

**The Inheritance Status of Children from Zina Relationship  
Perspective Complication of Islamic Law and the Civil  
KUHPidana**

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***Abstract***

Every child certainly has the same rights in terms of inheritance and others, mistakes made by both parents should not have an impact on children who are victims of immoral acts or adultery of both parents. Every human being has the same rights in the eyes of the law, whether Islamic law or positive law and it is regulated in the law so that in determining the inheritance status of a child born as a result of adultery, if born at the age of marriage of at least 6 (six) months, the child can follow the lineage of the father and the rights to inherit the property. It is also explained in articles 100 and 186 of the Compilation of Islamic Law which means that children from the consequences of adultery have the rights to inherit if they are born in a marital relationship.

***Keywords:*** *Inheritance Status, Islamic Law, The Civil KUHPidana*

***Abstrak***

Setiap anak tentunya memiliki hak yang sama dalam hal kewarisan maupun lainnya, kesalahan yang di perbuat oleh kedua orang tua seharusnya tidak berdampak kepada anak yang menjadi korban dari tindakan asusila atau perzinaan kedua orangtuanya. Setiap manusia memiliki Hak yang sama di mata hukum baik hukum islam ataupun hukum positif dan itu diatur dalam Undang-undang sehingga dalam penetapan status kewarisan anak yang lahir akibat perzinaan jika terlahir dalam usia perkawinan sekurang-kurangnya 6 (enam) bulan maka anak itu dapat mengikuti nasab sang ayah dan berhak mendapatkan harta waris. Dijelaskan juga dalam pasal 100 dan 186 Kompilasi Hukum Islam yang artinya bahwasanya anak dari akibat perzinaan berhak mendapatkan warisan apabila dilahirkan dalam hubungan perkawinan.

***Kata Kunci :*** *Status Kewarisan, Hukum Islam, Hukum KUHPidana*

## INTRODUCTION

There is no eternal life like the creatures created by Allah, immortality belongs to Allah alone. When the Being is still alive, he will die as in humans. One of them is the obligation of Muslims to their families, family members, and individual Muslims when one of them dies / dies, then we as human fellow Muslims need to take care of the corpse and settle the affairs of the deceased, including praying, burying, paying debts and dividing assets, paying obligations, and pass the inheritance on to his heirs (Ramdani & Utari, 2019; Maripigi, 2021).

In the realm of inheritance, two people are obliged to study it if they do not have knowledge of the legal inheritance (if it is done it will get a reward and if it is left it will get a sin), then if someone knows and understands the law of inheritance, then he has an obligation to inform other people.

Inheritance rights are certainly not obtained by just anyone, there are provisions that have been regulated by the laws governing inheritance itself such as the principles contained in the Qur'an, KHI, KUHP (Criminal Code) and so on (Hasan, 2020).

One way to obtain inheritance rights is clearly through marriage or legal relationships and in accordance with material law (Verdiyanti A., 2013). In this modern era, the development of innovation is very powerful, many young people, even women or men who get married as a result of Married by Accident (MBA), some of them get married because if they don't get married it will be a woman's disgrace. And will be a scourge for neighbors and even family. There are also some who choose the best way to escape or the men prefer not to take responsibility for their actions.

This relationship of adultery in a child being born without a father or a child brought into the world in a marriage period of under half a year or six months. Children born in this condition are referred to as children from adulterous relationships.

The conditions with children who are born into the world because of adultery raises debates or problems, because in general every child has the rights to know his parents and family members in accordance with the rules that apply

in Islamic law, but what about children from adultery who are basically them that only biological child of their father.

## RESEARCH METHODS

The research approach used in writing this article is a qualitative research approach. Denzin and Lincoln define that qualitative research is research that uses a natural setting, with the intention of interpreting phenomena that occur and is carried out by involving various existing methods (Moleong, 2011; Anggito & Setiawan, 2018). The type of research used is Library Research, which is a series of activities related to library data collection, read and record and process research materials (Zed, 2004; Herman, 2019). Data sources are books, research results in the form of reports, articles, magazines, journals published by institutions and so on. Meanwhile, the electronic media that can be used as a source is the internet.

## DISCUSSION AND RESEARCH RESULTS

### Definition of Inheritance Law

**Linguistically, the word of *Mawaris*** comes from the plural *Mawarits* from *Mirats*. The word according to language contains meaning without eternal (*al-baqa'*) and the transfer of something starts with one person to the next individual then to the next individual (*wa Intiqalu asy-syai' min qaumin ila qaumin akhrina*) (Asy-Syathiri, 1989; Sriani, 2018; Vela, 2015).

In other words, Islamic inheritance law is a law that regulates the exchange of property rights over inheritance/ *tirkah* from the heirs to find out who is entitled to become heirs and the amount of each.

*Faraidh* is another word for *Mawaris*. In Science farid studies the study of inheritance and the science of calculation (*hisab*) which leads to an understanding that specializes in individuals who have rights to the property of the deceased's inheritance (Mubit, 2017; Ula et al., 2020). Inheritance is the exchange of assets or property as *tirkah* from the heir to the heir recipient by taking into account the applicable legal rules (Bate'e, 2021).

Islamic Inheritance Law is a rule that regulates the transfer of property belonging to someone who has died to his heirs (Nani, 2018; Wahyuni, 2018;

Yuliasri, 2018). This shows who is entitled to become the heirs, the portion of each heir, determines the inheritance of the world to his heirs.

Regulation of Islamic Law Article 171 letter a states that Inheritance law is the law that regulates the transfer of property rights to the heirs (*tirkah*) of the heirs, determine who is entitled to be the heirs and the amount of each (Republik Indonesia, 2015; Sukarna & Hambali, 2017; Raharjo & Putri, 2019).

Based on the above description of the notion of inheritance, the author concludes that inheritance law is a rule that regulates the distribution of inheritance or known as *tirkah* left by the heir to his heirs.

### **Elements of Inheritance Law**

Before explaining the components of inheritance law, there are several legal requirements that need to be considered in terms of inheritance, including: inheritance can be considered substantial if it is heard that the individual who gave the inheritance has died. If the heir is known to be alive when the testator dies, and there is no barrier or hindrance in terms of inheritance.

The components of Islamic inheritance law in the implementation of inheritance law for Muslim community groups who have occupied the Unitary State of the Republic of Indonesia (NKRI) which consists of 3 (three) inheritance components will be described, they are:

- a. Heir: An heir is a person who has died or a person who gives an inheritance, this heir usually delegates both his assets and obligations or debts to other people or heirs. The death referred to here is an essential death (can be proven and witnessed factually, legally (decision determined by the judge), or *taqdiri* (on suspicion that is considered certain).
- b. Heirist: The heirist is the person who receives the inheritance, who is given the legal rights to receive the inheritance as well as the obligations or debts left by the heir. In this case, what is meant by receiving inheritance is people who have blood or kin ties, marital relations, guardianship relationships, and religious equality (Islamic relations).
- c. Inheritance/*Tirkah* : Before talking about inheritance, we will first describe what is meant by inheritance or in Arabic called *tirkah* (*tarikah*). What is

meant by inheritance is something that has been left behind by someone who has died or died, whether it is in the form of rights or assets such as houses, gold, and cars as well as debt obligations.

### **The reason someone has the rights to inherit property**

There are several factors that cause someone to become an heir as well as get an inheritance.

- a. kinship or kinship: A person can become an heir because of blood and kinship relations, for example, descendants, both parents, and people who have kinship ties by the heir.
- b. Marriage Relationship: Someone who gets an inheritance can also be due to marital ties (husband and wife), even after the contract before the occurrence of sexual relations, they have done the Kabul consent and are declared legally husband and wife both under Islamic law and marriage law.
- c. Guardianship: Guardianship is often called wala'ul or wala'ul ni'mah meaning whoever frees a slave in any way, then this becomes ashib (familiarity from the father's side). If he (the person who freed it) dies without having children and relatives, then the freed slave becomes his ashib.
- d. Religious Equality: A Muslim (Muslim) who dies and has no heirs, then his inheritance will be transferred to the religious property (baitul mal) for the social and welfare of the local Muslims.

According to Imam Abdillah Muhammad bin Ali bin Husain Ar-Rahabi, there are 4 reasons a person is entitled to inherit property according to Imam Abdillah Muhammad bin Ali bin Husain Ar-Rahabi in the book *Matnur Rahabiyah*, as follows:

- a. Marriage: Marriage that occurs with a valid contract. Although there has not been a sexual relationship between husband and wife, but with a legal marriage bond, both of them can inherit each other. If the husband dies, the wife can inherit the property she left behind and vice versa. Meanwhile, married couples who are married in a fasid (broken) marriage, such as a marriage without a guardian or two witnesses, cannot inherit each other. Similarly, husband and wife who are married by mut'ah marriage.

- b. Wala' (kinship for freeing slaves): A master who frees his slave when the slave has died then the master can receive the inheritance left by a freed slave. On the other hand, a slave who has been freed cannot receive the inheritance from the master who freed him.
- c. Lineage Relationships: People who can get inheritance by reason of lineage or kinship are both parents of the inheritor and people who are descendants of them such as brothers and sisters and children of their siblings, both siblings and fathers. Including children and their descendants, such as boys and girls and children of boys and girls and children of boys (grandchildren of boys) both boys and girls.
- d. Islam: A Muslim who has died or passed away but does not have an heir who has the above reasons to be able to inherit it, then his inheritance is handed over to the Baitul Maal to be managed for the benefit of Muslims. For a person who does not have any of the above three causes he has no rights for the person who died.

#### **The Status of Children Resulted in Adultery According to KHI (Compilation of Islamic Law) and the Civil Code Children**

The children born as a result of a relationship, but not from a legal marriage relationship in Islam. Law number 1 of 1974 Chapter IX on the Position of Children Articles 42, 43, and 44 states:

Article 42 "A legitimate child is a child born in or as a result of a legal marriage".

Article 43 " 1) Children born out of wedlock only have a civil relationship with their mother and their mother's family; 2) The position of the child referred to in paragraph 1 above will then be regulated in a government regulation".

Article 44 "1) A husband can deny the legality of the child born to his wife if he can prove that his wife had committed adultery and the child was the result of that adultery; 2) The court makes a decision about the legality of the child at the request of the interested party.

While the explanation of children in the Civil Code is as follows: 1) Children out of wedlock who are recognized is a child born to a woman who has

a biological relationship with a man outside the marriage bond, but is later recognized by the man as his child. The basis for this acknowledgment is that there is Article 280 of the Civil Code that: "*With a confession made to a child out of wedlock, a civil relationship arises between the child and his father or mother.*"; 2) Legal or legalized child Children who have been born before their parents have carried out a legal marriage. This child who is born is a child out of wedlock, will be recognized and become a legalized child if both parents are legally married.

Meanwhile, children outside of marriage which have been regulated in the Compilation of Islamic Law, as explained above, are children born to a woman while the woman is not in a legal marriage bond with a man who interferes with her. The definition of outside marriage is a relationship that is not known by a man and a woman who can give birth to off spring, while the relationship between the two is not legally married according to positive law and the religious law he embraces.

From the explanation of the definitions that have been stated above, it can be concluded that children are legitimate according to religion and applicable legal regulations.

The scholars agree that the validity of "a child outside the marriage relationship does not have a kinship relationship with his father as a legitimate child, if the child is born less than half a year or six months after the marriage contract, according to them, the shortest grace period between the birth of the child is with marriage is half a year or six months. This means that if a child is born in less than half a year or six months after the parents' marriage contract, then the child does not have a kinship relationship with his father as a legitimate child.

In Islamic law, children out of wedlock or children resulting from adultery are as follows:

- a. Children are brought into the world because adultery is called a child outside of marriage, adulterous relationships have been committed by people who have never been married, they are virgins and virgins, Islamic law does not consider adultery of Ghairu Muhson as an ordinary act, but it is still considered an act of adultery which should be punished. It's just that the punishments that can be obtained vary in number, for adulterers muhson is

stoned (beaten) to death while for *ghairu muhson* is lashed many times as much as 100 times.

- b. A *mula'annah* child is a child brought into the world from a woman who is *li'an* to her partner. The position of a *mula'annah* child is the same as that of a child resulting from adultery, and does not follow the lineage of his father but follows the genealogy of the mother who gave birth to him, this arrangement also applies to inheritance law, marriage and others.
- c. 3. *Syhubat's* son, when a man interferes with a woman because the woman is forbidden to be interfered with in other words where the two have no kinship relationship, unless the man admits. Islamic law recognizes *syhubat* into two types, they are:
  1. The child of *syhubat* born from the *syhubat* of action (deed) That is, when a man interferes with a woman without a contract between the two of them, both valid and *fasid*, simply because he is not aware when doing it, or he believes that the woman is lawful to interfere, but then it turns out that the woman is forbidden to interfere. mixed up. Included in this category are sexual relations carried out by crazy people, drunken people and delirious people, as well as people who believe that the person interfering is his wife, but then turns out to be another woman.
  2. Children of legal subjects. Is a child born from a marriage or contract, for example a man marries a woman, but it is known that the woman who is married has a kinship relationship with him (his biological sister) or his milk brother whom he marries.

From the above definition it can be concluded that a child born due to adultery only has the same relationship from his mother's side and his mother's family, in this case does not get recognition by the child's biological father. However, an adulterous child has a biological status with his father if the father legally recognizes the child. The fact is that there are many misunderstandings about the status of children resulting from adultery, in the community in general they think that all children resulting from adultery have the same rights, let alone the issue of inheritance of children from adultery which is very sensitive.

understand. Adultery children get rights and status from their mothers as described in fiqh.

### **Legal Status of Children in Adultery**

People who are born out of wedlock and then give birth to children, or children who are born because of the relationship between a man and a woman without being preceded by a valid marriage contract, the child born is called an "zina" child. The adulterous child is meant to be a child who does not actually have a sin.

According to fiqh, if you want to carry out a marriage contract after the child is born and the puerperium period ends. The method of resolving the inheritance case is that the child only has a family relationship with the mother who gave birth to him, and the child is considered to have no father. If it is proven legally and convincingly, the child only has an inherited relationship with the mother.

Likewise, Islamic inheritance law or in the Compilation of Islamic Law (KHI) stipulates that children born before 180 days (6 months) of the marriage contract period with both parents, this child only inherits from each other with the mother only. However, if the gestational age is more than 180 days from the time of the legal marriage contract, the child inherits from each other with both parents, and the parents do not need to repeat the marriage contract. Children born outside a legal marriage are regulated in Articles 99, 100 and 186 of the KHI.

Article 99 : Legitimate children are: a) Children born in or as a result of a legal marriage; b) The results of the actions of a husband and wife who are legal outside the womb and are born by the wife.

Article 100 : Children born out of wedlock only have a kinship relationship with their mother and their mother's family.

Article 186 : Children born out of wedlock only have an inherited relationship with their mother and their mother's family.

Civil law explains that there are three statuses for children out of wedlock, they are: a) Children outside the marriage bond who have not been recognized by both parents; b) Children outside the marriage bond that has been

recognized by one or both parents; c) Children out of wedlock who become legal children, as a result of both parents conducting legal marriages.

While in the Civil Code the inheritance of children outside of marriage is regulated in articles 862-873. The legal status of children born out of wedlock as a unification in the field of National Marriage law as stated in Law Number 1 of 1974 concerning marriage, that based on Article 43 paragraph (1) of the Law, it is stated that children born outside of marriage only have a civil relationship with his mother and his mother's family.

The article stipulates that children born outside of marriage only have family ties with the consequences. On the other hand, the legitimate child has an even relationship with his father and his father's family.

#### **Inherited status of children resulting from adultery according to the Compilation of Islamic Law**

The results of this study indicate that every child has a position between the law, be it a child resulting from adultery, a child conceived, etc. Every activity we have done before, of course, we will get the result later, regardless. Be it an exemplary act or humiliation, such as adultery which is forbidden in Islam and if it is done, it is punishable by stoning, whipping, and even being thrown out and exiled according to its provisions.

Adultery is an act that is not commendable and has an impact on children born in an adulterous relationship, the impact is psychological or gets ridicule from the environment where they live, inheritance is only from the mother and her mother's family and has no kinship relationship with her biological father. However, if we examine again in Article 100 and Article 186 of the KHI, in Article 100 that "children born outside of marriage only have a kinship relationship with their mother and their mother's relatives and their mother's relatives only" then in Article 186 that "children born out of wedlock only have an inherited relationship with his mother and his mother's family".

From these two articles, we can underline that if a child is born outside of a marital relationship, so if a child resulting from adultery is born in a legal

marriage, then the child has the rights to inherit and inherit? Of course every child is pure and there is no sin attached to it when the child is born.

The inheritance of a child resulting from adultery is indeed a debate in today's society, but if based on the benefit of the child, the child is entitled to the property as long as he was born in a legal marriage relationship, then the family of the heir and the heir will not object to the inheritance by dividing inheritance, then there is no problem to be debated anymore.

In the Compilation of Islamic Law, it is also contained in the Civil Code in article 43, article 66 of Law Number 1 of 1976 concerning Marriage which discusses children out of wedlock, Article 280 of the Civil Code that "with a confession made to a child out of wedlock, a civil relationship arises between the child and the father or mother". Article 43 of Law Number 1 of 1974 concerning marriage Paragraph 1 states that "Children born outside of marriage only have a civil relationship with their mother and their mother's family" and in paragraph 2 that "the position of the child in paragraph 1 above will then be regulated in a government regulation" . When examined in paragraphs 1 and 2 there are discrepancies because paragraph 1 of article 43 explains that children outside of marriage only have a civil relationship with their mother, while in paragraph 2 of article 43 the position of children outside of marriage has a position in terms of inheritance in accordance with government regulations that "for marriage and everything relating to marriage based on this law, with the enactment of this law the provisions stipulated in the Civil Code (Burgerlijk Wetboek) are made, so everyone who is about to get married or is already married and has a good case Islamic, Christian or mixed marriages must comply with government regulations in this case the Law.

The Constitutional Court (MK) and the Indonesian Ulama Council (MUI) have determined that what is considered in terms of inheritance of children resulting from adultery is the granting of children's rights which must be obtained from their parents even if the child was born from an adulterous relationship and not in a marital bond legal according to Islam.

## CONCLUSION

Commonly, the existence or existence of children born as a result of adultery according to the Compilation of Islamic Law and the Civil Code which has been discussed in Articles 100 and 186 of the KHI, Article 280 of the Civil Code, and Articles 43 and 66 of Law Number 1 of 1974 About Marriage. In these articles, it can be concluded that children born outside of marriage or adulterous children have kinship and inheritance relations from the mother and only her mother's relatives, but if the child is legally recognized by his father then he is entitled to his rights and maintenance as a person. children of legal parents, of course, based on government regulations that have been set.

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