



Inheritance Rights of Children Born Out of Wedlock in the Perspective of Islamic Law

Dede Irman P^{1*}, Nurnisaa AS²

¹*Communication in Research and Publications, Bandung, Indonesia*

³*Research Collaboration Community, Bandung, Indonesia*

**Corresponding author email: dedeirmanpirdaus@gmail.com*

Abstract

This study aims to analyze the legal status of illegitimate children from the perspective of Islamic law and civil law in Indonesia, focusing on aspects of lineage, inheritance rights, and legal protection. The research employs a literature study method with descriptive-analytical analysis to compare regulations in Islamic law and positive law. In Islamic law, illegitimate children are recognized only through their mother, meaning they have lineage and inheritance rights solely through her and her family. Conversely, in civil law, illegitimate children may gain legal recognition from both parents through acknowledgment or a court decision, providing them with broader civil rights. This study highlights the role of the Constitutional Court Decision Number 46/PUU-VIII/2010, which represents a significant legal milestone. The decision enhances legal protection for illegitimate children by acknowledging their civil rights, including rights to inheritance and other legal entitlements, provided they can prove a biological relationship with their father. The analysis underscores the fundamental differences between the two legal systems in recognizing lineage and inheritance rights. Islamic law adheres strictly to religious principles, which limit these rights to the maternal side, whereas civil law takes a more inclusive approach aimed at ensuring equal rights for all children regardless of their legitimacy status. Despite these differences, both legal frameworks emphasize the importance of safeguarding the basic rights of children, such as access to education, healthcare, and welfare. This convergence reflects a shared commitment to the principle of the best interests of the child, which serves as a cornerstone in child protection laws. Furthermore, this study suggests the need for ongoing dialogue and harmonization between Islamic and civil law to address any gaps in protecting the rights of illegitimate children in Indonesia.

Keywords: Children out of wedlock, islamic law, civil law, inheritance rights, lineage.

1. Introduction

The issue of illegitimate children is one of the issues that often causes polemics in society, both from a social, legal, and religious perspective (Hori & Wirastri, 2022). In the context of Islamic law, the status of illegitimate children is a complex debate, especially regarding their rights, including inheritance rights. This issue often occurs due to differences in views between religious norms, culture, and positive law that apply in a country.

According to Islamic teachings, the lineage or descent of a child is determined based on a legal marriage between both parents. Children born outside of marriage according to sharia law only have a lineage relationship with their mother (Fageh, 2021). The consequence of this provision is that illegitimate children do not have inheritance rights from their biological father. However, several views of scholars offer different interpretations, especially when considering the principles of justice and child welfare.

This issue is becoming increasingly relevant in the context of modern society, where the number of illegitimate children tends to increase due to various factors, such as changes in social values, limited religious education, and lack of family supervision (Muslimin & Muthmainnah, 2024). This phenomenon demands a fair legal solution that is in accordance with Islamic values without ignoring the need for child protection.

From an Islamic legal perspective, inheritance is a right given to heirs based on the rules stipulated in the Qur'an and Sunnah. The inheritance rights of illegitimate children are often discussed because Islamic law emphasizes that the distribution of inheritance is based on legitimate blood relations. This view creates a dilemma, especially when a biological father wants to give part of his inheritance to a child born out of wedlock.

In Indonesia, the existence of a legal system that combines Islamic law and national law creates space for further discussion regarding the inheritance rights of illegitimate children. Law Number 1 of 1974 concerning Marriage and

the Compilation of Islamic Law (KHI) provide a legal basis regarding the status of illegitimate children (Rokhim, 2024). However, the implementation of this law is still influenced by the interpretation of judges and the social practices of the local community.

The study of the inheritance rights of illegitimate children is not only limited to the aspects of Islamic law, but also touches on social and humanitarian dimensions. In many cases, these children often face discrimination and social stigma that affect their well-being. Therefore, it is important to understand this issue comprehensively in order to provide solutions that are not only in accordance with sharia, but also oriented towards protecting children's rights.

Through this literature review, the research will analyze the Qur'anic verses, hadiths, and the views of scholars regarding the inheritance rights of illegitimate children. The research will also discuss how Islamic law can be applied in the context of modern society while still considering social justice. With this approach, it is hoped that legal solutions can be found that are in accordance with Islamic principles and the needs of contemporary society.

This research aims to enrich insight related to the issue of inheritance rights of illegitimate children from an Islamic legal perspective. In addition, this study is expected to be a reference for academics, legal practitioners, and policy makers in formulating more inclusive and equitable regulations. Thus, it is hoped that this research can provide a real contribution in realizing a society that respects Islamic values while protecting children's rights universally.

2. Literature Review

According Abdullah et al., (2023) An illegitimate child is a child born out of wedlock either as a result of adultery or rape, and he is not from syubhah intercourse or not from a child of slavery. An illegitimate child born less than 6 months 2 lahzah (seconds) according to the Qamariah calendar from the date of tamkin (sex). In Islam, an illegitimate child is a child born out of wedlock, either as a result of adultery or the idea of an illegitimate child in Islamic law is walad zina which literally means "child resulting from adultery".

According to AlFathin and Sadari, (2023), the definition of illegitimate children according to civil law and Islamic law is the same, namely children who are conceived and born outside of a legal marriage. However, in Islamic law there is no recognition or ratification for illegitimate children, while in civil law there is recognition for illegitimate children.

Ummil et al., (2024) concluded that scholars agree that children born out of wedlock have a family relationship with both the mother and her family. Likewise, in the regulations governing marriage law in Indonesia, which stipulate that the civil relationship of children born out of wedlock is only with the mother and her family. Nevertheless, the plaintiff allowed the Constitutional Court to conduct a material review, especially to ensure that his son was given permanent legal status and accepted by the defendant's family.

In a study conducted by Ulwi et al., (2024) examined the inheritance rights of children born out of wedlock, especially focusing on the perspective of the Shafi'i Islamic School of Jurisprudence and the Civil Code on children born from adultery, using an educational approach. Although Islamic law recognizes inheritance rights for these children, civil law can apply definitions based on legal requirements and community norms.

In Aziz's research (2024) the most prominent provision in the inheritance distribution system in Islamic law is contained in the letter an-Nisa verse 11, where the share of one man is equal to the share of two women or with a ratio (2:1), in terms of textual provisions, this does seem unfair and ignores women more. However, the justice contained in this verse is not justice based on number and quantity, but rather by looking at the functions, duties, roles, and responsibilities of men and women.

According to Islamic law, illegitimate children only inherit from their mother or their mother's family. Meanwhile, according to civil law, illegitimate children cannot inherit from each other with their parents except after ratification or recognition by their parents or one of them through a court decision. There are similarities and differences between the two laws above in responding to the inheritance of illegitimate children. The similarity is that illegitimate children both receive inheritance (in Islamic law from the mother's side, in Civil law from the father's and mother's side after recognition or ratification). The difference lies only in whether or not there is a blood relationship with their parents. (AlFathin and Sadari, 2023).

Positive law, namely law made by an authorized body, can regulate the rights of children born out of wedlock. In general, children born out of wedlock have the same human rights as children born within the bonds of marriage (Tohari et al., 2024).

3. Methodology

This study uses a literature study method (library research) to analyze the inheritance rights of illegitimate children from an Islamic legal perspective. The data used consists of secondary sources in the form of journals, books, and relevant previous research, which provide an in-depth look at the issue. The data collection technique is carried out through thorough document searches from various academic and legal sources. The data analysis technique applies a descriptive-analytical approach, where the relevant sharia arguments are examined in detail and then analyzed in relation to their implementation within the context of positive law in Indonesia. This approach enables the study to offer an in-depth comparison between the principles of Islamic law and the regulations set forth by Indonesian civil law, particularly in terms of inheritance rights for illegitimate children.

The primary objective of this study is to provide a comprehensive understanding of the legal status of illegitimate children, focusing specifically on their inheritance rights. The study aims to explore how Islamic law views the inheritance rights of these children, recognizing that Islamic law traditionally limits inheritance rights for illegitimate children to the maternal side. In contrast, Indonesian civil law offers a more inclusive approach, allowing for inheritance rights to be recognized through a formal acknowledgment process by the father or through a court decision. This discrepancy forms a key part of the discussion in this study, as it highlights the tension between religious principles and the need for social justice in the legal recognition of children's rights.

Furthermore, the study aims to offer fair solutions according to both sharia principles and social justice. This includes discussing how Islamic law could adapt to modern social needs, ensuring that the rights of illegitimate children are upheld in a way that reflects the spirit of fairness and justice. The study also delves into the role of the Constitutional Court Decision Number 46/PUU-VIII/2010, which is a landmark decision in Indonesia that grants additional legal protection to illegitimate children, especially in relation to their civil rights, including inheritance. By providing this legal framework, the study advocates for a more inclusive approach that protects the rights of all children, regardless of their legitimacy, in accordance with both religious teachings and the evolving needs of society.

This study ultimately seeks to provide recommendations for a more harmonized approach between Islamic law and Indonesian civil law, ensuring that illegitimate children are afforded the same legal protections and inheritance rights as legitimate children.

4. Results and Discussion

4.1. Results

The results of Hanggartika's research (2023) on the legal status of illegitimate children are based on Article 100 of the Compilation of Islamic Law. Children born out of wedlock only have a family relationship with their mother and their mother's family. In Article 186 of the Compilation of Islamic Law, children born out of wedlock only have an inheritance relationship with their mother and their mother's family. Whereas in the Civil Code, children born out of wedlock do not have a civil relationship with their parents, unless there is recognition from their biological parents.

In the research of Israil et al., (2022) there are similarities in Islamic law and constitutional law that illegitimate children have rights from their parents, namely the right to parental authority, the right to care for and educate children, inheritance rights, and rights to the family name, while the difference lies in the relationship between Islamic law which states that illegitimate children have a civil relationship with their mother and mother's family, while Constitutional Law states that illegitimate children have a civil relationship with their mother and mother's family, as well as their biological father which can be proven with evidence based on statutory regulations.

The results of the study show that in the Civil Code, children born outside of marriage have the status of illegitimate children, but can be recognized as legitimate children by both parents. According to Article 42 of the Marriage Law, if the marriage is not valid, then the child born from the relationship does not have the status of a legitimate child. Constitutional Court Decision Number 46/PUU-VIII/2010 recognizes children born from a valid marriage according to religion, while children resulting from adultery do not have a blood relationship with their father legally, but only a civil relationship. If the biological father is not responsible, the child through his mother can sue in a civil manner. Based on Article 863 of the Civil Code, an illegitimate child who is recognized is entitled to receive half of the inheritance that he should have received if he was a legitimate child, while Article 100 of the Compilation of Islamic Law (KHI) and Article 43 paragraph 1 of the Marriage Law emphasize that children born outside of marriage only have a blood relationship with the mother and the mother's family (Adawiyah et al., 2024).

Maulana et al., (2024) findings. In Islamic civil law there is no legal relief for illegitimate children, if the child is born without a clear status from both parents, then the child follows the mother, not the father. Islam has flexible laws that can be adapted to the existing context. From the perspective of Islamic law, there are several ways to determine nasab, one of which is the qiyafah technique. This technique can be confirmed by reading the lineage through DNA testing because it has almost the same legal law. With advances in technology and developments in science, methods for determining ancestry can also be developed.

The results of Armin et al.'s research (2023) state that children born out of wedlock still have the opportunity to inherit their parents' property, if recognized by their father and mother. Meanwhile, they can inherit their mother's property directly according to the law without any recognition, because the name listed in the Birth Certificate is legal proof of the heir. Even though they were born as illegitimate children, they are the heirs who are prioritized as Heirs of Class I.

Children born out of wedlock have the same human rights as children born in a legal marriage. In Indonesia, the protection of children born out of wedlock in terms of their rights can be fulfilled by both parents, and children born out of wedlock can be recognized by their father as long as it can be proven through scientific knowledge or concrete legal evidence (Tohari et al., 2024).

With the issuance of the Constitutional Court Decision, it is a legal breakthrough to demand recognition and ratification so as to provide legal protection for children's rights to demand or obtain their civil rights, including illegitimate children resulting from adultery and gifted children as well as protection for biological mothers to demand accountability for supporting and raising illegitimate children to their biological fathers. The legal policy of

illegitimate children is also based on the Convention on the Rights of the Child which has also been ratified by the Republic of Indonesia. is a gift or blessing from Allah SWT (Dianti, 2017).

4.2. Discussion

The results of this study indicate that the status of illegitimate children is a complex issue due to differences in approaches in Islamic law and civil law. In Islamic law, illegitimate children are identified as *walad zina* or children born from adultery, and only have blood relations and inheritance rights with the mother and her mother's family. This approach is based on sharia principles that emphasize the importance of the validity of marriage as the basis for family relationships.

Civil law provides an opportunity for illegitimate children to be recognized as legitimate children through recognition from parents or court decisions. This recognition gives the child inheritance rights from both the mother and the father, which is explicitly regulated in Article 863 of the Civil Code. In this context, civil law provides flexibility to protect children's rights, regardless of the status of the validity of the relationship between their parents.

Constitutional Court Decision Number 46/PUU-VIII/2010 provides a new dimension in the protection of illegitimate children, by recognizing children born from legal marriages according to religion. However, children born from adultery do not have a blood relationship with their father according to the law, except through recognition or scientific evidence such as DNA testing. This shows an effort to accommodate the development of science in the legal system.

The fundamental difference between Islamic law and civil law lies in the relationship between the child and the biological father. In Islamic law, there is no blood relationship between an illegitimate child and his father, while civil law allows such a relationship after recognition. Although different, these two legal systems are in line in paying attention to the welfare and rights of illegitimate children as equal human beings.

From the perspective of Islamic law, justice in the distribution of inheritance is also a highlight. Islamic law regulates the inheritance rights of illegitimate children through the mother and her mother's family. In Article 100 of the KHI, illegitimate children do not have inheritance rights from their biological father. However, the use of modern methods such as *qiyafah* or DNA testing can be a means to identify scientific blood relationships, which allows flexibility in the enforcement of Islamic law in the modern era.

Overall, protection for illegitimate children has been attempted through various regulations, both in Islamic law and positive law. This protection includes human rights, inheritance rights, and legal recognition. Despite conceptual differences, both seek to provide justice and adequate legal protection for illegitimate children.

5. Conclusion

This study concludes that the legal status of illegitimate children has fundamental differences between the perspectives of Islamic law and civil law. In Islamic law, illegitimate children only have blood relations and inheritance rights through the mother and her family, while civil law provides broader recognition through parental recognition or court decisions. The development of science such as DNA testing has enabled a more flexible approach in Islamic law to determine blood relations. In addition, the Constitutional Court Decision Number 46/PUU-VIII/2010 is an important milestone in providing legal protection for illegitimate children, including inheritance rights and recognition of family relations. Both legal systems have similarities in protecting children's rights, although they differ in determining blood relations and inheritance rights with the biological father. Integration efforts between religious law, positive law, and modern technology can create better justice and legal protection for illegitimate children.

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