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## *Inheritance Rights of Illegitimate Children and Wives Under Islamic Law*

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**Neneng Dwi Citawati, I Made Suwitra, Ni Made Jaya Senastri**

Universitas Warmadewa, Indonesia

Email: mimirodja1602@gmail.com

### **ABSTRACT**

This research examines inheritance rights to joint property for extra-marital children obtained through wills and the protection of wives as heirs in Islamic law. Islamic law does not recognize joint property, whereas the Civil Code and Marriage Law apply it only to legal spouses. Extra-marital children have no rights to joint property unless granted through a will, which requires the wife's consent and cannot exceed 1/3 of the testator's assets without other heirs' approval. Recognized extra-marital children have limited inheritance rights, receiving a maximum of 1/3 of a legitimate child's share if the testator has legal descendants or the entire estate if no legitimate heirs exist. Extra-marital children only inherit from their mother and her family, with no paternal inheritance rights unless granted through a mandatory will, as stipulated in Constitutional Court Decision Number 46/PUU-VIII/2010. In Bima customary law, extra-marital children can only inherit through a will. Wives, as heirs in Islamic law, receive 1/4 of the inheritance if the testator has no children and 1/8 if children exist. Before inheritance distribution, debts and wills are settled, with wills limited to 1/3 of assets, ensuring no harm to legal heirs. Extra-marital children are not direct heirs but may receive a share through wills. In Bima customary law, a wife remains an heir, although her inheritance may be reduced if there is a will for extra-marital children. This methodology ensures a comprehensive understanding of inheritance rights through both theoretical and practical perspectives in Islamic and customary law.

**Keywords:** extra-marital children, inheritance, will.

### **INTRODUCTION**

The existence of children in the family is something very meaningful, children have different meanings for each person (Campo et al., 2020). Children are a connector of offspring, as an investment in the future and children are a hope to be a backup in old age. Children are considered as capital to increase the rank of life so as to control the social status of parents. Children are the holders of parental privileges, when parents are alive, children are a comfort and when parents have died, children are a symbol of succession and a symbol of immortality. Children inherit signs of similarity with their parents, including characteristics, good and bad, high and low. Children are the soulmates and flesh and blood of their parents (Hertz & Nelson, 2018).

So important is the existence of children in human life, that Allah SWT prescribed marriage. Pensyari'atan marriage has a purpose, among others, to have good offspring (have children), maintain nasab, avoid disease and create a sakinah family. As Allah SWT says in Surah al-Rum verse (21) which means:

"And among the signs of His power is that He created for you wives of your own kind, that you may tend to them and feel secure in them, and that He may establish between you love and affection. Indeed, in such things there are signs for the thinking people."

Therefore, Islam prohibits adultery. Islamic law imposes severe sanctions on adultery, because adultery can lead to unclear offspring. So when a child is born as a result of adultery, there will be doubts about who the father is. With marriage, any child born from a husband's bed is absolutely the child of that husband, without requiring his recognition from him (Hill, 2017).

Promiscuity among teenagers today often leads to negative unintended consequences, such as sexual relations outside marriage and pregnancy outside marriage (Dreweke, 2019). This phenomenon arises due to cultural shifts, so that cohabitation between men and women without the bonds of marriage is increasingly visible in society. However, the 'iddah for pregnant women due to adultery will have implications for the permissibility of the marriage contract, in the sense of whether or not the marriage is valid. In addition, the 'iddah for pregnant women due to adultery is not explicitly explained in either the Qur'an or the Sunnah, thus inviting differences of opinion among scholars.

The status of children outside of marriage has positive legal consequences and negative legal consequences. Children outside of marriage can get rights like legitimate children of marriage by fulfilling several conditions. One of them is that the child must be legally recognized by the parents who bore him. In accordance with the provisions of Article 284 of the Civil Code which basically states that with recognition, the status of a child outside of marriage can be changed to a recognized child outside of marriage (Rumadaul, 2020). This must be done through recognition by the biological father, which can only be done with the consent of the mother.

According to the legal system in the Civil Code, the principle is that only those who have a legal relationship with the heir have inheritance rights, by getting inheritance, it means that the status of an unmarried child has changed to a recognized unmarried child. However, before making a confession, first look at Article 284 of the Civil Code because not all confessions can change the status of an unmarried child to a recognized unmarried child; the confession must be made in accordance with the prescribed method of recognition. Islamic law does not recognize recognition, the status of an extra-marital child or adulterous child cannot be changed to a recognized extra-marital child as in the Civil Code. Extra-marital children can only demand a living allowance and education costs

Based on the description of the background of the problem above, a problem formulation can be formulated, namely, How are the inheritance rights to joint property for children outside of marriage obtained through a will? In general, the purpose of this research is to find out the inheritance rights to joint property for extra-marital children obtained through wills and the protection of wives as heirs in the distribution of inheritance in Islamic law.

The results of this study are expected to be useful for the development of legal science so that later it can formulate theoretical thoughts in order to deepen the study of inheritance rights to

joint property for children outside of marriage who are obtained through wills, and the protection of wives as heirs in the distribution of inheritance in Islamic law.

The legal and social implications of inheritance rights for out-of-wedlock children, especially those who are denied fair inheritance, have wide-ranging effects. The economic and social repercussions of excluding these children from inheritance are severe, as they are denied resources that could impact their social mobility and well-being (Narayan et al., 2018). Such exclusions can perpetuate cycles of poverty and inequality, particularly for children who are already marginalized due to their birth status.

This research aims to delve deeper into the inheritance rights of out-of-wedlock children in Indonesia, especially focusing on those obtained through wills. By reviewing recent legal reforms, particularly following the Constitutional Court's decision on inheritance rights, this study seeks to explore the potential for further legal developments in Indonesia. It is expected that these findings can contribute to the ongoing discussions surrounding inheritance laws in Indonesia, providing a foundation for policy improvements that ensure equal rights for all children, regardless of their birth status (Nurlaelawati & Van Huis, 2019).

The results of this research are expected to be valuable for the development of legal scholarship, particularly in the areas of family law and inheritance. By highlighting the challenges and potential reforms, the study aims to provide critical insights into how legal frameworks can better accommodate the rights of out-of-wedlock children and improve their access to inheritance in Indonesia. This research also intends to contribute to broader discussions on how national legal systems can evolve to better reflect the principles of justice and equality for all citizens, including vulnerable populations like out-of-wedlock children (Andiani, 2024).

## RESEARCH METHODS

The type of research used is empirical legal research. Empirical legal research is an analysis of the applicable legal provisions and how they are applied in reality in society. The object of research in this study is the inheritance rights of extra-marital children and wives based on Islamic law. Therefore, the research location chosen is in the area of Bima City, West Nusa Tenggara Province, namely the Religious Court and the Dae Ranga Advocate Office. To support the findings, quantitative data will be collected, such as statistics on the number of inheritance cases involving extramarital children or the inheritance rights of wives settled through wills.

Legal materials or data sources in this research adjust to the type of empirical research, namely using primary data sources. Primary data is data obtained primarily from empirical research, as a form of research conducted directly in the community. Primary data sources are data obtained directly from the source or from the field where the research is conducted, through interviews with interested parties or respondents who can provide information relevant to the problem to be studied.

## **RESULTS AND DISCUSSION**

### **Inheritance Rights to Joint Property for Extra Marital Children Acquired through a Will Customary Law of Inheritance**

Customary law is a collection of rules of behavior that are positive, sanctioned and uncodified. In other words, customary law is custom that has legal consequences. Some jurists define customary law as follows:

- 1) R. Soepomo argues that customary law is non-statutory law, mostly in the form of customary law and a small part derived from Islamic law;
- 2) A. Ridwan Halim argues that customary law includes all legal regulations based on the customs of the Indonesian people, most of which are unwritten. This law varies according to the different ethnic groups in Indonesia, each reflecting the tribe's view of life;
- 3) Moh. Koesno argues that customary law is a law rooted in the cultural values of the nation, which always adapts to changing circumstances over time;
- 4) Hilman Hadikusumah argues that customary law is all laws that are not written in the form of laws, but grow and develop in society; and
- 5) Soerojo Wignjodipoero argues that customary law is a collection of norms that originate from a sense of community justice, continues to develop, and includes rules for daily human behavior. Most customary laws are unwritten, but they are still obeyed and respected by the community because they have legal consequences in the form of sanctions.

Compliance with customary law occurs because of the belief that every individual born into the world is already within the scope of norms governing personal behavior, legal actions, and legal relationships in social interactions. Customary law, of course, must also describe what is called customary law society. In theory, there is a fundamental difference between the notions of legal community and customary law community. Kusumadi Pujosewoyo defines a legal community as a group of people who establish, submit to, and are bound by a legal system that they themselves create (Priambodo, 2018). Meanwhile, customary law societies are communities that form naturally in an area without intervention or determination by the authorities, with a high level of solidarity among its members. In customary law communities, members see each other as part of the group, while their territory is considered a resource that can only be utilized by members of the community.

Customary law communities consist of customary law alliances whose members are bound by genealogical (blood relations), territorial (territory), or a combination of both (genealogical-territorial) factors (Risma et al., 2023). According to Barend Ter Haar Bzn, in addition to the general public, there are certain groups of people, such as kings, nobles and merchants, who are geographically separated and influenced by local customary law.

In customary law, there are 3 (three) kinship or lineage systems that affect the distribution of inheritance property to heirs, namely:

### 1. Patrilineal Kinship System

This system draws lineage from male ancestors. In this system, also known as paternal lineage, maternal lineage is ignored. This affects who is entitled to be an heir, i.e. only sons are considered as successors to their father's property.

### 2. Matrilineal Kinship System

This kinship system draws its lineage from female ancestors. In this system, the paternal line is ignored, and the female descendants are the successors. The right of inheritance in this system goes to the daughter who receives the property from her mother.

### 3. Parental or Bilateral Kinship System

This system draws lineage from both sides, namely male (father) and female (mother) ancestors. In this system, the position of sons and daughters is equal in law, so that both have the same rights as heirs to the parents' inheritance. Areas in Indonesia that adhere to the parental or bilateral system include Java, Madura, Kalimantan, Lombok and Sulawesi.

### **Bima Customary Inheritance Law**

Customary inheritance law is a rule in customary law that regulates how inherited property is distributed or distributed to heirs from one generation to the next, including the procedure and process of transfer (Faizal et al., 2025). According to H. Hilman Hadikusuma, customary inheritance law consists of rules governing the inheritance of property, both material and immaterial, from the testator to the heirs on an ongoing basis.

Customary inheritance law is also influenced by the kinship system in society, which varies, such as patrilineal, matrilineal, or bilateral (parental). Many customs have developed in Indonesia, one of which is the Bima customary society, in West Nusa Tenggara Province. The Bima City family system, also known as Dana Mbojo by the Mbojo Tribe, is located in the eastern part of Sumbawa Island in West Nusa Tenggara Province, Indonesia. Bima City is located in the eastern part of Sumbawa Island. Bima City has a total population of 155,140 people in 2021, with a population density of 694 people per km<sup>2</sup>, calculated from its area of 222.25 km<sup>2</sup>.

### **Islamic Inheritance Law**

Death is the natural end of the human journey. Although biologically it is an ordinary event for living beings, for humans, death has legal implications. In a legal context, death is considered a legal event because it brings certain consequences, namely the end of all legal rights and obligations that a person had during his lifetime. The term inheritance comes from the Arabic warotsa, which means the transfer of property rights from one person to another after the original owner dies. The inherited property is called heirloom. Article 171 letter a KHI states:

"Inheritance law as a rule that regulates the transfer of ownership rights over inherited property (tirkah), including the determination of who is entitled to become heirs and the distribution of the property".

Islamic law explains that there are pillars of inheritance that form the basis and conditions for the validity of the inheritance process. These pillars are essential elements that must be present for inheritance to take place, consisting of:

- 1) Al-Muwarits (heirs), namely people who have died, either real death or declared by a judge (hukmiy death), who leave certain assets or rights;

- 2) Al-Warits (heirs), namely living people or children in the womb who have the right to inherit, although in some conditions can be prevented from receiving inheritance; and
- 3) Al-Mauruts (inherited property), which is any property or rights that can be inherited, including certain rights such as the right to qishash (civil) or the right to pledge goods.

If one of these pillars is not fulfilled, then inheritance cannot be carried out. Islamic Inheritance Law specifically regulates the process of transferring property from someone who dies to his heirs, including determining who is entitled to inherit, the portion of the distribution of each heir, and determining what is included in the inheritance or inheritance.

Heirs are individuals who have passed away and left behind clean assets. The existence of the heir is determined by the existence of causes that obligate the right to inherit, such as kinship or marriage. If these causes are not fulfilled, then the right to inherit does not apply. The legal basis of Islamic inheritance comes from the Qur'an, Hadiths of the Prophet Muhammad, laws and regulations, and the Compilation of Islamic Law (Djawas et al., 2022).

### **Position of children outside of marriage**

#### **Extra-marital Children Based on Bima Customary Law**

Customary law is a legal system that comes from the customs of the community in a particular area and is unwritten. This makes the determination of inheritance rights, including the inheritance rights of children outside marriage according to customary law, quite complex. This complexity is caused by differences in customs in each region that only apply in the local community and do not have legal force that applies globally or universally (Tamanaha, 2017). The diversity of kinship systems in customary law also adds to the challenges, especially for judges in the courts who must handle customary inheritance disputes involving unmarried children. In situations like this, some judges often issue decisions that are more universal in nature so that they can be used as a reference or consideration for other judges when facing similar cases regarding customary inheritance disputes related to unmarried children.

#### **Extra-marital Children in Various Laws**

##### **Extra-marital Children According to the Civil Code**

Inheritance law is a set of legal rules that regulate who are the heirs entitled to inherit the estate of someone who has died. In addition, inheritance law also regulates the position of each heir and how the distribution of inheritance is carried out fairly and in accordance with applicable regulations. The Civil Code agrees that the legitimate descendants of a deceased person are the main heirs and are more entitled to receive a share of the inheritance than other heirs, due to their close blood relationship and kinship with the testator (Brassington, 2019). However, in unusual situations, where a deceased person has no legitimate descendants but may have extra-marital children. Article 272 of the Civil Code explains that children born out of wedlock (between a young man and a girl) can be recognized and legalized, unless the child is the result of adultery or discord. An adulterous or discordant child is a child born from a relationship between a man and a woman who is prohibited from marrying. This means that the article indicates that extramarital sex between a girl and a young man is not considered adultery. Thus, adultery according to the Civil Code is extramarital sex between persons at least one of whom is married. Referring to

Article 272 of the Civil Code which states that:

"Every child born from a marital relationship, followed by the marriage of the parents, will be considered valid if it has been previously recognized in accordance with the provisions of the law or if such recognition is made through a marriage certificate. Exceptions apply to children born from adulterous or discordant relationships."

### **Extra-marital Children According to the Compilation of Islamic Law**

The Qur'an as a guide to life regulates many aspects, including the relationship between humans and others (*hablum minannas*) and between humans and God (*hablum minallah*). One of the things that is regulated in relation to human relations is the issue of inheritance, which in Arabic is called *faraidl*, which means 'a certain share'. According to A. Rofiq, *faraidl* or *faraid* refers to the provisions regarding who is entitled to receive inheritance, who is not entitled, and the share received by each heir. Inheritance law is a set of legal rules that regulate who the heirs are entitled to inherit the property of someone who has died. In addition, inheritance law also regulates the position of each heir and how the distribution of inheritance is carried out fairly and in accordance with applicable regulations (Yusuf, 2017).

### **Joint Property for Extra Marital Children**

Joint property is defined as wealth acquired during the marriage period, with the exception of inheritance or gifts from each family, which means that the wealth is generated from the efforts of both parties during the marriage bond. Joint property in marriage has various terms, one of which comes from customary law terms, such as the term *gono-gini* which is commonly used in Java. In the context of households, joint property (*gono-gini*) stems from '*urf*' or customs in a region, which does not distinguish property rights between husband and wife.

Article 119 of the Civil Code states that 'from the time of marriage, by operation of law, there shall be a complete union between the assets of the husband and wife, except in respect of which no other provision is made by a marriage agreement'. The definition of joint property is also explained in Article 35 of Law Number 1 of 1974 concerning Marriage which states that 'property obtained during marriage becomes joint property'. Article 1 letter f of the Compilation of Islamic Law states that 'Marital property or *syirkah* is property obtained either alone or jointly by husband and wife during the marriage bond and hereinafter referred to as joint property, regardless of being registered in the name of anyone'.

### **Protection of Wives as Heirs in the Division of Inheritance in Islamic Law**

#### **Share of Legitimate Wife's Estate in Islamic Law**

Marriages with *siri* wives do not have legal force, because they are not registered at the Office of Religious Affairs or if the *siri* marriage is not preceded by a permit from the Religious Court as Article 56 paragraph (1) to paragraph (3) KHI regulates. The position of a legal wife is more important than a *siri* wife. However, sometimes the legal wife is excluded, especially regarding her inheritance rights. If the heir dies (in this case the husband), the wife is also one of the heirs based on the Qur'an Surah An-Nisa' verse (12), which reads:

"And for you (husbands) half of what your wives leave behind if they have no children. But

if they have children, then for you a quarter of the property they leave after fulfilling the will they made or after paying their debts. And for them (the wives) a quarter of the property you leave if you have no children. But if you have children, then they get an eighth of the property you leave after fulfilling the will you made or after paying your debts."

The wife's share according to Islamic law is 1/8 part if the husband leaves children, and 1/4 part if the husband does not leave children. This division is done after the joint property (gono-gini property) is separated and the testator's debts are paid off.

### **Protection of Wives as Heirs in the Division of Inheritance in Islamic Law**

The heir is the party entitled to the inheritance property. If the discussion in this sub-chapter is linked to the discussion in the previous sub-chapter, then most ordinary people will start to think badly about the fate of the legal wife to the inheritance if the extra-marital child gets the inheritance through the will. This is due to the nature of the will which must take precedence. The order of giving the inheritance to the heirs first is the release of the testator's debt (if any), the fulfillment of the will, and then the distribution of inheritance. However, this has actually been limited through the provisions of Article 863 of the Civil Code which states that:

"If the deceased leaves legitimate heirs or a husband or wife, the illegitimate children inherit one-third and the share they would have received had they been legitimate heirs; they inherit one-half and the estate, if the deceased leaves no heirs, husband or wife, but blood relatives in the upward line, or brothers and sisters or their descendants, and three-fourths if there are only blood relatives living in a more distant degree. If the legal heirs according to the law are related to the deceased in unequal degrees, then the closest in degree in one line determines the amount of the share to be given to the child out of wedlock, even against those in the other line".

Heirs who leave legitimate descendants or spouses (husband/wife), then extra-marital children are only entitled to 1/3 of the property that would have been received if they were legitimate children.

### **CONCLUSION**

Based on the entire description of the discussion above, it can be concluded that the inheritance rights to joint property for extra-marital children obtained through wills are different according to Islamic law, the Civil Code, and the Marriage Law. Islamic law does not recognize the concept of joint property, while the Civil Code and the Marriage Law limit joint property only to legal spouses. Extra-marital children have no rights to joint property, except through a will with the consent of the wife, the implementation of which may not exceed 1/3 of the testator's property without the consent of other heirs. Recognized extra-marital children have limited inheritance rights, namely a maximum of 1/3 of the rights of legitimate children if the testator has legitimate descendants, or can inherit the entire property if the testator does not have legitimate heirs. Extra-marital children only have a nasab relationship and inheritance rights with the mother and her mothers family, and do not have inheritance rights from their biological father, except through mandatory wills or other legal evidence as stipulated in Constitutional Court Decision Number

46/PUU-VIII/2010. The Bima customary community also believes that extra-marital children are not entitled to inherit, except through a will. Meanwhile, the protection of wives as heirs in Islamic law is given in accordance with their needs, roles and contributions in the family. If the testator has no children, the wife is entitled to 1/4 part of the estate, while if the testator has children, the wife is entitled to 1/8 part. In addition, Islamic law regulates the priority of debt repayment and the fulfillment of wills before the distribution of inheritance, with the provision that wills are only allowed a maximum of 1/3 of the total assets of the testator and must not harm the rights of legal heirs, including wives. Protection is also given to the wife's rights in situations involving extra-marital children, where extra-marital children are not considered direct heirs but can receive a share through a will with a maximum limit of 1/3 of the assets. In Bima customary law, the existence of an extra-marital child does not affect the wife's status as an heir, although the value of the inheritance that should belong to the wife is slightly reduced if there is a will for the extra-marital child.

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