

# Child Standing Outside in the Distribution of Heritage under Marriage Compilation Islamic Law

Kasmuddin Harahap

Lecture (STKIP) Tapanuli Selatan Padangsidempuan  
Stn.Mhd.Arif street. No.7, Padangsidempuan, North Sumatera Indonesia

## Abstract

*The position of Islamic inheritance law in Indonesia a special place as part of an effort to run religious laws. Inheritance rights of children outside the mating become central to discussion related to these developments. This case is because there is a difference between a child outside the scope of Islamic law to marry according to national civil law. Compilation of Islamic Law does not recognize between the term "bastard" but the term "children born outside of marriage", whose status is the same as the child of a conjugal relationship between men and women are not tied ropes valid marriage, that also includes children born to women which do not have binding legal marriage with men who impregnate, or doubtful unless the father recognized the child. Thus the child outside of the mating is not got a position as an heir in KHI as a legitimate marriage is a prerequisite that consequences of inheritance law. However, if for a wedding performed the confirmation marriage, children born in a marriage that was valid (as long as a valid marriage according to their religion or belief).*

**Keywords:** Married Children Affairs, Heritage, Islamic Law Compilation

## I. INTRODUCTION

A lot of history that tells about because the decline in the verses of inheritance, all that history does not deviate from the core issues that the drop in verse serves as an explanation and the ordinance of God caused at that time women can't inherit the e state. Among them is as narrated by Imam Bukhari and Imam Muslim:

A wife when Sa'ad ibn ar-Rabi 'came to the Prophet with the two daughters. He said. "O Messenger of Allah, this is the second daughter son Sa'ad ibn ar-Rabi 'who had died as a martyr when Uhud. But the uncle's two daughters Sa'ad had taken the tremendous legacy Sa'ad, without leaving the slightest for both. "Then the Prophet. Said, "May God soon decide these things." So the verse came about inheritance that letter an-Nisa 'verse 11.

Discussion on the small mating child is indeed interesting because there is always pros and conside. Pro perspective view that children do not have the conviction or position may choose to be born as a child outside marry or not. In other words, like in the hadith of Abu Hurairah, he said: The Prophet said: "Every child born in a state of nature, both his parents who make him a Jew, Christian, or Zoroastrian. (Bukhari and Muslim). Thus, an event that is not a straight game would never give birth as a result of the law so that it is not possible there is a cordial relationship (inheritance) between them according to the law. A form of protection that is evident from the decision of the Constitutional Court is a kind of cordial relationship with her biological father (as a result of the decision of the judicial review of Article 43 paragraph (1) UUP). While the Indonesian Ulema Council (MUI) presents Fatwa existence borrowed and Ta'zir for parents. Fatwa Indonesian Ulema Council (MUI) No. 11 of 2012 in the preamble states that against the decision (Constitutional Court Decision No. 46 / PUU-VIII / 2010) the question of the public regarding the position of the child of adultery, mainly related to the relationship nasab, inheritance, nafaqah and guardians of the children of his adultery with a male lead to birth according to Islamic law.

Based on the above description, legal certainty regarding the inheritance based on national positive law, especially regarding clarity of who serves as heir and who does not belong to the heir becomes very important to be studied, particularly about children outside of marriage. In this case the Law No. 1 of 1974, and Compilation of Islamic Law that became the focus of an umbrella law that will be studied

### A. Problem Formulation

Formulation of the problem needed to assert the problems to be studied, so it will be much easier in practically then formulated the question as follows:

- How does the Child Status Married Affairs in their parents according to Islamic Law Compilation?

- How Heritage Management Practice Child Marriage Affairs in the Religious Court Medan.

### **B. Benefits Research**

Aims of the research objectives of this study are expected to bring an advantage to the reader and others. This paper is supposed to have the following benefits:

#### **1) Theoretical Benefits**

- Increase knowledge and complete repertory of scientific work and contribute ideas regarding the child outside the mating position in the division of inheritance based on Islamic Law Compilation.

- As a comparison for further research.

#### **2) Practical Benefits**

- Giving thought to contribute to the community about the child standing outside of mating in the division of inheritance based on Islamic Law Compilation.

- Provide input to policymakers and law enforcement officials as a contribution to be able to resolve the problems of children in the child outside the mating position in the division of inheritance based on Islamic Law Compilation.

## **II. THEORETICAL FRAMEWORK**

Theory masha' al-Sharia regarding language masha' al-Shari'a means intent or purpose Shari'a of Islam. Which were at issue therein is the problem of wisdom and the enactment of a physical defect. With face problems, need to be investigated first the essence of these challenges. A study of the case will assign legal research with as important as sources of law that will be the argument. That is the set texts in a new case, the content of the books must scrutinize, including researching be a legal our purpose of the law.

The next theory is a theory put forward with Suhardjo protection is the theory of security, in other words, the theory of functions.

## **III. RESULTS AND DISCUSSION**

### **A. Standing Outside Child Marriage By Inheritance Rights In Islamic Law Compilation**

Thai's children (child out of wedlock) that legally does not have the nasab relationship with his father. Legality they are only has a relationship with the mother and there family, by the generality of the Hadith; Al-walad Lil Al-first. Nasab relationship occurs between a child and his mother and his mother's family.

Hadith Muslim imam of Abu Hurairah, the Prophet said; al-walad li al-first was Li al-Lahiri al-Hajar (children have a relationship with his mother while adultery is stoning).

Shari'ah mission is to realize social justice (al-al-IJ Imai yah), in this context shari'a wad 'im introduce the recognition of children's institutions or so-called IQ rare al-salad or Ishaq. One of the benefits of istihq is how sympathize children who do not have nasab become socially and legally protected. Put simply illustrated that one man who claimed that the child was his, and he is the father of the child, then legally there data relationship between the child recognized by the person admitted. Of course if it is applied today, the procedure is not as simple as it may require the involvement of the judiciary in this court.

According to the scholars', the validity condition can lead to recognition for civil relations there are five, namely; (1) which recognizes the man is competent to act the law. (2) the recognition of common sense it could be justified. (3) The recognition was not by people who recognized. When it is fulfilled, then the law establishes an association between that recognizes and recognized. With the establishment of the relationship, both parties have a civil relationship, such as the obligation to provide for each other, inherited and so on.

The link between that recognizes and recognized is the relationship nasab pseudo namely arising from recognition. Therefore, the legal consequences of IQ rare al-walad only a relationship between that recognizes and recognized, not with family admitted. In the context of state politics (siyasa al-syar'iyah), the recognition of children's institutions is a function of the state to provide protection to every warga country. Therefore, in the history, the Caliph Umar ibn Khattab, giving the cost of a child's life are recognized someone, while people who recognize it's not enough to meet the daily needs of the child.

The above description has illustrated clearly that justice for the heirs is the aim of Islamic inheritance law. Thus, it is possible to be given inheritance rights to children outside of mating, mating along the outer meaning is based on a common understanding of terminology "from the marriage invalid because it was not recorded."

### **B. Practice Cases In Court Religious Islamic Inheritance Field**

According to the informant, there is agreement that the child outside of the mating must be protected by law, regardless of its validity as a child. As already disclosed in aware that the definition of a child outside of mating according to

the Civil Code of Islamic Law (KHI) is different. The significant difference was seen from the obligation of registration of marriages. However, outside of mating child seen from this perspective by a religious court, Medan can be anticipated by filing a confirmation wedding (marriage confirmation determination by a religious court), namely the condition that a religious marriage that has held not contested in the community (the controversy). Determination bad marriage, especially a lot happens to marriages that took place before the enactment of Law No. 1 of 1974 on marriages, at which time no obligation registration of marriages has held in Indonesia. But do not rule out that against the wedding that took place after the enactment of Law No. 1 of 1974 also performed the marriage that determination by the court. The determination that marriage is important especially against further consequence, which associated with inheritance, which must first determine who those who would be his heir.

Marriages confirmation comes from Arabic, meaning isbat establish, strengthen, and perpetuate. While the wedding (nikah) means marriage. So bat marriage is the institution of the marriage. Based on its jurisdiction, the institution of marriage confirmation or determination of marriage is one of the actual competence of Religious Court under Article 49 paragraph (2) of Law No. 7 of 1989. The purpose of the institution of marriage is confirmation that the real marriage got the power and the rule of law in the form of legal recognition under the legislation in force so that it can list as well as getting a marriage certificate as evidence of the wedding. Discourse apply the concept was borrowed from children outside of mating, the same as the general aim borrowed given to the adopted child. But of course, it is not expected to be legitimacy to survive even let the marriage invalid (which resulted in the birth of a child out of wedlock). It means that the provision was borrowed only as a form of anticipation or solutions to conditions that have occurred, but was not expected to be a legal loophole that is detrimental to legalize adultery.

#### IV. CONCLUSION AND SUGGESTION

##### A. Conclusion

From the description in the preceding chapters as the essence of this study can be some fundamental conclusions, among others:

- Compilation of Islamic Law does not recognize the term "bastard" but the term "children born outside of marriage" whose status is the same as the child of a conjugal relationship between men and

women are not tied ropes valid marriage, which includes children born of women who did not have a valid marriage bond with the men who impregnate, or doubtful unless the father recognizes the child. Thus, the child outside of the mating is not got a position as an heir in KHI as a legitimate marriage is a prerequisite that consequences of inheritance law. However, if for a wedding performed isbat the wedding, young children born in a marriage that was valid (as long as a valid marriage according to their religion or belief). Thus, the child becomes part of the heirs, with a note that the wedding or the marriage confirmation not contested in the community.

- Cases concerning inheritance for children outside of the mating there has never addressed in the Religious Court of Medan, but as the development (eg Constitutional Court decisions related to the child outside of mating), then it is possible there will be a similar case. The possibility of an attempt to anticipate the legal vacuum, it is a form of protection that may given to a child outside of mating (the level of discourse) is the form borrowed as of the adopted child is treat with the provisions amount not exceeding 1/3 of the estate available.

##### B. Suggestions

- The technical decisions of the Supreme Court of the Islamic Courts are necessary because it will be a reference for Islamic Court in deciding the case.

- The public must understand the understanding of the child outside of marriage that the child can not inherit according to the Islamic Law Compilation long as there has been no confirmation that the legality of the Court of wedlock, this needs to socialize with the community.

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##### B. Lawer

compilation islam lawyer  
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