

Inheritance Status of Unmarried Children from the Perspective of Islamic Law

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Abstract

This research examines the inheritance status of children born out of wedlock under Islamic law, which is a significant social issue in contemporary Indonesia. The research highlights that, according to the Compilation of Islamic Law (KHI), children born out of wedlock have limited inheritance rights, as they can only inherit from their mother and her family, while cannot inherit from their biological father's estate unless they are officially recognized. This limitation stems from the principle of nasab (lineage), which requires a valid marriage to establish inheritance rights. This research uses a qualitative methodology to provide an in-depth understanding of this legal framework and its implications for unmarried children. The research highlights the social challenges faced by these children, who often experience stigma and marginalization despite legal protections. The findings of this research point to a gap between Islamic law and positive law in Indonesia regarding the rights of such children, indicating the need for more inclusive legal interpretations that reflect the dynamics of modern society. Furthermore, this study emphasizes the importance of public awareness and policy development to ensure that the rights of unmarried children are upheld and protected.

INTRODUCTION

The issue regarding the inheritance status of unmarried children in Islamic law is a complex topic and often sparks debate (Tenggara et al., 2023). In a continuously evolving society, with the increasing number of children born outside of marriage, it is important to understand how Islamic law regulates inheritance rights for these children. According to the Compilation of Islamic Law (KHI), specifically Article 186, unmarried children only have inheritance rights from their mother and her family, without any right to inherit property from their biological father (Azmi, 2021). This shows that although the child is recognized biologically, their legal status remains limited by existing norms.

According to the Compilation of Islamic Law in Article 2 states that marriage according to Islamic law is marriage, which is a very strong contract or mitsaqan ghalidzan to obey Allah's commands and carrying it out is an act of worship. (See Article 2 of the Compilation of Islamic Law) While the purpose of marriage is located in Article 3 of the Compilation of Islamic Law which states that marriage aims to realize a sakinah, mawaddah, and rahma household life. Likewise, Article 4 states that marriage is valid if it is carried out under Islamic law in accordance with Article 2 paragraph 1 of Law Number 1 of 1974 (See Compilation of Islamic Law, pp. 14-15) (Noviarni et al., 2023). Rapid social changes, including the increase in the number of divorces and extramarital relationships, have affected family structures and societal dynamics (Harahap et al., 2023). In Indonesia, although positive law provides protection to children, there are still gaps in the implementation of those rights, especially for unmarried children (Amir & Al-saedy, 2024). In Islamic law, there are clear provisions regarding inheritance rights, but the interpretation and application of these rights to illegitimate children often become subjects of debate (Apit farid, n.d.). Therefore, it is important to explore how Islamic law regulates inheritance rights for these children and how this interacts with positive law in Indonesia.

In the perspective of Islamic law, a child born out of wedlock does not have inheritance rights from their biological father (Abubakar, 2021). This is due to the principle of nasab (lineage) which requires a legitimate marriage bond between the parents to acknowledge inheritance rights (As et al., 2024). According to Article 186 of the Compilation of Islamic Law (KHI), unmarried children only have inheritance rights with their mother and her family. This means that they cannot inherit property from their father unless there is an official acknowledgment from him. One of the main issues is how to uphold the rights that should be granted to children born out of wedlock. However,

without such acknowledgment, the child's legal status remains limited to the relationship with the mother.

Various studies have been conducted to discuss this issue from different perspectives. For example, research by Khan and Syarafudin shows that although the child cannot inherit property from the father according to Islamic law, they still have the right to inherit property from the mother (Khan & Syarafudin, 2023). This decision marks a step forward in recognizing the rights of children born out of wedlock and shows that there is room for a more inclusive legal interpretation in the modern context. However, social challenges and stigma still hinder the implementation of these rights. Many people still view children born out of wedlock negatively, causing them to often be marginalized and not receive the protection they should (Arief, 2020).

This research provides a better understanding of the rights of unmarried children in the context of Islamic law. This is not only relevant for academics and legal practitioners but also for the wider community, which needs to be aware of the rights of these children so that they are not marginalized. By understanding their legal position, it is hoped that society can better accept the presence of these children and provide support to them. In addition, this research is also important in the context of public policy development. With a better understanding of the inheritance rights of unmarried children, policymakers can formulate more fair and inclusive regulations. This will help create a better social environment for all children regardless of their birth status.

The novelty of this research lies in the emphasis on a comparative analysis between Islamic law and Indonesian positive law, as well as how social changes affect the implementation of inheritance rights for these children. This research will delve deeper into how legal interpretations can adapt to social changes and the current needs of society. Thus, this research is expected to make a significant contribution to the development of more inclusive and fair public policies for all children.

Overall, the issue of the inheritance status of children born out of wedlock from the perspective of Islamic law is a highly relevant and important topic to research. With the rapid social changes and the challenges in the implementation of their rights, this research aims to provide new insights and policy recommendations that can help create justice for all children. Through a comparative approach between Islamic law and Indonesian positive law, it is hoped that this research can bridge the gap between legal norms and social realities so that all children receive protection and their rights fairly.

METHODS

This research method uses a qualitative approach to explore an in-depth understanding of the Status of Inheritance of Unmarried Children in the Perspective of Islamic Law. Qualitative Research Method is research that is usually conducted to provide an explanation of a case that will later develop a theory related to the same case. The data used is taken from official documents or records with a theoretical basis. In conducting this research, what I make as a subject guide in conducting research is extra-marital children who still do not know their inheritance status from the perspective of Islamic law.

RESULTS AND DISCUSSION

Results

In Islam, a child is “a born child created through the creation of Allah by the marriage of a man and a woman”. Children are one of the three things that do not cut off the reward for both parents who have died, as the hadith of the Prophet SAW from Abu Hurairah r.a : Meaning: From Abu Hurairah that Rasulullah SAW has said: “When a person dies, all his deeds will be cut off, except for three things, namely: sadaqah jariyah, useful knowledge or a righteous child who prays for him”. (HR. Muslim) (Dunggio et al., 2021).

Extra-marital children according to Islamic law are children born outside a legal marriage or as a result of an illegitimate relationship (Asman, 2020). Extra-marital children are also referred to as children of adultery. The legal status of extramarital children is as follows:

- Does not have a nasab relationship with his biological father.
- Only inherit the lineage of the mother and her mother's family.
- Not entitled to inherit from his biological father.
- Can still get property through grants or wills.

Article 99 of the Compilation of Islamic Law (KHI) states that there are two definitions of a legitimate child. First, children born in or as a result of a legal marriage. Second, the child resulting from the fertilization of a legal husband and wife outside the womb and born to the wife.

Discussion

An extramarital child is also called an adulterous child, which is a child born as a result of adultery between the father and mother before the marriage was legal in religion. Allah Swt. never categorizes people based on their birth status, but rather emphasizes on the aspect of piety. As Allah says: “...indeed the noblest of people in the sight of Allah is the one who fears Allah the most.” (Q.S. Al-Hujurat: 13). Islam as a religion does not teach that one's sins can be transferred to others. Likewise, the sins committed by parents cannot be passed on to their children. Islam is very strict against adulterers. This does not mean that children born from adultery are aligned with their parents who committed adultery (Susanto et al., 2021). However, even if the child is innocent of the situation, Islamic law still

stipulates that his or her inheritance status is not equal to that of a child born from a legal marriage.

The law of inheritance in Islam is governed by a sharia law called “faraid”. Faraid regulates the distribution of inheritance among legal heirs, such as children, parents, and spouses. Each heir gets a predetermined share based on the Qur'an and hadith. The law of inheritance in Islam is regulated in the Qur'an and Hadith. Inheritance is governed by clear principles, where inheritance rights are given to legitimate descendants. Children born from a legal marriage have clear inheritance rights, whereas children born out of wedlock face challenges in this regard.

In marriage, to determine the nasab of a child, the following conditions must be met: According to the Hanbali, Shafi'iyah, Hanafiyyah, and Malikiyyah schools of thought, the husband is customarily able to have sexual intercourse with his wife (has reached puberty) but there is a difference of opinion in determining the age of *muraḥiq*. The Hanbalis state that *muraḥiq* is a child who is ten years old, while the Hanafiyyah are of the opinion that the age of *muraḥiq* is twelve years old. Thus, the child's lineage cannot be determined if the child has not reached puberty and is not yet capable of having marital relations.

According to the Hanafiyyah scholars, if the child is born after six months from the time of marriage, his or her nasab will not be linked to the husband. If the child is born less than six months after the marriage, the majority of scholars agree that the child's lineage cannot be considered as the lineage of the husband. Pregnancy before marriage can occur, unless the husband recognizes the child as his. Pregnancy that occurs outside of marriage, a contract that is invalid, or intercourse that is done under unauthorized circumstances, such as *wathi'shubhah*, can be the cause. All this is done for the benefit of the child and to cover the disgrace. Even if the man who committed adultery claims that the child is his, legally the child still has no lineage to his biological father, meaning that the child has no legal father. This applies whether the woman is married or not.

However, it has been explained that children out of wedlock do not have a nasab relationship with their father, aka they will not get inheritance (become heirs) from their father. Because in Islamic Inheritance Law it is regulated that the requirements for heirs are: The beneficiary must be Muslim, the beneficiary must have a blood relationship with the deceased, the beneficiary must be alive, the beneficiary must know the news of the death of the deceased, there is no barrier to inheritance. While children outside of marriage will not get inheritance from their biological father, they can only get inheritance from their mother and their mother's family. Furthermore, if the mother of the child dies, the property she leaves behind is divided among her legitimate children, while children born out of wedlock remain heirs to their mother's property.

Although children born out of wedlock do not have the right to inherit from their biological father, Islamic law still grants them other rights related to social life, such as the right to care, education and protection. Even if there is no right of inheritance, a father has an obligation to provide for his child born out of wedlock. Even if a child cannot inherit his father's property, the father is still obliged to pay child support for children born out of wedlock.

Even if a child out of wedlock cannot obtain an inheritance from his biological father, he can still obtain a will from his biological father. A will is a gift or bequest made by one person (usually while the person is still alive) to another party who is not legally related. In this case, the father can make a will in favor of the illegitimate child, even though under the Islamic system of inheritance, the illegitimate child has no right to inherit. When making a will regarding an illegitimate child, there are a number of things to consider.

Islam places restrictions on the amount of property that can be passed on to non-heirs. If an illegitimate child's will is granted, it can only cover up to one-third of the father's total assets. In addition, the consent of the other heirs, such as the legitimate children and wife, must also be obtained.

If a biological father makes a will for his unmarried child, the will is valid and may be executed, as long as it does not violate the provisions of Shari'ah, such as exceeding the limits specified in the will.

A will given to an out-of-wedlock child after the father dies can be executed by will, provided that it meets the conditions set out in Islamic law. Children born out of wedlock can receive a will, but cannot inherit their father's estate. Although out-of-wedlock children are not recognized as heirs under Islamic law, a father can express his care and affection for his children by writing a will. In this way, a father can acknowledge the existence of his child, even though the child is not legitimate under Islamic law.

This means that even if the out-of-wedlock child is not entitled to inherit, he can still receive a will from his biological father, in accordance with the provisions of Islamic law.

CONCLUSION

This research reveals that in the perspective of Islamic law, extramarital children do not have the right to inherit property from their biological father. This is due to the absence of a legal nasab relationship between the child and the father, because extramarital children are born from relationships that are not legal according to Islamic law. Out-of-wedlock children are only entitled to inherit property from the mother and the mother's family, because the mother is recognized as a legal parent.

This research looks at how important it is for us to know about the inheritance status of extramarital children from the perspective of Islamic law. The results showed that the research objectives were well achieved. Many will know that Islamic law is very strict and cannot be underestimated. So, no party violates the rules of Islam.

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This study aims to analyze and provide an understanding of the inheritance status of children out of wedlock from the perspective of Islamic law. In preparing this journal, the author uses a qualitative method to explore the views of scholars and Islamic law regarding the inheritance rights of children born from illegitimate relationships. Through this research, it is hoped that it can provide a clearer insight into the position of extramarital children in the Islamic inheritance system and the importance of protecting their rights, even though they cannot inherit property from their biological father. In this research.

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The author hopes that the results of this research will provide a clearer insight into this issue and help people understand the rights of out-of-wedlock children in the context of Islamic law.

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