather" in population documents as additional information. This registration does not change the child's lineage or displace the biological father, but rather serves as administrative recognition of the stepfather's role in the child's life. This approach can strike a balance between legal certainty and social needs, allowing stepfathers to receive limited recognition without violating basic legal principles.

5. Analysis of the Position of Stepfathers Based on Legal Certainty

According to Prof. Dr. Soerjono Soekanto, legal certainty is crucial for a society to live in order. To achieve this, the state must create laws that apply universally and can be obeyed by everyone. These rules serve to maintain public safety and order, and therefore must be enforced consistently and impartially. However, for the law to be truly enforced, the public must first understand the contents of those rules clearly. If a legal rule is applied retroactively (binding events that occurred before the rule was created), it can lead to confusion and uncertainty. This is because people cannot adapt their actions to rules that did not yet exist.²⁰

The principle of legal certainty is essentially intended to ensure that the law has clear and concrete force, so that people know which rules apply and must be obeyed. With this principle, the law cannot be changed arbitrarily, but must serve as a definite guideline for society. The existence of the principle of legal certainty also serves as protection for justice seekers (justiciables) from becoming victims of arbitrary actions by any party, including officials or authorities. This principle ensures that a person can obtain the rights or results they deserve in accordance with the rules applicable in a given situation. In other words, the principle of legal certainty provides a sense of security because people can predict what will happen if they follow the existing law.²¹

From the perspective of state administrative law, the preparation and issuance of population documents, particularly birth certificates, is based on the principle of material truth. This principle requires that all data contained in population documents conform to valid legal facts and be legally verifiable. These legal facts typically refer to authentic documents, such as the parents' marriage certificates, court decisions or rulings, or other legally binding official

²⁰ Abdullah Sulaiman, *Penghantar Ilmu Hukum*, in *UIN Jakarta Bersama Yayasan Pendidikan Dan Pengembangan Sumber Daya Manusia*, Kedua (UIN Jakarta bersama Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia (YPPSDM) Jakarta, 2019).

²¹ Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman terhadap Asas Kepastian Hukum melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, no. 1 (2019): 13–22, <https://doi.org/10.2753/RUP1061-1940040317>.

evidence. Therefore, only biological fathers who are related by blood to a child are legally registered on a birth certificate, not stepfathers who are not related by blood.

If, in practice, a stepfather's name is still listed as the biological father on population documents, this action can be categorized as a form of administrative irregularity (maladministration). The potential consequences are quite complex, such as the emergence of legal conflicts regarding the determination of heirs, the validity of the child's civil status, and the legitimacy of family relationships in the realm of civil and religious law. In the long term, inaccurate registration can also be detrimental to the child, potentially creating legal uncertainty regarding his or her identity.

Nevertheless, Indonesia's administrative legal system still offers room for improvement through legal correction mechanisms. For example, through court orders to correct population data, or through child recognition procedures (*itsbat nasab*), which can strengthen the legal relationship between a child and their biological parents. In the context of stepfathers, although they cannot be equated with biological fathers, they may still have a limited role. This role usually does not involve lineage or civil rights, but rather aspects of child care, protection, and maintenance, which are more social than legal in nature.

Thus, the position of a stepfather in state administrative law is more of a functional substitute than a formal recognition. This means that the state does not position the stepfather as a legal figure who can replace the biological father in official documents, but still allows him to play a practical role in the child's life, as long as it does not conflict with applicable positive law.

CONCLUSION

From a population administration legal perspective, the recording of a child's identity on a birth certificate must be based on valid legal facts, namely the blood relationship with the biological father and mother. Therefore, a stepfather does not have the legitimacy to be registered as the biological father. If the stepfather's name is listed without going through the adoption procedure approved by the court, then this action falls into the category of maladministration. The impact is not simple, as it can give rise to various legal problems, such as unclear civil status of the child, disputes regarding inheritance rights, and the validity of other official documents related to the child's population data. In other words, registration that does not align with the legal facts is detrimental to the child because it has the potential to create identity uncertainty in the future. From an Islamic legal perspective, a stepfather is not considered a guardian of lineage because he is not related by blood to the stepchild. The order of guardianship in marriage is only given to the biological father, grandfather, brother, and so on, so a stepfather cannot act as a guardian in

marriage. Likewise, in terms of inheritance, a stepchild is not entitled to inherit their stepfather's estate because the primary requirement for inheritance is a relationship of lineage or direct marriage. However, Islamic law still provides social justice for stepchildren through mandatory wills, gifts, or family agreements. Therefore, even though legally a stepchild does not have formal inheritance rights, he or she can still receive economic security after his or her stepfather's death.

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