

# The Implementation of Inheritance Rights Distribution for Children Born Outside of Marriage According to Islamic Law in the Application of the Inheritance Law System in Indonesia

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## Abstract

*This study discusses how the implementation of the inheritance rights of children born outside of marriage according to Islamic law in the application of the inheritance law system in Indonesia. In Islamic law, children born from a legitimate relationship have clear rights to their parents' inheritance. However, for children born outside of marriage, the situation becomes more complex. In many communities, social stigma and negative views of children born outside of marriage often affect their acceptance of inheritance rights. This can lead to injustice and discrimination, where these children do not get the rights they should receive according to Islamic law. The research method with a qualitative research type, this study uses library research, namely research that focuses and limits its activities to libraries to obtain data without conducting research in the field. Data collection techniques by conducting review studies of books, literature, notes, and reports that are related to the problem to be solved. Data sources in this study were obtained by tracing literature and laws and regulations, books, the Qur'an, and hadiths related to the research. Data collection techniques are carried out using documentary techniques. Documentary comes from the word document which means written object. In using the documentary method, the author collects written data such as books, scientific journals and so on. The results and discussion that in Islamic law, illegitimate children have limited inheritance rights, namely only the right to inherit from the mother and her family, without inheritance rights from the father. This is based on the view that illegitimate children do not have a legal bond with their father, but it is important to align the principles of Islamic law and positive law in regulating the inheritance rights of illegitimate children in order to realize justice and legal certainty for all parties. This harmonization effort will not only protect illegitimate children, but also strengthen the national inheritance law system as a whole*

**Keywords:** *Inheritance Law, Children Out of Wedlock, Islamic Law, Indonesian Law*

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## 1. Introduction

Inheritance is one of the crucial aspects of Islamic law that governs the distribution of property after a person's death. In Indonesia, a country rich in cultural diversity and legal systems including Islamic law the issue of inheritance often becomes complex, particularly in the context of children born outside of marriage. Children born out of wedlock frequently face challenges in obtaining their inheritance rights, despite the fact that under Islamic law, they still hold rights to inherit. In Islamic law, children born from a legitimate marriage have clear rights to inherit from their parents' estates. However, the situation is more complicated for children born outside of marriage. In many communities, social stigma and negative perceptions toward illegitimate children often affect the acceptance of their inheritance rights. This can result in injustice and discrimination, where such children are denied their rightful inheritance as prescribed by Sharia.

In Indonesia, the implementation of inheritance law is influenced not only by Islamic law but also



by customary law and the national legal system. This creates challenges in harmonizing the enforcement of inheritance rights for children born out of wedlock. Many court cases have shown that these children often struggle to claim their rights, and the current legal system does not yet fully protect their interests. Indonesia's inheritance legal framework adopts a pluralistic approach, comprising three main systems: customary inheritance law, Islamic inheritance law, and civil inheritance law (as codified in the Indonesian Civil Code). Each of these systems has distinct principles, regulations, and methods of distribution based on tradition, religion, and national legal norms. Islamic inheritance law applies specifically to Muslims and is derived primarily from the Qur'an, especially Surah An-Nisa verses 11, 12, and 176, which detail the heirs and their respective shares.

In Islamic inheritance law, lineage (*nasab*) is the primary basis for determining inheritance rights. A child born from a legitimate marriage is entitled to inherit from both parents. However, children born outside of wedlock face a more complex legal status. Traditionally, Islamic law recognizes the lineage of such children only through their mother and her family, while the paternal lineage is not acknowledged unless the father formally recognizes the child. As such, illegitimate children do not have inheritance rights from their biological father under classical Islamic law.

This principle aligns with Article 100 of Indonesia's Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), which regulates the lineage of children born out of wedlock. Nevertheless, in practice, the Constitutional Court of the Republic of Indonesia, through Decision Number 46/PUU-VIII/2010, altered this perspective by granting civil legal recognition between a child born out of wedlock and the father, provided that the relationship can be scientifically and legally proven. This includes inheritance rights. This ruling poses a challenge to the implementation of Islamic inheritance law in Indonesia, particularly regarding the inheritance rights of illegitimate children, as it contradicts traditional Islamic legal provisions. Additionally, the diversity of kinship systems in Indonesian customary law patrilineal, matrilineal, and bilateral also influences inheritance patterns, which often differ from Islamic and civil inheritance laws. The patrilineal system emphasizes descent from the father's line, the matrilineal system emphasizes descent from the mother's line, while the bilateral system recognizes both parental lines equally. These differences further complicate the harmonization of Indonesia's pluralistic inheritance legal framework.

Inconsistencies among Islamic law, customary law, and civil law often result in legal uncertainty and conflict in inheritance distribution, especially concerning the status and rights of children born out of wedlock. Therefore, a comprehensive study is needed to explore how the implementation of inheritance distribution for such children can be carried out justly and in accordance with Sharia principles within Indonesia's diverse and dynamic inheritance law system. Hence, it is essential to examine the application of inheritance rights distribution for children born outside of marriage according to Islamic law in the context of Indonesia's inheritance legal system. This study aims to identify the challenges and solutions for implementing fair and equitable inheritance laws for all children and to offer recommendations for enhancing the protection of their inheritance rights. By understanding this issue, it is hoped that justice and equality can be realized in society, and that better legal implementation can be achieved for all children, regardless of their parents' marital status.



## Method

Using a qualitative research method, this study employs library research, which focuses and limits its activities to the library in order to obtain data without conducting field research. The data collection technique involves a review of books, literature, notes, and reports related to the issue being addressed. The sources of data in this study are obtained by examining various pieces of literature, legal regulations, books, the Qur'an, and Hadiths relevant to the research. The data collection technique used is the documentary method. The term "documentary" comes from the word "document," which means written materials. In using the documentary method, the researcher collects written data such as books, scientific journals, and other similar sources.

## Results and Discussion

### Implementation of the Status of Out-of-Wedlock Children in Inheritance Law

In the Indonesian inheritance law system, out-of-wedlock children who are legally acknowledged by their parents have inheritance rights equal to those of legitimate children, although with different proportions of entitlement. Klaassen, Eggens, and Polak assert that acknowledged out-of-wedlock children have the right to inherit, including the right to receive inheritance, to file claims, and to demand the distribution of the estate. However, despite having equal rights, the portion of inheritance received by out-of-wedlock children varies depending on the class of other heirs.

According to the provisions of the Indonesian Civil Code (KUHPerduta), an acknowledged out-of-wedlock child is entitled to one-third of what a legitimate child would receive, especially if the deceased left behind legitimate children and/or a surviving spouse. For example, if the deceased leaves three legitimate children and a surviving wife, as well as an acknowledged out-of-wedlock child, the out-of-wedlock child would receive one-third of the portion received by a legitimate child, which means one-fifteenth of the total estate. The remaining estate would then be divided among the other legitimate heirs, such as the legitimate children and the spouse.

In other situations, if an out-of-wedlock child inherits alongside second-class heirs (such as siblings) or third-class heirs (more distant relatives), they are entitled to half of the available estate. Meanwhile, if the deceased only leaves fourth-class heirs (such as uncles, aunts, or cousins), the out-of-wedlock child is entitled to three-quarters of the estate, with the remaining estate divided among the fourth-class heirs.

If a deceased person leaves only an acknowledged out-of-wedlock child and no other heirs, then the acknowledged out-of-wedlock child inherits the entire estate pursuant to Article 865 of the Civil Code, which stipulates that if there are no heirs from the first to the fourth class, an acknowledged out-of-wedlock child shall be the sole heir. Although acknowledged out-of-wedlock children have inheritance rights, this does not apply to all out-of-wedlock children. Those who are not acknowledged by their parents or who were born from legally unrecognized relationships do not automatically have inheritance rights. However, they may still receive other entitlements, such as gifts or maintenance, in accordance with Article 867 of the Civil Code.

The Constitutional Court Decision No. 45/PUU-VIII/2010 strengthened the rights of out-of-wedlock children by declaring that they have civil relations not only with their mother and maternal family but also with their father if a biological connection can be legally proven. This decision opens the door for out-of-wedlock children to obtain their legal rights, including inheritance, in a more just and equal manner. It underscores the importance of non-discriminatory legal protection in accordance with the human rights values guaranteed by the 1945 Constitution.

although out-of-wedlock children face various challenges in obtaining inheritance rights, current Indonesian law provides greater protection for them, ensuring that their rights are recognized and safeguarded by the state. This is especially reflected in parental acknowledgment and the Constitutional Court's decision, which clarifies the legal standing of out-of-wedlock children in the context of inheritance.

Thus, out-of-wedlock children who are acknowledged and legitimized have rights and status equal to those of children born within a lawful marriage. Parents who acknowledge and legitimize out-of-wedlock children also grant them the same rights and position as children born within wedlock. It is

hoped that all of us living in a diverse and coexisting society can demonstrate tolerance and care for one another by always upholding good values and life norms—for adults, youth, and parent-child relationships alike—without any form of distinction or discrimination (Hammed et al., 2024, pp. 1266–1267).<sup>1</sup>

### **The Position of Heirs in the Implementation of Inheritance in Indonesia**

As we all know, the application of inheritance law in Indonesia is based on three different legal systems, depending on region, social structure, patrilineal customs, and religion. Inheritance issues in Indonesia are governed by various scattered laws and regulations. The applicable inheritance laws in Indonesia include Islamic Inheritance Law for Indonesian citizens who adhere to Islam, which is based on the Qur'an and Hadith as compiled in the Compilation of Islamic Law (Kompilasi Hukum Islam). Meanwhile, for Indonesian citizens who follow religions other than Islam, the applicable inheritance law is governed by customary law (Adat Law) and civil law. However, it is not uncommon for Muslims in Indonesia to also follow customary inheritance law..

In the implementation of inheritance law in Indonesia, Islamic Law serves as the primary foundation and is guaranteed through legal subjection. In the execution of inheritance, legal subjection to religious law in this case, Islamic Law acts as the main basis and is codified in the Compilation of Islamic Law, which is derived from the Qur'an and the Sunnah (Hadith). This guideline is applied directly and is rooted in the principle that every act is considered a form of worship, connected to the concepts of sin and reward. Based on this consideration of sin and reward, the implementation of inheritance must refer to Islamic Law, as sourced from the Qur'an and the Sunnah. The execution of inheritance is a manifestation of a legal event—namely, marriage. The legal consequences of a marriage determine the provisions in inheritance matters. Therefore, everything related to the validity of a marriage will also affect a person's eligibility to receive inheritance (Agustin et al., 2022, p. 110)<sup>2</sup>

#### **The Inheritance System in the Perspective of Islamic Law and Indonesian Legal Framework**

Islamic inheritance law regulates the transfer of wealth from a deceased person to their living heirs. The rules regarding this transfer of assets are known by various terms. In Islamic legal literature, several terms are used to refer to inheritance law, such as *Faraid*, *Fiqh al-Mawaris*, and *Ahkam al-Warith* (laws of inheritance). The differences in terminology arise from the different focal points emphasized in each discussion. However, the most commonly used term is *Faraid*, as stated by an-Nawawi in his book *Minhaj al-Talibin*..

The historical reality of the Muslim community in the development of their thoughts regarding the implementation of inheritance shows diversity. Islam, as a value system, plays a role in influencing Muslims to practice the inheritance teachings found in the Qur'an. Islam does not only regulate the relationship between humans and God but also governs relationships among human beings. In fact, Islam commands its followers to adhere to Islamic rules in their entirety and forbids following the desires of Satan.

In Indonesia, the inheritance law system is pluralistic, meaning that multiple systems of inheritance law are in effect. The three main inheritance law systems in Indonesia are Western Civil Inheritance Law, Islamic Inheritance Law, and Customary Inheritance Law. Each of these systems is applied based on the beliefs and views of the parties involved in the inheritance dispute, which influences how the inheritance issue is resolved.

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<sup>1</sup> Hammed, N., Pebrizal, A., & Artikel, R. (2024). Jurnal Sains Ekonomi dan Edukasi Implementasi Nasab Anak di Luar Nikah terhadap Hukum Waris INFO ARTIKEL. 1(12), 1266–1271.

<sup>2</sup> Agustin, F., Hasuri, H., & Najmudin, N. (2022). Kedudukan Hukum Islam dalam Pelaksanaan Waris di Indonesia. Mizan: Journal of Islamic Law, 6(1), 109.

For example, Islamic Inheritance Law refers to provisions found in the Qur'an and Hadith, while Western Civil Inheritance Law specifically applies to non-Muslim groups. Customary Inheritance Law, on the other hand, is applied within specific customary law communities, following inheritance rules based on local traditions and practices.

The Western Civil Inheritance Law is based on the Indonesian Civil Code (KUH Perdata), which regulates inheritance matters. This law includes provisions on the transfer of the deceased's assets to rightful heirs. The determination of who is entitled to receive the inheritance is further regulated by the Civil Code. According to the Civil Code, there are two methods of distributing inheritance: *ab intestate* (without a will) and by testament (through a written will). *Ab intestate* applies when a person dies without leaving a will, so the inheritance is distributed according to prevailing regulations, based on blood relations or lineage with legitimate heirs (Rosyid et al., 2023, pp. 101–103).<sup>3</sup>

Children born out of wedlock have the right to inherit alongside heirs from group I, II, III, or IV, and may receive inheritance even if they belong to a group of different legal standing. However, in certain situations, if there are no heirs from groups I to IV and only a child born out of wedlock remains, then a legally recognized child born out of wedlock is acknowledged as an heir and is entitled to receive the entire estate, in accordance with Article 865 of the Civil Code (Burgerlijk Wetboek/BW). The legal status of children born out of wedlock in marriage law is regulated by Law Number 1 of 1974, particularly in Article 43 paragraph (1), which states that children born out of wedlock only have a civil relationship with their mother and her family. Therefore, children born out of wedlock only have a legal bond with their mother and her family, without any legal relationship with the man who raised them. A child born out of wedlock is defined as a child born to a mother who does not have a lawful husband as the father. Recognition of a child born out of wedlock can be done in two ways: voluntary recognition through a written authentic deed, or forced recognition through a court decision (Cepi Winarso et al., 2024).

## Principles of Inheritance in Islamic Law

### Principle of Ijbari (Compulsion)

In Islamic law, the transfer of a deceased person's property to their living heirs occurs automatically in accordance with the decree of Allah, independent of any effort or will from either the deceased (the heir-leaver) or the heirs. This automatic transfer is known as the *ijbari* principle. Therefore, the deceased does not need to plan the use and distribution of their estate after death, as the assets will automatically be passed on to the heirs in accordance with the provisions already established.

The term *ijbari* lexically means "compulsory" that is, doing something outside of one's own will. This element of compulsion is evident in how the heirs are determined to be entitled to inherit and in the specific share they are to receive, as regulated in the Qur'anic verses, specifically Surah An-Nisa (Chapter 4), verses 11, 12, and 176. The compulsory nature in terms of the portion received is reflected in the word *mafrūdan*, which means a predetermined share. Hence, *ijbari* represents a compulsory legal principle.

#### 1. Principle of Bilaterality

The bilateral principle in Islamic inheritance law refers to the concept that an individual is entitled to inheritance rights from both sides of their family from both maternal and paternal lineage. This principle of bilaterality has two mutual inheritance dimensions as stated in Surah An-Nisa (4): verses 7, 11, 12, and 176:

- (1) Between children and their parents, and
- (2) Between siblings, if the deceased leaves no parents or children.

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<sup>3</sup> Rosyid, M. A., Nurhasanah, V. W., Atikasari, W., & Rayana, N. A. (2023). Kedudukan Hukum Anak Di Luar Perkawinan Yang Tidak Sesuai Pasal 272 KUHperdata Berkaitan Dengan Menerima Warisan Berdasarkan Putusan Nomor 1594 K/Pdt/2018. *Diponegoro Private Law Review*, 10(1) h.101-103

This is explained as follows:

First, the mutual inheritance dimension between children and their parents.

In Surah An-Nisa verse 7, it is affirmed that both males and females are entitled to inheritance from their parents. Furthermore, in verse 11, it is stated that daughters are entitled to inherit just as sons do, with the son's share being equal to that of two daughters. Also in verse 11, it is emphasized that the father and mother are entitled to inherit from their child, whether the child is male or female, each receiving one-sixth if the deceased leaves behind children.

Second, the mutual inheritance dimension among siblings applies when the deceased has no children or parents. Surah An-Nisa verse 12 states that if a man dies and leaves behind siblings, those siblings (male or female) are entitled to inherit. Similarly, in the same verse, if the deceased is a woman and has siblings, they are likewise entitled to inherit. Moreover, in verse 176, it is affirmed that if a man dies without children but has a sister, she is entitled to inherit from him. Likewise, if the deceased has a brother, he too is entitled to the inheritance.

## 2. Principle of Individuality

The individual principle asserts that each heir (individually) is entitled to their respective share without being bound to the other heirs, which differs from collective inheritance systems found in customary (adat) laws. For example, this can be observed in the Minangkabau custom in West Sumatra. Thus, each heir's portion of the inheritance is owned personally, and other heirs have no relation to that portion. Accordingly, every individual heir has the full right and freedom to manage and decide upon their share of the inheritance.

## 3. Principle of Balanced Justice

The principle of balanced justice refers to maintaining equilibrium between the inheritance share one receives and the obligations or life expenses one must bear. For instance, males and females receive portions that correspond to the responsibilities they shoulder within the family and society. A man typically plays the role of family provider, responsible for fulfilling the living needs of his wife and children according to his capacity (Qur'an 2:233). This responsibility is obligatory, regardless of whether the wife is financially capable or whether the children require support. Thus, inheritance law refers to the legal rules governing the transfer of ownership rights of the deceased's estate (tirkah) to the heirs. Inheritance is, therefore, closely related to human life, as every individual will inevitably face the legal event of death. Islamic law has established rules regarding inheritance and wealth distribution in the most just and appropriate manner. Islam acknowledges the property rights of individuals both men and women including in the context of transferring property to heirs after death.

In Islamic law, the division of the estate takes place after all matters related to funeral arrangements, debts, zakat, and bequests are settled. The deceased's debts are considered liabilities of the estate. Moreover, in dividing the estate among the heirs, Islamic law distinguishes between the shares received by male and female heirs. Let me know if you would like this version in formal academic English or formatted for a publication or thesis. The inheritance law system under the Civil Code (*Burgerlijk Wetboek*, or BW) does not recognize the concept of *original property* (pre-marital assets) and *marital property* (joint property acquired during marriage, commonly known as *harta gono-gini*). This is because, under the BW, inheritance regardless of its origin is regarded as a single entity that is wholly transferred from the deceased to all of their heirs. Therefore, in the BW system of inheritance distribution, there is no distinction or regulation based on the origin of the property left by the deceased. As stated in Article 849 of the BW: "*The law does not consider the nature or origin of the goods in an estate when regulating inheritance over them.*" (Wahyuni, 2018, pp. 153–158)<sup>4</sup>

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<sup>4</sup> Wahyuni, A. (2018). Sistem Waris Dalam Perspektif Islam dan Peraturan Perundang-undangan Di Indonesia. SALAM: Jurnal Sosial Dan Budaya Syar-i, 5(2), 147–160

### **Inheritance Rights of Children Born Outside of Marriage According to Islamic Law**

The provisions of inheritance in Islam, particularly those found in classical inheritance law, are derived from foundational structures established in the sources of Islamic law, namely the Qur'an, Hadith, and the *Ijtihad* (independent reasoning) of scholars. These provisions have been elaborated and systematized by the *imams* of various *madhhabs* (Islamic schools of thought) through different methods and interpretations. In Islamic inheritance law, there are three essential pillars that must be present: First, the decedent (*al-muwarris*), also known as the one who bequeaths, i.e., the individual who has passed away and leaves behind an estate to be inherited. Second, the heir (*al-wārith*), namely the person who is legally entitled to receive inheritance from the decedent, based on valid causes for inheritance either through blood relations (*nasab*), marriage, or the act of freeing a slave. (Wahyu et al., 2024, p. 14)<sup>5</sup>

The status of children born outside of marriage in Islamic law was initially similar to that of the Marriage Law, namely that such children were affiliated only with their mother and her relatives. However, following the annulment of Article 43 of the Marriage Law by the Constitutional Court, a distinction arose between Islamic law and the Marriage Law. Islamic law, based on the Qur'an and Hadith, continues to recognize a child born outside of marriage only in relation to the mother and her kin. Meanwhile, under the Marriage Law, a child born outside of marriage may be affiliated with the father if there is technological evidence such as DNA testing proving a genetic relationship between the child and a man.

The Constitutional Court's decision impacts the inheritance rights of children through the annulment of Article 43 of the Marriage Law, thereby granting inheritance rights to children born outside of marriage, provided that DNA testing confirms the relationship. As such, the child may submit an application for legal recognition to the District Court (for non-Muslims) or to the Religious Court (for Muslims). However, this does not alter the provision in Islamic teachings, which holds that a child born outside of marriage has no inheritance relationship with the father. Nonetheless, in order to provide legal protection for the child, the biological father is obligated to provide maintenance and may allocate part of his estate through a gift (*hibah*) or will (*wasiyyah*) (Wahyuni, 2018).

### **Inheritance Rights of Children Born Outside of Marriage According to the Indonesian Legal System**

The Indonesian legal system regarding the inheritance of children born outside of marriage has undergone changes. Article 55 of Law Number 1 of 1974 on Marriage provides an opportunity by stipulating that if the origin of a child cannot be proven with an authentic certificate, then such origin shall be determined through a ruling by a competent court. Furthermore, Article 43 Paragraph (1) states that the relationship between a child and a man. The status of a man as a father is not solely determined by the existence of a marital bond, but can also be based on evidence of a biological relationship between the child and the man as the father. Therefore, regardless of the procedural or administrative matters concerning marriage, a child who is born must receive legal protection. Otherwise, a child born out of wedlock would be disadvantaged, even though the child bears no fault for being born under circumstances beyond their control.

The status of every child born outside a legally recognized marriage is that of an illegitimate child. In Islamic law, as guided by the Qur'an and Hadith, an illegitimate child is still affiliated with the mother and her relatives. According to the Civil Code, a child born out of wedlock is considered to have no legal relationship with their parents unless there is acknowledgment by either the father

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<sup>5</sup> Wahyu, W., Sya'bani, Moh. A., & Permana, S. P. (2024). Hak Waris dan Keadilan: Menggagas Reformasi Hukum Keluarga dengan Prinsip Maqasid Syariah. *Jurnal Studi Inovasi*, 4(2).

or the mother. Therefore, if the child is acknowledged, they are entitled to inherit the estate of the parent who acknowledges them, and the inheritance will be distributed according to the provisions of the law. However, under the enactment of the Marriage Law, namely Law No. 1 of 1974 (Article 43 paragraph 1), even an unacknowledged illegitimate child automatically has a civil relationship with their mother and the mother's family.

The inheritance rights of children born out of wedlock have undergone significant changes following the Constitutional Court Decision Number 46/PUU-VIII/2010, which impacted their rights by annulling Article 43 of Law Number 1 of 1974 on Marriage. This decision grants inheritance rights to children born out of wedlock, provided that the biological relationship can be proven through DNA testing. For those who do not adhere to Islam, applications for legal determination may be submitted to the District Court, while for Muslims, the application must be submitted to the Religious Court. However, this ruling does not alter the provisions of Islamic teachings, which maintain that a child born out of wedlock does not have inheritance rights from the father. Nevertheless, in order to provide legal protection to the child, the biological father is obliged to provide financial support and allocate a portion of his estate through gifts (*hibah*) or a will (*wasiat*) (Adjufri, 2016, p. 101).<sup>6</sup>

#### **Provisions on the Inheritance Distribution of Children Born Out of Wedlock According to the Compilation of Islamic Law**

First, the Legal Status and Consequences of Acknowledging a Child Born Out of Wedlock. Under Islamic law as regulated in the Compilation of Islamic Law, a child born out of wedlock who is acknowledged by the father still cannot inherit from him, nor can the father inherit from the child. This is because, under Islamic law, such a child is considered the result of *zina* (illegitimate intercourse) and only has a legal relationship with the mother and the mother's relatives. Second, Grounds for a Child Born Out of Wedlock to Receive Inheritance.

A person obtains inheritance rights through marriage, blood relation (kinship), and *walaa'* (allegiance). A child born out of wedlock may only inherit from the mother and the mother's relatives by virtue of kinship. However, such a child may also receive an inheritance through a will (*wasiat*). Third, the Share of Inheritance for a Child Born Out of Wedlock. According to the Compilation of Islamic Law, the provisions regarding the inheritance share of a child born out of wedlock state that such a child is only entitled to inherit from the mother and the mother's family. Therefore, if there is a child born out of wedlock in a family, that child may exclude other heirs who are lower in inheritance rank from the maternal line. From the paternal side, the child born out of wedlock has no right to any share of the inheritance. If there is any remaining estate from the paternal line, it will be transferred to the state treasury (*baitul mal*). Fourth, Disqualification from Inheritance Rights for a Child Born Out of Wedlock. An heir may lose their right to inherit for several reasons, such as slavery, murder, religious differences with the deceased, apostasy (*murtad*), or being missing without a trace. According to the Compilation of Islamic Law, as stipulated in Article 173, a person is disqualified from becoming an heir if, by a final and binding court decision, they are convicted of murdering, attempting to murder, or severely assaulting the deceased, or if they falsely accuse the deceased of committing a crime punishable by five years' imprisonment or more (Ipandang, 2020, pp. 198–199).<sup>7</sup>

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<sup>6</sup> Aldjufri, R. (2016). Hak Waris Anak di Luar Nikah menurut Hukum Islam. LEX ET SOCIETATIS, 4(1), h.101

<sup>7</sup> Ipandang (2020). *Komparasi Tentang Pembagian Harta Waris Untuk Anak Luar Nikah* (Vol. 11), h. 198-199

Article 863 of the Indonesian Civil Code (KUH Perdata) regulates the inheritance rights of children born out of wedlock as follows: a. A child born out of wedlock inherits together with heirs of Group I, receiving one-third ( $\frac{1}{3}$ ) of the inheritance if the child has been legally acknowledged. b. A child born out of wedlock inherits together with heirs of Group II and III, receiving one-half ( $\frac{1}{2}$ ) of the total inheritance. c. A child born out of wedlock inherits together with heirs of Group IV, receiving three quarters ( $\frac{3}{4}$ ) of the inheritance.

Explanation of Articles 870–871 addresses the inheritance rights in the event that a child born out of wedlock passes away. In such a case, if the child has no descendants or spouse, the estate they leave behind shall be passed on to the father or mother who acknowledged custody. According to Islamic inheritance law, such a child is referred to as *mula'anah* or is considered to have no legal father (*la nasab lahu ila abihi*), and therefore, the estate shall be inherited by the single parent typically the mother or by relatives on the mother's side who are still connected by blood.

According to Article 872 of the Civil Code, a child born out of wedlock has no right to inherit from the blood relatives of either parent, except in the circumstance outlined in Article 873. That provision states that if one of the blood relatives dies without leaving a spouse or other lawful heirs, the child born out of wedlock may inherit the entire estate. If the child also dies without leaving any descendants, spouse, or blood relatives, the estate shall pass to the closest blood relatives of the parent who acknowledged custody. If both parents acknowledged the child, then half of the inheritance shall go to the father's blood relatives and the other half to the mother's blood relatives.

According to Islamic inheritance law, the paternal family is not entitled to claim inheritance because they are not recognized as blood relatives. If the child born out of wedlock has no remaining heirs, their estate will be transferred to the *Baitul Maal* (public treasury), and thus the property is considered to be ownerless. (Rozy & Izzuddin, 2024, p. 48–49).<sup>8</sup>

### **Comparison of Inheritance Distribution for Children Born Out of Wedlock According to the Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI)**

The provisions regarding inheritance distribution for children born out of wedlock under the Indonesian Civil Code (KUH Perdata) regulate the legal standing and consequences of acknowledging a child born outside of a lawful marriage. Acknowledgment of a child is an act carried out by either the mother or father toward a child born outside a marriage that is legally recognized. In principle, such acknowledgment can be made by either parent. However, according to Article 43 of Law No. 1 of 1974 on Marriage, which states that a child born out of wedlock has no civil relationship with their father, acknowledgment by the father is necessary to establish a new civil relationship between the father and the child. As a result of such acknowledgment, a civil relationship is formed between the child and the parent who acknowledges them.

Process of Acknowledgment and Legalization of a Child Born Out of Wedlock Through acknowledgment, a child born out of wedlock may obtain inheritance rights from their parent. However, not all such children are entitled to inherit. According to Article 285 of the Civil Code, a child born out of wedlock may inherit only if they are acknowledged by their father before the father legally marries another woman. Amount of Inheritance for a Child Born Out of Wedlock A child born out of wedlock who is acknowledged before the parent marries someone else is entitled

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<sup>8</sup> Cepi Winarso, Dika Ratu Marfu'atun, Santy Fitnawati WN, & Ahmad Fauzan. (2024). Hak Waris Anak Diluar Nikah: Implementasi Menurut Hukum Perdata Indonesia. *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik*, 1(3), 358–366. <https://doi.org/10.62383/demokrasi.v1i3.457> h. 48–49

to inherit alongside other lawful heirs. The portion of inheritance received by an acknowledged child depends on the category of heirs with whom they inherit.

Disqualification from Inheritance for a Child Born Out of Wedlock According to the Civil Code, as stipulated in Article 838, a person may lose their right to inherit if they are convicted by a final court decision of murdering or attempting to murder the deceased (the testator); if they are convicted of maliciously filing a false accusation against the deceased; if they have, through violence or other means, prevented the deceased from drafting or revoking a will; or if they have concealed, damaged, or forged the will of the deceased.

### Conclusions

The Implementation of Inheritance Rights for Children Born Out of Wedlock According to Islamic Law within the Framework of the Indonesian Inheritance Legal System. The implementation of inheritance rights for children born out of wedlock under Islamic law within the framework of Indonesia's inheritance legal system demonstrates a clear distinction between the provisions of positive law and the principles of Islamic law. Under Islamic law, a child born out of wedlock has limited inheritance rights, namely the right to inherit only from the mother and her family, with no inheritance rights from the father. This is based on the view that a child born out of wedlock has no legal relationship with the father. Meanwhile, in Indonesia's positive legal system, there are provisions that provide broader opportunities for children born out of wedlock to obtain inheritance rights under certain conditions. For example, a child born out of wedlock who is legally acknowledged by a parent may inherit property, and under certain circumstances, such as when no other heirs exist, the child may receive the entire estate. Nonetheless, the realization of inheritance rights for children born out of wedlock still faces challenges, particularly concerning acknowledgment and protection of their rights. Social stigma and a lack of legal understanding remain obstacles in ensuring full recognition of the rights of such children. Therefore, more intensive efforts are needed to raise legal awareness and provide fair protection so that the rights of children born out of wedlock can be optimally fulfilled within the Indonesian legal system. Overall, it is essential to align the principles of Islamic law with those of positive law in regulating the inheritance rights of children born out of wedlock in order to achieve justice and legal certainty for all parties. Such harmonization efforts will not only protect children born out of wedlock but also strengthen the national inheritance legal system as a whole.

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