

## Legal Review of Children Born Out of Wedlock Based on Islamic Inheritance Law and Civil Law

Nurfitriyani Siregar<sup>1</sup>, Nur Hakima Akhirani Nasution<sup>2</sup>,  
Lecturer at Sekolah Tinggi Agama Islam Barumun Raya Sibuhuan, Indonesia  
e-mail: nurfitriyani2@gmail.com

Article history: received July 02, 2023; revised July 20, 2023; accepted July 24, 2023

This article is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/).



**Abstract.** In the context of Islamic law, the division of inheritance is one of the studies in Islam that, in science, is discussed specifically in the Fiqh of Mawaris. This is nothing more than to prevent disputes between family members related to the inheritance of family members who have died. In essence, the position of the child is not only a blessing but also a mandate from Allah SWT. In the view of Islam, child protection has a fundamental meaning, namely as the basis of values and paradigms for changing the fate of children. In civil law, marriage is the basis for the realization of family ties, and this gives birth to rights and obligations among those who are included in the family environment. Children are born from legal marriages and automatically have a civil relationship with their father; this is stated in Article 250 of the Civil Code (hereinafter referred to as the Civil Code), which states that every child born or raised during marriage obtains the husband as his father. The position of children in inheritance rights is also explained in the Civil Code in Article 852, which states that "children or all their descendants may be born from other marriages, even if they inherit from both parents, grandfather, grandmother, or all their blood relatives, then in straight line up with no difference between male and female and no difference based on first birth.

**Keywords:** Children, Outside Marriage, Inheritance Law, Civil Law.

### 1. INTRODUCTION

Time is one of life's limitations. If life has until the end with coming death, then affairs of a worldly man have not so ended. Death, on the one hand, has ended the world of the deceased, but on the other hand, death will also have an impact on those he left behind. One impact is the distribution of the treasure relics of people who died in circles of family, often called the distribution treasure legacy. In essence, position the child not only as grace but also as trust from Allah SWT. In Islamic views, protection of the child has a fundamental meaning, i.e., as a value base and paradigm for changing fate for the child.

Indeed, lineage is right; he first received a child after he was born. With his right lineage, he will get other rights, including right civil or right maintenance and maintenance, rights guardianship, and rights to his inheritance. Rule about inheritance is ordained by Allah SWT through His words in the Qur'an. Basically, provisions regarding inheritance have clear intent and purpose. Various things still need explanation, both in nature confirmation or character detailing, as conveyed by Rasulullah SAW through The Hadith. Although thus, its application Still raises discourse thoughts and discussions among experts in later Islamic law formulated in the form of characteristic teachings normative. Rule the become guidelines for people Muslim in finishing related problems with inheritance. [1]

scope study related to Islamic law with a very wide legacy Among them are the right people who accept inheritance, parts or amounts of magnitude heirs, and lots again, like addition or

subtraction part heirs. Entitled person accepts heir, in context Islamic law, divided into three classes, i.e., *dzu al-faraid*, *dzu qarabat*, and *mawali*.

There are three things that cause each other to inherit, namely: *al-qarabah*, or affinity blood; *al-mus hahaha*, or connection marriage; and *al-wala*, or liberate my servant. If the third element above is fulfilled, so that connection between each other can happen, then possible distribution inheritance with notice get along distribution legacy get along distribution inheritance There are three, namely:

1. *Al-Muwarist*, i.e., inherited his legacy or bequeathed his treasure. The condition is that *al-Muwarist* truly has died, did die in a manner true, literally juridical (*hukmi*), or in a manner destiny based on an estimate.
2. *Al-Warist* or expert heir the heir is the person stated to have connection kinship because of connection blood, relationship because of marriage (*senda*), or Because consequence liberates my servant. The conditions are that, at the time of his death, *al-Muwarist* had an expert inheritance that truly lived in the circumstances. Including in understanding this, a still baby is at in content (*al-hamli*). Although still a fetus, if it can be confirmed live, through movement (contraction) or other methods, then the fetus is entitled to a legacy. For that, there need to be known firm boundaries about the minimum limit (minimum limit) and or the longest (maximum limit) of age content. This is intended to know to whom the fetus the will decreed.
3. *Al-Mawruth* or *al-Mirath*, that is, treasure legacy, is dead after reduced cost maintenance corpse, debt repayment, and execution wasia.

## 2. RESEARCH METHOD

Type of research used is study library (research *library*), i.e., study literature to work scientific literature in the relevant literature with Legal Review of Children Born Out of Wedlock Based on Islamic Inheritance Laws and the Book of Laws Civil Law Act in Inheritance Distribution.

## 3. RESULTS ANF DISCUSSION

### Children Born Out of Wedlock

Children born out of wedlock are the offspring of an unmarried couple. In Islam, that is seen as child extramarital, or adultery. A child of fornication is a child born from a resultant connection without marriage, also known as a child who is not legitimate Because born outside legal marriage. The marriages that are legal and recognized in Indonesia are those in which the marriage was performed according to the laws of each religion and belief and recorded according to the applicable laws and regulations (articles 2 (1) and (2) of Law No. 1 of 1974). And record-keeping for marriages is done by employes marriage registrars from the KUA for religious people of Islam. According to Law No. 1 of 1974, Article 42, legitimate children are children born in or as a consequence of legal marriage. And in KHI, a legitimate child is born in or as a consequence of a legal marriage and is the result of a deed of husband and wife outside the uterus and born by the wife. [2]

### Review of Islamic Law About Inheritance of Children Outside of Marriage

The word inheritance comes from Arabic, as mentioned in the book Encyclopedia of Islam. The word inheritance comes from the Arabic *waritsa-yaritsu-warisan* or *irisan / turats*, which means to inherit. Inheritance is a provision about the distribution of treasure inheritance; the rightful person accepts the heir as well as the amount. Term inheritance the same with *faraid*, which means , grade or , part. The word *waris* means the person who has the right to accept heirlooms (treasure relics) from people who have died. Inheritance, that is, treasure riches, one person, at a time, dies, so it will

switch (move) to someone else who still lives, a way to obtain treasure inheritance with the existence of transferring treasure inheritance from someone who is entitled to others, so in a manner of automatic ownership, treasure inheritance will switch to someone else with the existence of an unheard of death determined who died first. From the beginning of rights and obligations a dead That will move in a manner auto and here it is law Islamic heirs will direct How treasure That will until to expert his heir. [3]

In matter, this is what the Fuqaha defines understanding inheritance as: Science with which he can know those who inherit, those who do not inherit, and levels received. By each expert inheritance with method division [4]. Inherit with governing regulations displacement riches from someone who died to expert his heir. These limitations formulate something principled in law: heir, that which transmigrates within inheritance is riches si heir. [5]

As already mentioned above, the assets left behind are dead, so in a manner automatic, they will become objects of inheritance, and the law of inheritance will be valid at the time of that too, which will arrange distribution of the objects of inheritance. Children out of wedlock are born from something adultery, that is, connection sex between men and women who aren't bound in a legal marriage, although he was born into a legal marriage, with men who commit adultery or another [6] man.

### **Review of the Code Civil Law Act About Inheritance of Children Outside of Marriage**

Inheritance law is the law governing the transition of treasure from heir to expert caused by inheritance because the heir has died. Inside law is positively related to Indonesia's governing rules on inheritance, which are arranged in such a form in the Civil Code (*Burglijk Webbook*). As stated by Prof. Abdulkadir Muhammad, SH stated that the system adhered to by the Civil Code is bilateral individual inheritance. It means every expert inheritor is entitled to demand distribution of treasure inheritance and acquire the same part that became right, either a fine treasure inheritance from her mother or a treasure inheritance from his father. With so much inside law, inheritance must be determined. Whoever is the rightful heir accepts the heir's treasure inheritance. This is set inside Article 832 of the Civil Code, which reads:

*"According to law, who is entitled to expert inheritance is family blood, both legal according to the Constitution as well as those outside marriage and husband or living wife longest according to regulations following this.*

*When family blood and husband or living wife are the longest, then all treasure legacy becomes state property, which is mandatory to pay off the debts of the deceased. So far, the price of treasure legacy is sufficient for it.*

According to Prof. Abdulkadir Muhammad, SH divided expert inheritance into three as follows:

1. original heirs (actually) consisting of a child biological and wife or husband heir. It says original Because it originates from marriage between husband, wife, and child, his descendants, including children outside marriage, expert wills, and expert inheritance replacement.
2. heir close bosom connection; his kinship with heir consisting over parents biological, grandparents, brothers and sisters, sibling, and uncle and aunt (straight line to up and sideways)
3. heir other If order items a and b are not there, there is, that is, the state.

Before the Court Constitution Number: 46/PUU-VIII/2010 against right inheritance, kids outside marriage often have problems. This caused a conflict between the Civil Code and Law No. 1 of 1974 concerning Marriage. Inside the Civil Code, Article 862 states:

*"When the deceased leaves kids outside marriage already acknowledged in a manner legitimate according to law, then treasure his legacy shared in the specified way in articles following (and furthermore in the Civil Code, red)."*

*Juncto* Article 280, which states: "With confession to a kid outside marriage, be born a civil connection between the child and Daddy or his mother."

Based on chapter the clear that inside Civil Code confess existence kid outside marry For get treasure inheritance from heir throughout has acknowledged in a manner legitimate according to law

Meanwhile, inside Law No. 1 of 1974 Concerning Marriage, only acknowledges what is meant by legitimate child as a child born in or as a consequence of legal marriage. Then inside Article 43, paragraph (1) asks that a son born outside marriage only have a civil connection with his mother and family. So if it refers to Law No. 1 of 1974 concerning Marriage, then a kid outside marriage is not entitled to inherit from the real father based on connection blood. However, the Supreme Court has issued a decision regarding the position of a child outside of marriage. Based on Decision Court Constitution Number: 46/PUU-VIII/2010 concerning testing Law No. 1 of 1974 Concerning Marriage against the 1945 Constitution of the Republic of Indonesia, which granted part of the request submitted by J. Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono, In amar, the verdict of the Court Constitution has changed, meaning Article 43 paragraph (1) of Law No. 1 of 1974 concerning Marriage becomes as follows:

*"A child born outside marriage has a civil connection with his mother and family, her mother, as well as with man as his father, which can be proven based on knowledge, technology, and/or other evidence according to law to have a civil connection with his mother and family, his father."*

So that consequence generated a law consequence. Decision Court Constitution mentioned Law No. 1 of 1974 concerning Marriage No. There is conflict Again with inside rules Civil Code and has confessed position kid outside marry to his father in matter heir in particular and in connection law civil others in general along the father of child the can proven based on knowledge knowledge and technology and/or tool other evidence according to law have connection blood, incl connection civil with family his father Other evidence according to law here is in line with the existence of confessions made outside marriage inside the Civil Code. However, the following conditions must be understood in order for a child to be confessed outside of marriage under the Civil Code:

1. Confession to a kid outside marriage can be done with something deed authentic (Article 281 of the Civil Code).
2. Confession: a kid outside married enough people age, that is, has reached nine mercy years. Except for children, girls below age can do confession. (Article 282 of the Civil Code)
3. Child who is not born because of adultery or desecration of blood (Article 283 of the Civil Code)
4. Confession: A kid outside marriage is accepted when she gets agreement from her mother if her mother is still alive (Article 284 of the Civil Code).

Inheritance rights of children outside of marriage If position child Already clear based on Civil Code and Law No. 1 of 1974 concerning Marriage that child outside marry entitled get inheritance from his father, then For part inheritance kid outside marry according to Civil Code is as following:

1. Child outside marriage gets one third of the inheritance when the dead leave descendants legitimate according to the Constitution or husband or wife. (Article 863)
2. Child outside marriage gets half part when the dead die. No leave offspring, husband or wife, however, leave family blood in lineage to the top, or you boys and girls. (Article 863)
3. Child outside marriage gets three quarters when the dead only leave family blood in more degrees Far again. (Article 863)
4. Child section outside past marriage acknowledged must be given especially first, then the rest shared with experts as legal heirs. (Article 864)
5. Child outside marriage inherits the whole treasure heir if heir No leaves an expert legal heir according to law. (Article 865) [7]

#### 4. CONCLUSION

According to one Islamic law, a child outside marriage is only decreed to his mother, so with a thereby born child, only he can inherit from his mother and family mother, and vice versa. Whereas to his biological father, he cannot inherit Because there is no connection lineage. According to the Civil Code, there is a possibility that a child outside marriage cannot inherit his mother and father; he can inherit after there is a confession from his biological mother and father. Basically, Islamic law and the Civil Code You're welcome to state that a child outside marriage cannot inherit from his biological father. The difference between Islamic law and the Civil Code is in the relationship of a child outside marriage with his mother. According to Islamic law, children outside marriage are directly decreed to his mother, whereas according to the Civil Code, there is a possibility that the child has no connection with his mother and that a new relationship arises after an existing confession. Recommended to whole people, to protect dignity, dignity yourself, and take care of descendants still well, so always stay away from actions that are close to adultery so that you will give birth to a child outside marriage. To parents of a child outside marriage that is subject to the Civil Code, in order to remain guardians of a right-seed child, they with make a valid confession to the child. It is recommended that it be made more detailed regulations that oblige parents of children outside marriage to be responsible answer to their sons, as well as rules about inheritance for children outside marriage.

#### ACKNOWLEDGEMENTS

The author would like to thank for all the help from various parties, especially "Sekolah Tinggi Agama Islam Barumun Raya Sibuhuan, Indonesia"

#### REFERENCES

- [1] Affandi, Ali. *Inheritance Law Family Law Law of Evidence* Jakarta: Rineka Copyright, 2004.
- [2] Mustaghfir, Aghis. *Inheritance of Adultery Children in Review of Islamic Law and the Civil Code Thesis, Study Program Ahwal Syakhsiyyah*. Postgraduate Program, Ponorogo State Islamic Institute, 2018.
- [3] Pitlo. *Inheritance Law According to the Book of Legal Laws Dutch Civil* Jakarta: PT Intermasa, 2015.
- [4] Azra, Azyumardi. *Islamic Encyclopedia*. Jakarta: PT Ichtiar Baru Van Hove, 2005.
- [5] Bashir, Ahmad Azhar. *Islamic Inheritance Law*. Yogyakarta: UII Press, 2014.
- [6] Beautiful, Benjamin. *Fundamentals of Western Inheritance Law: A Discussion Theoretical and Practical* Bandung: Tarsito, 2008.
- [7] Saebani, Ahmad Beni. *Methods of Legal Research*. Bandung: Faithful Library, 2009.
- [8] Ash Siddieqy, Hasbi *Jurisprudence Roses*. Semarang: PT. Rizki Putra, 1987.
- [9] Yango, Huzaimah Tahido *Masail Fiqhiyah Studies of Contemporary Islamic Law*. London: Publisher Space, 2005.
- [10] Ansari, Ibn, *Child Protection in Islamic Religion* Jakarta: Commission on Indonesian Child Protection, 2006.
- [11] Sumitro, Irma Setyowati *Legal Aspects of Child Protection* New York: Earth Script, 2015.
- [12] Satrio, *Inheritance Law*. Bandung: Alumni Publisher, 2016.
- [13] Committee Faculty of Sharia, Al Azhar University, *Inheritance Law* Jakarta: Senayan Abadi Publishing, 2009.
- [14] Ministry of Religion of the Republic of Indonesia *The Qur'an and Its Interpretation, Volume 7*. Jakarta: Widya Cahaya, 2011.

- 
- [15] Maruzi, Muslich *Main Points in Inheritance Science*, Semarang: Mujahidin, 1981
- [16] Sembiring, Rosnidar. *Family Law: Internal Property Marriage*. Jakarta: PT. Grafindo King Persad, 2016.
- [17] Al Dimasyqi, Muhammad Abdul Rahman *Jurisprudence: Four Madhhabs* Bandung: Science Library, 2014.
- [18] Arikunto, Suharismi. *Procedure Study Something Approach Practice* Jakarta: UIN Jakarta Press, 2002.
- [19] Simanjuntak, Indonesian *Civil Law* Jakarta: Kencana, 2015.
- [20] Amir Syarifuddin, *Islamic Inheritance Law, Cet. 4* (Jakarta: Kencana Pramedia Group, 2012), h. 3–4.
- [21] Huzaimah Tahido Yango, *Masail Fiqhiyah Studies of Contemporary Islamic Law* (Bandung, Publisher Angkasa, 2005), h. 12.
- [22] Azyumardi Azra, *Islamic Encyclopedia* (Jakarta: PT Ichtiar Baru Van Hove, 2005), p. 263.
- [23] M. Fuad Abdul Baqy, *Al-LLu'lu Wa Al-Marjân* (Cairo: Dâr Ihyâ 'al-Pole al-Arabiyah, tt), h. 183.
- [24] J. Satrio, *Inheritance Law* (Bandung: Alumni Publishers, 2016), h. 9.
- [25] Committee Faculty of Sharia, Al Azhar University, *Inheritance Law* (Jakarta: Senayan Abadi Publishing, 2009), p. 137.
- [26] Benjamin Asri, *Fundamentals of Western Inheritance Law: Discussion Theoretical and Practice* (Bandung: Tarsito, 2008), 13.