



Reconstructing the Criminal Liability of Adoptive Parents in Child Neglect: A Comparative Study of Indonesia, the United Kingdom, and Australia

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Abstract

Child neglect represents one of the most complex forms of child maltreatment within contemporary criminal law, particularly when it arises from omissions rather than direct acts of harm. This complexity is further intensified in cases involving adoptive parents, where legal parenthood is formally recognized but the scope of criminal liability remains doctrinally underdeveloped across jurisdictions. This study aims to reconstruct the criminal liability of adoptive parents in child neglect cases through a comparative analysis of Indonesia, the United Kingdom, and Australia. Employing a normative juridical method combined with a comparative legal approach, this research examines statutory frameworks, judicial practices, and legal doctrines concerning parental responsibility, omission-based liability, and child protection. The findings reveal that Indonesia adopts a relatively formalistic approach that lacks doctrinal clarity regarding omission liability, while the United Kingdom and Australia provide more structured frameworks grounded in duty of care and the best interests of the child. However, even in these jurisdictions, challenges persist in aligning formal parental status with substantive accountability. This study proposes a reconstructed model of criminal liability based on three key elements: (1) explicit recognition of adoptive parents' duty of care, (2) doctrinal integration of omission-based liability, and (3) alignment with child protection principles rooted in the best interests of the child. This reconstruction offers a more coherent and child-centered framework for addressing neglect within modern legal systems. The study contributes to the development of criminal and child protection law by bridging the gap between formal legal status and substantive responsibility, while providing policy-relevant insights for strengthening legal frameworks and judicial reasoning.

Keywords: Child Neglect; Adoptive Parents; Criminal Liability; Duty of Care; Omission Liability; Child Protection Law; Comparative Law; Best Interests of the Child

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1. Introduction

Child neglect is widely recognized as one of the most pervasive yet under-theorized forms of child maltreatment in criminal law. Unlike physical or sexual abuse, which involve direct acts of harm, neglect is primarily characterized by omission, namely the failure of a caregiver to provide adequate care, supervision, or protection.¹ This omission-based nature creates significant challenges for criminal law, which traditionally emphasizes positive acts (*actus reus*) as the basis for liability. As a result, determining criminal responsibility in cases of neglect requires a more nuanced understanding of legal duties, causation, and harm.

¹Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2022), 36–40.

The issue becomes even more complex in the context of adoptive parents. Adoption legally transfers parental rights and obligations from biological parents to adoptive parents, thereby establishing a formal parent-child relationship recognized by law.² However, despite this formal recognition, many legal systems do not clearly articulate how criminal liability should be attributed when adoptive parents fail to fulfill their obligations. This gap is particularly evident in cases of neglect, where harm often results from prolonged inaction rather than immediate misconduct.

In Indonesia, the legal framework governing child protection is primarily regulated under the Child Protection Law, which affirms the rights of children and the obligations of parents, including adoptive parents.³ However, the law does not provide a comprehensive doctrinal basis for omission-based liability, nor does it clearly define the threshold for criminal responsibility in cases of neglect. Judicial reasoning in such cases tends to rely on a formal interpretation of parental status, without sufficiently engaging with the substantive dimensions of care, harm, and responsibility. This creates uncertainty in the application of criminal law and may result in inconsistent outcomes.

By contrast, the United Kingdom has developed a more structured approach to child neglect. Under the Children and Young Persons Act 1933, it is a criminal offence for a person responsible for a child, including an adoptive parent, to neglect or ill-treat that child in a manner likely to cause unnecessary suffering or injury to health.⁴ Importantly, UK law recognizes omission as a valid basis for criminal liability when a duty of care exists. Judicial interpretation further reinforces this framework by emphasizing the responsibility of caregivers to actively safeguard the welfare of the child.

Similarly, Australia has established a comprehensive legal framework that integrates criminal law with child protection principles. Australian jurisdictions recognize that parents, including adoptive parents, owe a duty of care to their children, and failure to fulfill this duty may give rise to criminal liability.⁵ Courts in Australia have consistently emphasized the importance of protecting children from harm, including harm resulting from neglect, and have developed legal standards that reflect both statutory obligations and broader child welfare considerations.

Despite these developments, significant differences remain across jurisdictions in conceptualizing and applying criminal liability for child neglect involving adoptive parents. These differences reflect broader tensions between formal legal status and substantive responsibility, as well as between act-based and omission-based models of criminal liability.⁶ In many cases, legal systems struggle to reconcile the formal recognition of adoptive parenthood with the practical realities of caregiving, particularly when neglect arises from systemic or long-term failures rather than isolated incidents.

From a theoretical perspective, omission liability has long been a contested issue in criminal law. Classical legal theory, as articulated by Hart, distinguishes between acts and omissions and emphasizes that liability for omissions arises only where a legal duty to act exists.⁷ In the context of adoptive parents, the existence and scope of such duties must be clearly defined in order to ensure legal certainty and fairness. However, in practice, these duties are often ambiguously formulated, leading to gaps in accountability.

Furthermore, the principle of the best interests of the child, as enshrined in international human rights instruments such as the Convention on the Rights of the Child, provides an important normative framework for assessing parental responsibility.⁸ This principle requires that all decisions concerning children

²United Nations, Convention on the Rights of the Child, 1989, Articles 3 and 20.

³Indonesia, Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

⁴United Kingdom, Children and Young Persons Act 1933, section 1.

⁵Ben Mathews, "Criminal Liability for Failure to Protect Children," *Child Abuse & Neglect* 36, no. 7–8 (2012): 542–548.

⁶Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022).

⁷H.L.A. Hart, *Punishment and Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2008), 136–152.

⁸United Nations, Convention on the Rights of the Child, Article 3.

prioritize their welfare and development. However, its integration into criminal law varies significantly across jurisdictions, and it is often underutilized in determining criminal liability for neglect.

In light of these challenges, there is a clear need to reconstruct the concept of criminal liability of adoptive parents in cases of child neglect. Such reconstruction requires a shift from a purely formalistic approach toward a more substantive and child-centered framework that integrates duty of care, omission liability, and child protection principles. A comparative analysis of Indonesia, the United Kingdom, and Australia provides a valuable basis for this reconstruction, as it allows for the identification of both strengths and weaknesses in different legal systems.

This study therefore seeks to answer two main research questions: (1) how is the criminal liability of adoptive parents in child neglect cases conceptualized and applied in Indonesia, the United Kingdom, and Australia? and (2) how can judicial reasoning be reconstructed to provide a more coherent and effective framework for determining such liability? By addressing these questions, this research aims to contribute to the development of criminal law and child protection law, while offering practical insights for legal reform.

Although various studies have discussed child neglect and parental responsibility from both criminal law and child protection perspectives, research that specifically examines the criminal liability of adoptive parents in cases of child neglect using a comparative legal approach remains relatively limited. Most previous studies have focused more on the responsibility of biological parents or on general child protection issues, without giving adequate attention to the legal position of adoptive parents as subjects who bear equivalent caregiving obligations under the law. Therefore, this study seeks to fill this gap by analyzing and reconstructing the concept of criminal liability of adoptive parents in child neglect cases through a comparison of the legal systems of Indonesia, the United Kingdom, and Australia.

2. Literature Review

The issue of criminal liability for child neglect, particularly in the context of adoptive parents, lies at the intersection of several key doctrinal areas in criminal law and child protection law. These include the concept of duty of care, omission-based liability, and the principle of the best interests of the child. While each of these concepts has been extensively discussed in legal scholarship, their integration into a coherent framework for assessing the liability of adoptive parents remains limited, especially in comparative contexts.

The concept of duty of care constitutes the foundational element for establishing criminal liability in cases of omission. In criminal law, liability for omission arises only where an individual is under a legal duty to act and fails to discharge that duty, resulting in harm or risk of harm.⁹ This principle has been widely recognized in common law jurisdictions, where courts have identified specific relationships—such as that between parent and child—as giving rise to such duties. In the context of adoptive parents, the duty of care is legally transferred through the process of adoption, thereby placing adoptive parents in a position equivalent to biological parents. However, the extent to which this duty is clearly articulated and enforced varies significantly across jurisdictions.

Scholarly discussions emphasize that duty of care in child protection is not merely a legal construct but also reflects broader social and ethical obligations. Herring argues that parental responsibility should be understood as an active and continuous obligation to safeguard the welfare of the child, rather than a passive status derived from legal recognition.¹⁰ This perspective is particularly relevant in cases of neglect, where harm often results from sustained inaction rather than isolated incidents. In such cases, the failure

⁹Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2022), 36–40.

¹⁰Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022), 245–260.

to act may be as harmful as direct abuse, necessitating a legal framework that adequately captures the gravity of omission.

Closely related to the duty of care is the doctrine of omission-based liability, which remains one of the most contested areas in criminal law theory. Traditional criminal law has been criticized for its reluctance to impose liability for omissions, based on concerns about over-criminalization and the difficulty of defining the scope of legal duties.¹¹ However, modern legal systems increasingly recognize that omission can constitute a basis for criminal liability where there is a clear duty to act. Ashworth and Horder note that omission liability plays a crucial role in addressing harm arising from neglect, particularly in relationships characterized by dependency, such as that between a child and a caregiver.¹²

Despite this recognition, the application of omission liability remains inconsistent. In some jurisdictions, courts adopt a restrictive approach, requiring clear statutory provisions or established categories of duty before imposing liability. In others, a more flexible approach is taken, allowing courts to infer duties based on the circumstances of the case.¹³ This inconsistency is particularly problematic in cases involving adoptive parents, where the legal and social dimensions of parenthood may not always align. As a result, there is a risk that adoptive parents may either be held to unclear standards or, conversely, escape liability due to gaps in legal doctrine.

The principle of the best interests of the child provides an important normative framework for addressing these challenges. Enshrined in international instruments such as the Convention on the Rights of the Child, this principle requires that all decisions affecting children prioritize their welfare and development.¹⁴ In the context of criminal law, this principle can serve as a guiding standard for interpreting parental duties and assessing liability. However, its application in criminal proceedings is often indirect and varies across jurisdictions.

Eekelaar argues that the best interests principle should not be viewed merely as a policy consideration but as a substantive legal standard that informs the interpretation of rights and obligations.¹⁵ This perspective suggests that criminal liability for child neglect should be assessed not only in terms of legal duty but also in relation to the impact on the child's well-being. In practice, however, many legal systems, including Indonesia, have yet to fully integrate this principle into their criminal law frameworks.

In comparative legal scholarship, the divergence between civil law and common law approaches to omission liability and child protection has been widely noted. Civil law systems, such as Indonesia, tend to rely on codified provisions and formal definitions of legal relationships, which may limit judicial flexibility in interpreting duties of care.¹⁶ In contrast, common law systems, such as those in the United Kingdom and Australia, allow for greater judicial discretion and have developed more nuanced doctrines through case law. This flexibility enables courts to adapt legal principles to the complexities of modern family structures, including adoption.

Another important aspect of the literature concerns the distinction between formal legal parenthood and substantive caregiving responsibility. Legal scholarship increasingly recognizes that formal status alone is insufficient to capture the realities of caregiving, particularly in cases involving complex family arrangements.¹⁷ In the context of adoption, this distinction becomes critical, as adoptive parents are legally recognized as parents but may face unique challenges in fulfilling their responsibilities. The failure to address this distinction in legal doctrine may result in gaps in accountability and protection.

¹¹A.P. Simester et al., *Criminal Law: Theory and Doctrine*, 7th ed. (Oxford: Hart Publishing, 2019), 120–135.

¹²Ashworth and Horder, *Principles of Criminal Law*, 2022.

¹³H.L.A. Hart, *Punishment and Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2008), 136–152.

¹⁴United Nations, *Convention on the Rights of the Child*, 1989, Article 3.

¹⁵John Eekelaar, "The Importance of Thinking That Children Have Rights," *International Journal of Law, Policy and the Family* 6, no. 1 (1992): 221–235.

¹⁶Mark Van Hoecke, *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011).

¹⁷Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022).

Furthermore, empirical studies on child neglect highlight the multifaceted nature of neglect and its long-term impact on children's development. Research indicates that neglect can have severe consequences for physical, emotional, and cognitive development, often comparable to or even exceeding the effects of other forms of abuse.¹⁸ These findings underscore the importance of a robust legal framework that can effectively address neglect and hold caregivers accountable.

Despite the growing body of literature on child neglect and parental responsibility, there remains a significant gap in the specific context of adoptive parents' criminal liability. Most studies focus on biological parents or general caregiving relationships, with limited attention to the unique legal and social dynamics of adoption. This gap is particularly evident in comparative studies, where the interaction between different legal systems and adoption practices is rarely examined in depth.

In light of these limitations, this study seeks to contribute to the literature by integrating doctrinal analysis with comparative insights. By examining how different jurisdictions conceptualize and apply criminal liability in cases of child neglect involving adoptive parents, this research aims to develop a more coherent and comprehensive framework. Such a framework is essential for addressing the complexities of modern family structures and ensuring that legal systems provide effective protection for children.

3. Research Method

This study employs a normative juridical method combined with a comparative legal approach to analyze the criminal liability of adoptive parents in cases of child neglect. The normative juridical method is utilized to examine legal norms, principles, and doctrines governing parental responsibility, omission-based liability, and child protection within the framework of criminal law. This approach focuses on the analysis of statutory provisions, legal principles, and doctrinal interpretations as reflected in legislation and scholarly literature. More specifically, this study applies three analytical approaches: the statute approach, the conceptual approach, and the comparative approach. The statute approach is used to analyze the legal provisions governing child protection and parental responsibility in each jurisdiction. The conceptual approach is employed to examine legal concepts such as duty of care, omission liability, and the principle of the best interests of the child from the perspective of criminal law doctrine. The comparative legal approach is used to compare the construction of criminal liability of adoptive parents across the legal systems of Indonesia, the United Kingdom, and Australia, with a view to developing a more comprehensive and relevant reconstruction model for the advancement of Indonesian law.¹⁹

The comparative legal approach is applied to identify similarities and differences in how Indonesia, the United Kingdom, and Australia conceptualize and regulate the criminal liability of adoptive parents in cases of child neglect. These jurisdictions are selected based on their distinct legal traditions and levels of doctrinal development. Indonesia represents a civil law system with a codified legal structure, while the United Kingdom and Australia represent common law systems that rely heavily on judicial interpretation and precedent. The comparison enables a deeper understanding of how different legal systems address omission liability, duty of care, and child protection principles.²⁰

The data used in this study consist of primary and secondary legal materials. Primary legal materials include statutory regulations such as Indonesia's Child Protection Law, the United Kingdom's Children and Young Persons Act 1933, and relevant legislation in Australia concerning child protection and criminal liability. Secondary legal materials include academic books, peer-reviewed journal articles, and authoritative legal commentaries that discuss criminal law theory, omission liability, and child protection.²¹

¹⁸Ben Mathews, "Exploring the Impact of Child Abuse and Neglect," *Child Abuse & Neglect* 36, no. 7–8 (2012): 542–548.

¹⁹Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

²⁰Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

²¹Terry Hutchinson, *Researching and Writing in Law*, 4th ed. (Sydney: Lawbook Co., 2018).

These materials are analyzed qualitatively to identify doctrinal patterns, conceptual gaps, and interpretative inconsistencies.

The analytical method adopted in this study is qualitative doctrinal analysis, which involves interpreting legal norms and principles in order to assess their coherence and applicability. This analysis is further complemented by a comparative framework that allows for cross-jurisdictional evaluation. Through this process, the study identifies strengths and weaknesses in each legal system and develops a reconstructed model of criminal liability that integrates best practices from the examined jurisdictions.²²

The research is grounded in a conceptual framework that emphasizes three key elements: duty of care, omission-based liability, and the best interests of the child. These elements serve as analytical lenses for evaluating existing legal frameworks and for proposing a reconstructed model of liability. By combining normative and comparative approaches, this study aims to produce a comprehensive and context-sensitive analysis that contributes to both legal theory and practical reform.

4. Results And Discussion

4.1 Criminal Liability of Adoptive Parents in Child Neglect under Indonesian Law

The regulation of criminal liability for child neglect in Indonesia reflects a predominantly formalistic approach that prioritizes statutory recognition of parental status without sufficiently elaborating the doctrinal foundation of omission-based liability. Although Indonesian law acknowledges the responsibility of parents, including adoptive parents, to ensure the welfare of children, the legal framework remains fragmented and lacks conceptual clarity in addressing neglect as a form of criminal conduct.

Under Indonesian law, the primary legal basis for addressing child neglect is found in the Child Protection Law, which imposes obligations on parents and caregivers to provide care, protection, and fulfillment of children's rights.²³ The law explicitly recognizes adoptive parents as having the same responsibilities as biological parents following the legal process of adoption. However, while these obligations are clearly articulated in normative terms, the law does not provide a detailed framework for attributing criminal liability when such obligations are violated through omission.

This absence of doctrinal clarity becomes particularly evident in the treatment of neglect as a criminal offense. Indonesian criminal law traditionally emphasizes acts rather than omissions, and liability for omission is not systematically developed within the general provisions of the Criminal Code.²⁴ As a result, the application of criminal liability in cases of child neglect often depends on the interpretation of specific statutory provisions rather than on a coherent theoretical framework. This creates uncertainty in determining when a failure to act constitutes a punishable offense.

In practice, judicial reasoning in Indonesia tends to rely heavily on a formal interpretation of parental responsibility, focusing on whether the defendant holds a legally recognized status as a parent. Once such status is established, courts may infer responsibility without thoroughly examining the substantive elements of duty, breach, and causation. This approach risks oversimplifying the complexity of neglect, particularly in cases where harm results from prolonged inaction rather than a single identifiable event.

Moreover, the legal framework does not clearly distinguish between different forms of neglect, such as physical neglect, emotional neglect, or medical neglect.²⁵ This lack of differentiation limits the ability of courts to assess the severity and impact of neglect, as well as to determine appropriate levels of criminal liability. In many cases, neglect is treated as a general failure of parental duty without a nuanced evaluation of the specific circumstances and consequences.

²²H. Patrick Glenn, *Legal Traditions of the World*, 5th ed. (Oxford: Oxford University Press, 2014).

²³Indonesia, Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

²⁴Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 2010).

²⁵Ben Mathews, "Exploring the Impact of Child Abuse and Neglect," *Child Abuse & Neglect* 36, no. 7–8 (2012): 542–548.

Another significant issue concerns the evidentiary challenges associated with omission-based liability. Unlike acts of commission, which are often supported by direct evidence, omissions require the establishment of a duty to act, the failure to fulfill that duty, and a causal link between the omission and the resulting harm.²⁶ Indonesian courts, however, often lack clear guidelines on how to assess these elements, leading to inconsistent interpretations and outcomes. This is particularly problematic in cases involving adoptive parents, where the scope of responsibility may be influenced by social, economic, and psychological factors.

The role of judicial discretion in Indonesia is also relatively limited compared to common law jurisdictions. Courts tend to adhere closely to statutory provisions, with less emphasis on developing legal principles through interpretation.²⁷ While this approach enhances legal certainty, it may hinder the ability of judges to address complex cases of neglect that require a more flexible and context-sensitive analysis. Consequently, judicial reasoning may fail to capture the broader realities of child welfare and caregiving.

Furthermore, the integration of child protection principles into criminal law remains incomplete. Although the Child Protection Law reflects the influence of international standards, including the Convention on the Rights of the Child, these principles are not consistently applied in criminal proceedings.²⁸ In particular, the principle of the best interests of the child is often treated as a general guideline rather than as a substantive standard for determining liability. This limits its effectiveness in shaping judicial reasoning and ensuring that legal outcomes prioritize the welfare of the child.

Comparatively, the Indonesian approach reveals a tension between formal legal recognition and substantive responsibility. While adoptive parents are formally recognized as having full parental rights and obligations, the legal system does not adequately translate this recognition into a clear and enforceable framework of criminal liability. This gap becomes especially problematic in cases of neglect, where the harm is cumulative and may not be immediately visible.

In addition, the absence of a structured doctrine of omission liability raises concerns about both under-criminalization and over-criminalization. On one hand, the lack of clear standards may allow certain cases of neglect to go unpunished due to evidentiary difficulties or interpretative uncertainty. On the other hand, broad and undefined obligations may lead to the imposition of criminal liability in cases where the threshold of harm or culpability is not sufficiently established.²⁹ This dual risk underscores the need for a more precise and balanced legal framework.

From a theoretical standpoint, the Indonesian model demonstrates a strong reliance on normative obligations without corresponding analytical mechanisms. The law clearly states that parents must care for their children, but it does not provide adequate tools for assessing whether a failure to do so constitutes a criminal offense. This disconnect between norm and application limits the effectiveness of the legal system in addressing child neglect.

In light of these findings, it is evident that the current framework of criminal liability for adoptive parents in Indonesia requires significant reconstruction. Such reconstruction should focus on clarifying the scope of duty of care, developing a coherent doctrine of omission liability, and integrating child protection principles into judicial reasoning. By addressing these issues, the legal system can move toward a more consistent and child-centered approach to criminal liability.

The following section will examine how the United Kingdom conceptualizes and applies criminal liability in cases of child neglect, providing a comparative perspective that highlights alternative approaches and potential avenues for reform.

4.2 Criminal Liability of Adoptive Parents in Child Neglect under United Kingdom Law

²⁶Ashworth and Horder, *Principles of Criminal Law*, 2022.

²⁷Mark Van Hoecke, *Methodologies of Legal Research*, 2011.

²⁸United Nations, *Convention on the Rights of the Child*, 1989.

²⁹H.L.A. Hart, *Punishment and Responsibility*, 2008.

The legal framework governing child neglect in the United Kingdom reflects a more developed and doctrinally coherent approach to omission-based criminal liability, particularly in the context of parental responsibility. Unlike the Indonesian system, which tends to rely on formal recognition of parental status, UK law integrates the concepts of duty of care, omission liability, and child welfare into a unified framework that allows for a more nuanced assessment of criminal responsibility, including that of adoptive parents.

At the statutory level, the primary legal basis for criminal liability in cases of child neglect is found in section 1 of the Children and Young Persons Act 1933, which criminalizes the ill-treatment, neglect, abandonment, or exposure of a child by a person responsible for that child.³⁰ The phrase "person responsible" explicitly includes parents, guardians, and any individual who has assumed responsibility for the child's care, thereby encompassing adoptive parents. This statutory formulation is significant because it shifts the focus from formal legal status to functional responsibility, allowing courts to assess liability based on the actual relationship between the caregiver and the child.

A defining feature of UK criminal law is its recognition of omission as a basis for liability, provided that a legal duty to act can be established. The duty of care owed by parents to their children is well-established in both statutory law and judicial precedent, and it imposes a positive obligation to ensure the child's welfare.³¹ In cases of neglect, liability arises not from what the parent has done, but from what the parent has failed to do, such as failing to provide adequate food, medical care, or supervision. This approach reflects a broader understanding of harm that encompasses both acts and omissions.

Judicial reasoning in the UK further reinforces this framework through the development of case law. Courts have consistently emphasized that the existence of a duty of care is central to establishing omission liability. In *R v Gibbins and Proctor* [1918], for example, the court held that a parent's failure to feed a child, resulting in death, constituted a criminal offense due to the breach of a legal duty.³² This case remains a foundational authority for omission liability in English criminal law and illustrates how the law attributes responsibility based on relational duties rather than merely on direct actions.

In addition to duty of care, UK courts also place significant emphasis on causation and foreseeability in determining criminal liability. It must be shown that the omission contributed to the harm suffered by the child and that such harm was reasonably foreseeable.³³ This requirement ensures that liability is not imposed arbitrarily but is grounded in a clear connection between the defendant's failure to act and the resulting harm. In cases involving adoptive parents, this analysis allows courts to assess the extent to which the parent's conduct—or lack thereof—directly affected the child's well-being.

Another important aspect of the UK approach is the integration of child protection principles, particularly the best interests of the child. While this principle originates in family law and international human rights law, it has influenced the interpretation of criminal statutes and judicial reasoning.³⁴ Courts increasingly recognize that the purpose of criminalizing neglect is not only to punish wrongdoing but also to protect vulnerable children from harm. This perspective encourages a more holistic assessment of the circumstances, including the child's needs, the parent's capacity to meet those needs, and the broader context of caregiving.

The role of adoptive parents within this framework is relatively clear. Once adoption is legally finalized, adoptive parents assume full parental rights and responsibilities, including the duty of care.³⁵ There is no doctrinal distinction between biological and adoptive parents in terms of criminal liability, as both are

³⁰United Kingdom, Children and Young Persons Act 1933, s. 1.

³¹Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2022).

³²*R v Gibbins and Proctor* (1918) 13 Cr App R 134.

³³Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022).

³⁴United Nations, *Convention on the Rights of the Child*, 1989, Article 3.

³⁵United Kingdom, *Adoption and Children Act 2002*.

equally responsible for the welfare of the child. This equality reflects the principle that legal parenthood carries substantive obligations, regardless of the origin of the parental relationship.

Moreover, UK law demonstrates a high degree of judicial flexibility in interpreting and applying legal principles. Courts are not limited to a rigid statutory framework but may draw on precedent, legal doctrine, and contextual analysis to determine liability.³⁶ This flexibility allows for a more responsive legal system that can adapt to the complexities of individual cases, including those involving adoptive families.

However, this approach is not without its challenges. The reliance on judicial discretion may lead to variations in interpretation and application, particularly in cases where the boundaries of duty and causation are not clearly defined.³⁷ Nonetheless, the existence of appellate review and the development of consistent legal principles through case law serve to mitigate these risks and maintain a degree of coherence within the legal system.

When compared to the Indonesian framework, the UK approach offers several important advantages. First, it provides a clear doctrinal basis for omission liability, grounded in the concept of duty of care. Second, it integrates child protection principles into criminal law, ensuring that legal outcomes are aligned with the welfare of the child. Third, it allows for a more flexible and context-sensitive form of judicial reasoning, enabling courts to address the complexities of modern caregiving arrangements, including adoption.

These features make the UK model particularly relevant for comparative analysis and legal reform. By examining how UK law conceptualizes and applies criminal liability in cases of child neglect, valuable insights can be gained into how other jurisdictions, including Indonesia, might develop more coherent and effective legal frameworks. The next section will further expand this comparative perspective by analyzing the Australian approach, which offers additional insights into the integration of criminal law and child protection.

4.3 Criminal Liability of Adoptive Parents in Child Neglect under Australian Law

The Australian legal framework governing child neglect demonstrates a comprehensive and integrated approach that combines criminal law principles with a strong emphasis on child protection. Compared to Indonesia and the United Kingdom, Australia offers a model that not only recognizes omission-based liability and duty of care but also embeds these concepts within a broader statutory and institutional system aimed at safeguarding the welfare of children. This integration is particularly relevant in cases involving adoptive parents, whose legal responsibilities are clearly defined and consistently enforced across jurisdictions.

At the legislative level, child neglect in Australia is regulated through a combination of criminal statutes and child protection laws at both the federal and state levels. While criminal provisions vary between states, there is a consistent recognition that parents and caregivers, including adoptive parents, owe a legal duty to provide for the safety, health, and well-being of children.³⁸ This duty is not merely declaratory but imposes a positive obligation to act, thereby forming the basis for omission-based liability when such obligations are breached.

One of the defining features of the Australian approach is its explicit recognition of parental duty of care as a source of criminal liability. Courts have consistently held that parents may be held criminally liable for failing to take reasonable steps to prevent harm to their children. In *R v Taktak* (1988), the court affirmed that a person who voluntarily assumes responsibility for another may incur a duty to act, and failure to discharge that duty can result in criminal liability.³⁹ Although not limited to parental relationships, this

³⁶H. Patrick Glenn, *Legal Traditions of the World*, 5th ed. (Oxford: Oxford University Press, 2014).

³⁷A.P. Simester et al., *Criminal Law: Theory and Doctrine*, 7th ed. (Oxford: Hart Publishing, 2019).

³⁸Ben Mathews, "Mandatory Reporting Laws and Identification of Child Abuse and Neglect," *Child Abuse & Neglect* 36, no. 7–8 (2012): 542–548.

³⁹*R v Taktak* (1988) 14 NSWLR 226.

principle has been applied in cases involving caregivers, including adoptive parents, reinforcing the notion that legal responsibility arises from both status and conduct.

In addition to general criminal law principles, Australian jurisdictions have enacted specific provisions addressing child neglect and failure to protect. For example, legislation in several states criminalizes the failure of a parent or caregiver to protect a child from harm where there is knowledge or reasonable suspicion of risk.⁴⁰ These provisions reflect a proactive approach to child protection, extending liability beyond direct perpetrators to those who fail to intervene. In the context of adoptive parents, this reinforces the expectation that they actively safeguard the child's welfare.

Judicial reasoning in Australia also demonstrates a strong emphasis on causation, foreseeability, and reasonableness. Courts assess whether the harm suffered by the child was a foreseeable consequence of the caregiver's omission and whether the caregiver failed to take reasonable steps to prevent such harm.⁴¹ This approach ensures that liability is grounded in a balanced assessment of responsibility, taking into account both the circumstances of the case and the capacity of the caregiver to act.

A distinctive aspect of the Australian framework is the integration of child protection principles into criminal adjudication. The best interests of the child are not only recognized as a guiding principle in family law but also influence the interpretation and application of criminal law.⁴² Courts and legislative bodies emphasize that the primary objective of legal intervention is to protect children from harm and promote their well-being. This child-centered approach aligns with international standards and enhances the coherence of the legal system.

The position of adoptive parents within this framework is clearly defined. Once adoption is legally finalized, adoptive parents assume full parental rights and obligations, including the duty to protect and care for the child.⁴³ There is no legal distinction between adoptive and biological parents in terms of criminal liability, as both are equally subject to the same standards of care. This equality reflects a substantive understanding of parenthood, where responsibility is determined by the role assumed rather than the origin of the relationship.

Furthermore, the Australian legal system benefits from a high degree of institutional coordination between criminal justice agencies and child protection services. This coordination facilitates the identification, investigation, and prosecution of cases involving child neglect, while also ensuring that appropriate support mechanisms are in place for affected children.⁴⁴ Such an integrated approach enhances the effectiveness of legal responses and reduces the risk of gaps in protection.

However, challenges remain within the Australian framework. The reliance on state-based legislation may result in variations in legal standards and enforcement practices across jurisdictions.⁴⁵ Additionally, the emphasis on reasonableness and foreseeability introduces a degree of subjectivity into judicial reasoning, which may lead to differing interpretations in similar cases. Despite these challenges, the overall framework remains robust and adaptable, providing a strong basis for addressing the complexities of child neglect.

When compared to Indonesia and the United Kingdom, the Australian approach offers several important insights. First, it demonstrates how criminal law and child protection principles can be effectively integrated to create a comprehensive legal framework. Second, it highlights the importance of clearly defining parental duties and establishing omission-based liability as a central component of criminal responsibility. Third, it illustrates the value of institutional coordination in ensuring the effective implementation of legal norms.

⁴⁰Queensland, Criminal Code Act 1899 (Qld), s. 286 (Duty of persons in charge of children).

⁴¹Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022).

⁴²United Nations, *Convention on the Rights of the Child*, 1989.

⁴³Australia, *Family Law Act 1975* (Cth).

⁴⁴Ben Mathews, 2012.

⁴⁵H. Patrick Glenn, *Legal Traditions of the World*, 5th ed. (Oxford: Oxford University Press, 2014).

These insights are particularly relevant for the reconstruction of criminal liability in other jurisdictions. By examining the strengths of the Australian model, it becomes possible to identify key elements that can be adapted to improve legal frameworks elsewhere, including Indonesia. The following section will synthesize the findings from all three jurisdictions and develop a reconstructed model of criminal liability for adoptive parents in cases of child neglect.

4.4 Comparative Analysis and Reconstruction of Criminal Liability of Adoptive Parents in Child Neglect

The comparative analysis of Indonesia, the United Kingdom, and Australia reveals a fundamental divergence in how criminal liability for child neglect, particularly involving adoptive parents, is conceptualized and applied. These differences are not merely technical but reflect deeper distinctions in legal traditions, doctrinal development, and the integration of child protection principles within criminal law. By examining these differences, this section aims to identify structural weaknesses and propose a reconstructed model of criminal liability that is both coherent and responsive to the realities of child neglect.

At the most basic level, the Indonesian legal framework demonstrates a formalistic orientation, where criminal liability is primarily derived from the legal status of parenthood. Once adoptive parents are formally recognized, they are presumed to bear responsibility for the child's welfare. However, this presumption is not supported by a clear doctrinal structure that explains how omission-based liability operates.⁴⁶ As a result, judicial reasoning often lacks analytical depth, particularly in assessing the elements of duty, breach, and causation. This creates a gap between normative obligations and their practical enforcement.

In contrast, the United Kingdom adopts a doctrinally structured approach grounded in the concept of duty of care. Criminal liability arises where a person responsible for a child fails to fulfill a legally recognized duty, and this failure results in harm or risk of harm.⁴⁷ The UK framework clearly establishes omission as a valid basis for liability and integrates judicial interpretation with statutory provisions. This approach allows courts to engage in a more nuanced analysis of responsibility, taking into account both legal duties and factual circumstances.

Australia further develops this approach by integrating criminal law with child protection systems, thereby creating a more comprehensive framework. In addition to recognizing duty of care and omission liability, Australian law emphasizes the importance of foreseeability and reasonableness in determining liability.⁴⁸ This ensures that criminal responsibility is assessed in a balanced manner, considering both the caregiver's obligations and their capacity to act. Moreover, the integration of institutional mechanisms enhances the effectiveness of legal enforcement and child protection.

From a comparative perspective, three key differences emerge. First, there is a divergence in the conceptualization of duty of care. While Indonesia recognizes parental obligations in a general sense, it does not clearly define the scope and content of these duties in criminal law. By contrast, the UK and Australia provide more precise and operational definitions, allowing courts to assess liability with greater clarity.⁴⁹ Second, there is a difference in the recognition of omission-based liability. In Indonesia, omission remains underdeveloped as a doctrinal basis for criminal liability, whereas in the UK and Australia it is firmly established and consistently applied. Third, there is a variation in the integration of child protection

⁴⁶Indonesia, Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

⁴⁷United Kingdom, Children and Young Persons Act 1933, s. 1.

⁴⁸Queensland, Criminal Code Act 1899 (Qld), s. 286.

⁴⁹Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2022).

principles, particularly the best interests of the child, which are more prominently incorporated in the UK and Australian frameworks.

These differences highlight the need for a reconstruction of criminal liability for adoptive parents in Indonesia. The current framework is insufficient to address the complexities of child neglect, particularly in cases involving prolonged omission and indirect harm. A reconstructed model must therefore move beyond formal legal recognition and incorporate substantive elements that reflect the realities of caregiving and child welfare.

This study proposes a three-dimensional reconstruction model of criminal liability for adoptive parents in cases of child neglect.

The first dimension is normative clarification of duty of care. Indonesian law must explicitly define the scope of adoptive parents' obligations, including duties related to physical care, emotional support, education, and protection from harm.⁵⁰ This clarification should be incorporated into both statutory provisions and judicial guidelines, ensuring that courts have a clear basis for assessing liability. By defining duty of care in concrete terms, the law can provide greater legal certainty and reduce interpretative ambiguity.

The second dimension is the integration of omission-based liability into criminal doctrine. This requires the development of a coherent framework that establishes when a failure to act constitutes a criminal offense. Such a framework should include clear criteria for determining the existence of a duty, the breach of that duty, and the causal relationship between omission and harm.⁵¹ Drawing from common law principles, omission liability should be recognized as a central component of criminal responsibility in cases involving dependent relationships, such as that between parents and children.

The third dimension is the incorporation of child-centered principles, particularly the best interests of the child, into judicial reasoning. This requires courts to evaluate not only the legal elements of the offense but also the impact of the caregiver's conduct on the child's welfare and development.⁵² By integrating this principle into criminal adjudication, the legal system can ensure that decisions are aligned with broader objectives of child protection and social justice.

The integration of these three dimensions results in a model of criminal liability that is both structured and flexible. It maintains legal certainty through clear definitions and criteria, while also allowing for contextual analysis that reflects the complexities of individual cases. Importantly, this model redefines the role of adoptive parents within criminal law, emphasizing substantive responsibility over formal status.

Furthermore, the proposed reconstruction has broader implications for legal reform. It highlights the need for harmonization between criminal law and child protection law, as well as the importance of capacity building for judges and law enforcement officials.⁵³ By adopting a more analytical and child-centered approach, the legal system can enhance its ability to address child neglect and protect vulnerable populations.

In conclusion, the comparative analysis demonstrates that the limitations of the Indonesian framework are not inherent but can be addressed through doctrinal development and institutional reform. By learning from the experiences of the United Kingdom and Australia, Indonesia can develop a more coherent and effective model of criminal liability for adoptive parents. This reconstruction not only strengthens legal accountability but also reinforces the fundamental objective of protecting the rights and welfare of children.

Based on the comparative analysis of the legal systems of Indonesia, the United Kingdom, and Australia, it is evident that criminal liability in cases of child neglect does not solely depend on active conduct that causes harm, but may equally arise from the failure to fulfill a legal obligation to provide care for a child. In

⁵⁰Jonathan Herring, *Criminal Law: Text, Cases, and Materials*, 9th ed. (Oxford: Oxford University Press, 2022).

⁵¹H.L.A. Hart, *Punishment and Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2008).

⁵²United Nations, *Convention on the Rights of the Child*, 1989, Article 3.

⁵³Mark Van Hoecke, *Methodologies of Legal Research*, 2011.

the context of adoptive parents, this obligation emerges as a direct consequence of the legal recognition of the parent-child relationship established through the adoption process. Therefore, the reconstruction of criminal liability for adoptive parents must be grounded in three principal elements: first, a clearer and more explicit recognition of the adoptive parents' duty of care toward the adopted child as the foundational basis for criminal liability; second, the strengthening of the concept of omission liability within criminal law, particularly in cases concerning child protection; and third, the integration of the principle of the best interests of the child into judicial reasoning, so as to ensure that the protection of children remains the paramount priority in legal enforcement. Through this reconstruction, it is anticipated that the legal system will be capable of providing more effective protection for children and establishing greater legal certainty in determining the criminal responsibility of adoptive parents in cases of child neglect.

4.5 Research Limitations

This study has several limitations that should be acknowledged. First, it employs a normative-juridical approach that focuses on the analysis of legislation, legal doctrines, and academic literature, and therefore does not include direct empirical analysis of court practices. Consequently, the findings reflect a doctrinal assessment of the law rather than an account of how it is applied in concrete judicial proceedings. Second, this study only compares three jurisdictions — Indonesia, the United Kingdom, and Australia — and therefore the findings do not yet reflect the full range of legal approaches that may exist in other countries. Nevertheless, these three jurisdictions were intentionally selected because they represent meaningfully different legal traditions — a civil law system and two common law systems — which are particularly relevant for the purposes of comparative analysis and legal reconstruction.

5. Conclusion

This study has examined the criminal liability of adoptive parents in cases of child neglect through a comparative analysis of Indonesia, the United Kingdom, and Australia, with a particular focus on the role of judicial reasoning and doctrinal coherence. The findings demonstrate that while all three jurisdictions formally recognize the responsibility of adoptive parents to ensure the welfare of children, they differ significantly in how this responsibility is translated into criminal liability, especially in cases involving omission.

In Indonesia, the legal framework reflects a predominantly formalistic approach, where parental responsibility is recognized in normative terms but lacks a sufficiently developed doctrinal foundation for omission-based liability. The absence of clear criteria for defining duty of care, breach, and causation results in uncertainty and inconsistency in judicial reasoning. Consequently, the legal system struggles to effectively address cases of child neglect, particularly those involving prolonged omission or indirect harm. This limitation highlights a structural gap between statutory obligations and their practical enforcement.

By contrast, the United Kingdom provides a more structured and coherent framework grounded in the concept of duty of care. The recognition of omission as a basis for criminal liability, supported by statutory provisions and judicial precedent, enables courts to engage in a more nuanced assessment of parental responsibility. Similarly, Australia demonstrates a comprehensive approach that integrates criminal law with child protection systems, emphasizing foreseeability, reasonableness, and institutional coordination. These frameworks offer valuable insights into how legal systems can more effectively address the complexities of child neglect.

The comparative analysis reveals three key deficiencies in the Indonesian framework: the lack of explicit doctrinal clarity regarding duty of care, the underdevelopment of omission-based liability, and the limited integration of child-centered principles such as the best interests of the child. These deficiencies undermine the effectiveness of criminal law in protecting children and ensuring accountability for adoptive parents who fail to fulfill their obligations.

In response, this study proposes a reconstructed model of criminal liability based on three interrelated dimensions: normative clarification, doctrinal integration, and child-centered reasoning. First, the law must explicitly define the scope and content of adoptive parents' duty of care, providing clear guidance for both

courts and practitioners. Second, omission-based liability must be systematically incorporated into criminal law doctrine, with well-defined criteria for establishing duty, breach, and causation. Third, judicial reasoning must integrate the principle of the best interests of the child as a substantive standard for assessing liability, ensuring that legal outcomes prioritize child welfare.

This reconstructed model offers a more coherent and balanced framework that bridges the gap between formal legal status and substantive responsibility. It enhances legal certainty by providing clear doctrinal guidance while also allowing for contextual analysis that reflects the realities of caregiving. Moreover, it aligns domestic legal frameworks with international standards of child protection, thereby strengthening the overall legitimacy of the legal system.

From a policy perspective, the implementation of this model requires several key reforms. These include the development of detailed judicial guidelines on omission liability, the harmonization of criminal law and child protection legislation, and the enhancement of judicial capacity in handling cases involving child neglect. Additionally, greater coordination between legal institutions and child protection agencies is essential to ensure effective enforcement and prevention.

In conclusion, this study contributes to the advancement of criminal law and child protection law by offering a comparative and reconstructive analysis of adoptive parents' liability in child neglect cases. By addressing doctrinal gaps and proposing a structured framework for reform, it provides a pathway toward more effective, consistent, and child-centered legal responses. Future research may further explore empirical dimensions of judicial practice and evaluate the impact of legal reforms on the protection of children in diverse socio-legal contexts.

Based on the findings of this study, there is a clear need for legal reform in Indonesia that places greater emphasis on the recognition of parental caregiving obligations as the foundational basis for criminal liability in cases of child neglect. Lawmakers should consider integrating the concept of duty of care, as well as a child protection approach oriented toward the principle of the best interests of the child, into the national criminal law framework. In doing so, the legal system will be better positioned to provide more optimal protection for children while simultaneously creating legal certainty in the enforcement of the criminal responsibility of adoptive parents. Such reform is not merely a doctrinal imperative but also a practical necessity in ensuring that Indonesia's legal system responds adequately to the realities of modern family structures and fulfills its obligations under international child rights standards.

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