THE INHERITANCE RIGHTS OF CHILDREN FROM MARRIAGE ARE NOT RECORDED ACCORDING TO THE MARRIAGE LAW AND THE COMPILATION OF ISLAMIC LAW

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Submitted: 05-02-2024  Accepted: 01-04-2024  Published: 01-05-2024

Abstract
Unregistered marriages are a significant aspect of the Compilation of Islamic Law, affecting children's inheritance rights. Although a valid marriage should be registered, there are many cases where this unregistration can have serious legal consequences, especially related to children's inheritance rights. This study aims to explore the understanding of the inheritance rights of children from unrecorded marriages in accordance with the provisions contained in the Compilation of Islamic Law. This research uses qualitative research methods with a normative juridical approach, which is carried out based on legislation, including the Civil Code and Law No. 1 of 1974. Data is obtained from various legal sources, such as the Law, Civil Code, and journals. Data analysis is carried out to filter and collect data according to its type, then draw conclusions from the findings obtained. The results showed that the inheritance status of a child from a marriage not recorded according to the Marriage Law can be obtained from the mother and the mother's family, but with the decision of the Constitutional Court, an extramarital child can also get inheritance rights from his father if it can be legally proven that he is related by blood to his biological father. However, the right of inheritance of children from marriage is not recorded according to the Compilation of Islamic Law still follows its rule which states that the child only has a sexual relationship and inheritance rights with the mother and the mother's family, not with the father. Parents can apply for marriage certificate to obtain legal protection related to inheritance based on kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. Therefore, children born into marriage have the right to receive inheritance from their parents, while children from unregistered marriages do not have inheritance rights from their fathers if there is no marriage decree that legally strengthens the marital status.

Keywords: Illegitimate children, inheritance rights, compilation of Islamic law.

Abstrak
Perkawinan yang tidak tercatat secara sah merupakan aspek yang signifikan dalam Kompilasi Hukum Islam, yang mempengaruhi hak waris anak. Meskipun seharusnya...
perkawinan yang sah didaftarkan, terdapat banyak kasus di mana ketidaktercatatan ini dapat memiliki konsekuensi hukum yang serius, terutama terkait dengan hak waris anak. Penelitian ini bertujuan untuk menggali pemahaman mengenai hak waris anak dari perkawinan tidak tercatat sesuai dengan ketentuan yang terdapat dalam Kompilasi Hukum Islam. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan yuridis normatif, yang dilakukan berdasarkan pada perundang-undangan, termasuk KUHPerdata dan UU No 1 Tahun 1974. Data diperoleh dari berbagai sumber hukum, seperti UU, KUHPerdata, dan jurnal-jurnal. Analisis data dilakukan untuk memfilter dan mengkumpulkan data sesuai jenisnya, kemudian menarik kesimpulan dari temuan yang diperoleh. Hasil penelitian menunjukkan bahwa status waris anak dari perkawinan tidak tercatat menurut Undang-Undang Perkawinan dapat diperoleh dari ibu dan keluarga ibunya, tetapi dengan adanya putusan dari Mahkamah Konstitusi, anak luar kawin juga dapat mendapatkan hak waris dari ayahnya jika dapat dibuktikan secara sah bahwa ia memiliki hubungan darah dengan ayah biologisnya. Namun, hak waris anak dari perkawinan tidak tercatat menurut Kompilasi Hukum Islam tetap mengikuti aturannya yang menyatakan bahwa anak hanya memiliki hubungan nasab dan hak waris dengan ibu dan keluarga ibunya, tidak dengan ayahnya. Orang tua dapat mengajukan permohonan itsbat nikah untuk mendapatkan perlindungan hukum terkait waris mewarisi yang berdasarkan kekerabatan atau hubungan nasab antara orang yang mewarisi dengan orang yang mewarisi yang disebabkan oleh kelahiran. Oleh karena itu, anak-anak yang dilahirkan dalam perkawinan memiliki hak untuk menerima warisan dari orangtua mereka, sementara anak dari perkawinan tidak tercatat tidak memiliki hak waris dari ayahnya jika tidak ada itsbat nikah yang menguatkan status perkawinan tersebut secara hukum.


INTRODUCTION

The compilation of Islamic Law stipulates that marriage is valid, if it is carried out according to Islamic Law in accordance with Article 2 paragraph (1) of Law Number 1 of 1974. A valid marriage is a marriage performed according to the laws of each religion and belief, in other words a marriage that is not according to the laws of each religion and belief is an invalid marriage. So that the children he gave birth to were also illegitimate children. Then Islamic Law confirms that a marriage is considered valid if the marriage has fulfilled the pillars and conditions of marriage as stipulated in Islamic Shari'a, which is meant by the conditions of the validity of marriage, namely that the marriage must have a prospective husband, prospective wife, marriage guardian, two

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witnesses and ijab and qabul. In addition, marriage must be recorded, which is a condition for whether or not marriage is recognized by the state. With the registration of marriage, there has also been protection of interests for the parties in a marriage.

A valid marriage can only be proven by a marriage certificate made by the Marriage Registration Officer. In the event that the marriage cannot be proven by a marriage certificate, it can be submitted to the religious court. Itsbat nikah which can be submitted to the religious court in relevant cases. Those who have the right to apply for marriage itsbat are the husband or wife, their children, marriage guardians and parties interested in the marriage.

A valid marriage must be performed based on the provisions of the laws of their respective religions. The marriage needs to be protected by law in accordance with applicable laws and regulations, so that the marriage has legal force. At this time not all people in Indonesia comply with the laws and regulations governing marriage in Indonesia, so many people carry out unregistered marriages (marriage under hand).

The definition of unregistered marriage (nikah under hand) is a marriage performed by a female guardian with a man and witnessed by two witnesses, but not reported or not recorded at the Marriage Registration Officer (PPN) and not registered with the Office of Religious Affairs (KUA).

Unregistered marriages are performed without going through the proper process according to the Marriage Act. From this understanding,

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3 Zidna Nama, "JURIDICAL MEANING OF LEGAL STATUS OF INHERITANCE RIGHTS OF CHILDREN RESULTING FROM SERIAL MARRIAGES ACCORDING TO THE COMPILATION OF ISLAMIC LAW" (2014), https://doi.org/10.21776/ub.arenahukum.2014.00701.4

4 S. Sudarsono, "LEGAL PROTECTION OF THE SECOND WIFE'S INHERITANCE RIGHTS FROM UNREGISTERED MARRIAGES IS ASSOCIATED WITH THE FUNCTION OF MARRIAGE REGISTRATION (Comparative Study of Islamic Fiqh and Law Number 1 of 1974)" (2022), https://doi.org/10.54367/fiat.v2i2.1773

unregistered marriage (marriage under the hand) has no legal force because considering article 2 of Law Number 1 of 1974 concerning Marriage, marriage is valid if it is carried out according to the laws of each religion and belief. Every marriage is recorded according to applicable laws and regulations. Unregistered marriages (marriages under the hands) are legal according to the religion of Islam.6

Some factors that cause people in Indonesia to perform many unregistered marriages (marriage under hand) include Law Number 1 of 1974 adheres to the principle of monogamy, but still provides leeway for those whose religion allows polygamy (one of which is Islam) with very strict requirements. A person who wishes to practice polygamy must meet at least one of the alternative conditions specified in the law.7 The strictness of polygamy permits also causes the person concerned to prefer marriage under the hand or nikah sirri because the implementation (ordinance) of marriage under the hand is simpler and faster to achieve the goal of marriage itself.8

A man or woman who is ready to marry, but has not met the age in the Law, finally they choose to enter into an unregistered marriage.9

Many people do not fully understand how important marriage registration is. Some people consider marriage registration to be just a matter of administration without considering full awareness of the beneficial aspects of marriage registration.10

The provisions of article 2 of Law No. 1 of 1974 are the subject matter of the validity of marriage. The provisions of paragraphs (1) and (2) of the article must be understood as a cumulative condition, not an alternative condition for the validity of a marriage. From the legal facts and / or legal norms are actually enough to be the basis for Muslims to

6 Dwitya Laras Suharyati, Susilo Edi Purwanto and I. N. Suarna, "LEGAL ANALYSIS OF CHILDREN'S INHERITANCE RIGHTS IN MARRIAGES THAT ARE NOT REGISTERED BY THE STATE (IN TERMS OF POSITIVE LAW AND HINDU LAW)" (2021), https://doi.org/10.53977/wk.v4i2.390
9Mahmudin Bunyamin and Agus Hermanto, Islamic Marriage Law (Bandung, Pustaka Setia, 2017), 151
register their marriages. However, this provision contains weaknesses because the article has multiple interpretations and also does not come with sanctions for those who violate it. In other words, the provisions for marriage registration in the law are not firm.¹¹

Unregistered marriages (underhand marriages) can cause problems for the women who live them. Various problems can arise due to unregistered marriages (marriages under hand) due to unbound marriages in the country. Marriage registration is very important. Although administrative, registration has a major juridical influence on legal recognition of marital law. With the registration of a marriage carried out by the Marriage Registration Officer, then the Marriage Certificate Quotation Book is published, there is authentic evidence of the existence of a valid marriage, which is religiously recognized and juridically recognized.¹² Although serial marriages are considered valid according to Islam, namely the existence of ijab and qabul, guardians and brides who are of legal age, but the marriage must also be valid under the laws of the country. Without state registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers.¹³

Unenforced marriages in the country have no legal force and have juridical impact on the rights of public services that should be provided by the competent authorities. In the event of a divorce of joint property, the inheritance rights and custody of the child become unclear due to the absence of a marriage performed in front of the civil registry officer. Without a valid letter or proof in marriage, if there is a divorce it will be difficult to prove blood relationship or marriage. Wives who perform or children born from unregistered marriages (marriage under hand) cannot obtain legal protection and services, the status of husband and wife who perform unregistered marriages (marriage under hand) is not registered in the civil registry, so children born cannot obtain birth certificates. The invalidity of unregistered marriages (marriages under the hands) according to state law has a negative impact on the status of children born in the eyes of the law.¹⁴

Children born from unregistered marriages (marriage under hand) in this case include illegitimate children or extramarital children because

¹² Mahmudin Bunyamin and Agus Hermanto, 151.
¹³ Rosnidar Sembiring, Family Law, (Depok Rajagrafindo Persada, 2016), 126
¹⁴ Rosnidar Sembiring, Family Law, (Depok Rajagrafindo Persada, 2016), 152
the child was born from a marriage that was not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. Consequently, the child only has a civil relationship with the mother and the mother's family. This means that the child has no legal relationship with his father (Article 42 and Article 43 of the Marriage Law, Article 100 of the KHI). The birth certificate only includes the name of the mother who gave birth to him. \(^{15}\) After the Constitutional Court's ruling, the Constitutional Court stated that the father of the child must still be legally responsible, regardless of the procedure or administration of the marriage.

An unregistered marriage can become a valid marriage, if the husband and wife apply for a marriage certificate, to obtain legal force for the status of children.

Application for itsbat nikah based on the provisions of Article 7 Paragraph (3) letter e of the Compilation of Islamic Law. If the marriage requested for marriage is not subject to marriage as stipulated in Law No. 1 of 1974 concerning Marriage, the Religious Court will grant the request for marriage even though the marriage was carried out after the enactment of Law No. 1 of 1974 concerning Marriage.

The compilation of Islamic Law does not explicitly regulate the definition of extramarital children. Article 186 of the Compilation of Islamic Law only confirms that a child born out of wedlock only has a civil relationship with his mother and certainly only has a relationship of inheritance with his mother and his mother's family. The Civil Code regulates the division of extramarital children regulated in Articles 862 to 873 BW. If the heir leaves a legitimate descendant or a husband or wife, then the extramarital child will inherit one-third of the share. \(^{16}\) To determine the status of children's inheritance rights from unregistered marriages according to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), researchers will provide an explanation in the form of the position of unregistered marriages (marriage under hand), the position of children from unregistered marriages (marriage under hand) and the status of inheritance rights of children from unregistered marriages (marriage under hand).

\(^{15}\) Rosnidar Sembiring, *Family Law*, (Depok Rajagrafindo Persada, 2016), 152

\(^{16}\) T. Pratiwi, K. Kurniati and Abdul Rahman, "INHERITANCE STATUS OF CHILDREN RESULTING FROM ADULTERY RELATIONSHIP PERSPECTIVE COMPILATION OF ISLAMIC LAW AND CIVIL CODE" (2023), https://doi.org/10.24952/tazkir.v9i1.4009
RESEARCH METHODS

This research uses qualitative research methods with a normative juridical approach carried out based on legislation which in this case includes the Civil Code, Law No. 1 of 1974. The primary data in this study are the Civil Code, Law No. 1 of 1974, KHI while secondary data are obtained from books related to marriage, inheritance and journals that have been published with high credibility. This research was conducted by reviewing library materials and legislation related to the status of children's inheritance rights from unregistered marriages (marriage under hand), in this case concerning issues of marriage, inheritance and children's rights that must be fulfilled, one of which is the right to inherit children. After the data is obtained, the next step is data analysis to filter the data obtained and collected according to its type and finally draw conclusions from the findings obtained.

RESULTS AND DISCUSSION

Understanding and Legal Basis of Inheritance

The law that regulates the transfer of inheritance from heir to heir is called inheritance law, which in Islamic Law is known by several terms such as: faraidl, Fiqh, Mawaris. Islamic inheritance law is the law that governs everything pertaining to the transfer of rights and obligations over a person's property after death to his heirs.17

The compilation of Islamic Law contained in the format of legislation regulating inheritance provisions is used as a guideline in Islamic inheritance law. The law of inheritance in Islamic law is regulated in the Qur'an and as a complement to it is used by the sunnah of the Prophet and the results of the ijtihad of Islamic jurists. Islamic inheritance law is also regulated in Presidential Instruction No.1 of 1991 concerning the Compilation of Islamic Law (Articles 171-214 KHI).18

Article 171 of the Compilation of Islamic Law states that the law of inheritance is a law that regulates the transfer of ownership rights of

17 Fitri Ayu Sari Wijaya, "Legal Protection of Children's Inheritance Rights from Unregistered Polygamous Marriages (Study of Supreme Court Decision No. 671K/Ag/2015)" (2020), https://doi.org/10.31289/DOKTRINA.V3I2.4140
18 Vaula Surya Hannifa, Johni Najwan and M. Qodri, "Inheritance Rights of Adopted Children in the Perspective of Indonesian Islamic Law Compilation" (2022), https://doi.org/10.22437/zaaken.v3i1.15919
heirs (tirkah), determining who is entitled to be the heir and their respective shares.\textsuperscript{19}

From the above understanding, the inheritance law according to the KHI includes the following provisions:
1. Provisions governing who is the heir
2. Provisions governing who the heirs are
3. Provisions governing estate
4. Provisions governing the consequences of the transfer of estate from heir to heir
5. Provisions governing the share of each heir

Thus the principle of only rights and obligations covering property can be inherited, it turns out that it cannot be upheld and there are some exceptions.

Islamic Inheritance Law only applies to societies that embrace Islam, where the system of inheritance distribution uses the principle of bilateral individuality. So it can be said that the heirs must be from the paternal or maternal line. In addition, the meaning of inheritance is if the property or asset given by the person who gave it has died, if the person is still alive, the term is called Grant not inheritance.\textsuperscript{20} Although the Qur'an already explains in sufficient detail about heirs and their parts, the Hadith also explains some things about the division of inheritance.

The Hadith is among others narrated by Ibn Abbas Ra:

\textit{أَلْحِقُوا اَلْفَرَائِضَ بِأَهْلِهَا , فَمَا بَقَىَ فَهُوَ لِِِوْلَى رَجُلٍ ذَكَرٍ}

It means: "Give those who have a fixed share according to their own share, while the excess is given to the closer asabah, that is, the man who is more important".

There are 3 (three) elements of inheritance in the KHI (Compilation of Islamic Law), namely:

\textsuperscript{19} Hamdani Hamdani, Adi Mansar and T. Erwinsyahbana, "Wills Grant for Children Born from Unrecorded Marriages" (2022), https://doi.org/10.33087/legalitas.v14i1.324

Jenal Wahidin, etc., The inheritance rights of children from marriage are not ............

1. Heir (Muwarit), i.e.: A person who has died and left something that can pass to his surviving family heir. The testator is the person who, at the time of death, leaves behind heirs and estate. Article 171 point b of the Compilation of Islamic Law explains that: "An heir is a person who, at the time of his death or who is declared dead based on a Muslim court decision, leaves behind heirs and estate. Thus, a new heir is said to exist if the person concerned dies and has the estate and heirs.

2. Warits, namely: People who are entitled to inheritance because they have a relationship with the heir, in the form of kinship, marriage or other relationships. In Article 171 point c of the Compilation of Islamic Law, it is explained that an heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law from becoming an heir.

3. Inheritance (Mauruts), namely: Something left by the deceased, both in the form of movable and immovable objects. The Compilation of Islamic Law distinguishes between inheritance and inheritance.

In Article 171 point d of the Compilation of Islamic Law: "Estate is property left by the testator, whether in the form of objects that belong to him or his rights". The basis and main source of Islamic Law as Islamic religious law is the nash or text contained in the Qur'an and the sunnah of the prophet. It is the verses of the Qur'an and the sunnah of the prophet that directly govern the inheritance.

Basically, the issue of inheritance is always synonymous with the transfer of ownership of an object, rights and responsibilities from the heir to his heirs. And in Islamic inheritance law the acceptance of inheritance is based on the principle of ijbari, i.e. inheritance moves by itself according to the decrees of Allah SWT without depending on the will of the heir or heir.

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21 G. Safitri, "Status of Children Outside of Wedlock According to the Compilation of Islamic Law Chapter XIV Article 100" (2021), https://doi.org/10.31293/DDK.V30I1.5675
In the KHI, the provisions on inheritance are regulated in Book II, which consists of 23 articles, from Article 171 to Article 193. In these various provisions there are some things that are not in classical jurisprudence, but are in the KHI, as well as provisions that should exist, but are not included in the KHI. Inheritances function as a change of position in owning property between the deceased person and the living person he left behind (heirs). Therefore, heir-inherit (one who inherits).  

There are several conditions that must be met in the division of inheritance, these conditions always follow the harmony, but some stand alone. In the event that there are three conditions of inheritance that have been agreed upon by the scholars, the three conditions are:

1) The death of a person (heir) either haqiqi, hukmy, (e.g. presumed dead) or taqdiri.
2) There are heirs who live haqiqi at the time of the testator's death.
3) All heirs are known for certain their respective parts.

The Position of Children in Marriage Is Not Recorded According to the Marriage Law and the Compilation of Islamic Law

Marriages performed in Indonesia are subject to the provisions in Law No. 1 of 1974 concerning Marriage (UUP) which stipulates the principles or principles of marriage. The purpose of marriage is to form a happy and eternal family. For this reason, husband and wife help and complement each other so that each can develop his personality, help and achieve spiritual and material well-being. A marriage is valid if it is performed according to the laws of each religion and belief, and in addition each marriage must be recorded according to the prevailing laws and regulations.

If the marriage is not performed based on religion and belief and is registered at the Civil Registry Office, the marriage performed is invalid and not recognized by the state. Sirri marriage is a marriage that is carried

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out not in accordance with the provisions of the applicable laws and regulations.  

Based on Article 2 Paragraph (1) of the Marriage Law states that:

"A marriage is valid when it is performed according to the laws of each religion and belief."

According to Article 2 paragraph (2) of the Marriage Law, it is stated that:

"Every marriage must be recorded in accordance with applicable laws and regulations".

A lawful child is the result of a legal marriage. This is stated in Law No.1 of 1974 concerning Marriage Article 42 Paragraph 1: Legal children are children born in or as a result of a valid marriage. Children born from sirri marriages in this case include extramarital children because the child was born from marriages that were not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. The status of the child born is considered an illegitimate child. Consequently, the child only has a civil relationship with the mother and the mother's family. That is, the child has no legal relationship with his father (article 42 and article 43 of the Law).

Based on the limitations provided by Article 250 of the Civil Code, it can be concluded that the so-called extramarital child is any child born outside of legal marriage. Act Number. 1 Year 1974 on Marriage regulates the position of extramarital children in Article 43, namely:

1. A child born out of wedlock has only a civil relationship with his mother and his mother's family;
2. The position of the child in paragraph (1) above will then be regulated in a Government Regulation.

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25 M. N. Najmuddin and Adi Laksono, "THE POSITION OF INHERITANCE RIGHTS OF SIRI WIFE AND CHILD ACCORDING TO ISLAMIC INHERITANCE LAW" (2022), https://doi.org/10.32492/justicia.v11i1.685


27 Dyah Ayu Anggraeni, "THE POSITION OF ADOPTED CHILDREN TOWARDS THE PROPERTY LEFT BY ADOPTIVE PARENTS DERIVED FROM PARENTAL GRANTS BASED ON THE COMPILATION OF ISLAMIC LAW" (2023), https://doi.org/10.24123/argu.v8i1.5185
Positive law in Indonesia distinguishes between legitimate offspring and illegitimate offspring. Legitimate offspring is based on the existence of a valid marriage, in the sense that one is the offspring of the other by birth or as a result of a valid marriage, such children are called legitimate children.\textsuperscript{28} Whereas an illegitimate child is a descendant who is not based on a valid marriage, people call such a child an extramarital child.

A marriage that is valid under state law is a marriage that is registered and meets the conditions set by the government. A serial marriage is a marriage that is not registered so that it does not meet these conditions. Children born from unregistered marriages are considered extramarital children (considered illegitimate) by the state so that children only have civil relations with their mothers and families while civil relations with their fathers do not exist, in addition children born from unregistered marriages will have difficulty obtaining birth certificates. In the absence of birth certificates for children, So the state has obstacles in protecting children, because legally there is no record of the child's birth status along with the data of both parents who caused the birth of the child.\textsuperscript{29} Without the existence of state legal registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers. Another legal consequence of serial marriage on children is that children cannot take care of birth certificates. This can be seen from the application for a birth certificate submitted to the Civil Registration Office. If you cannot show the marriage certificate of the child's parents, then in the child's birth certificate the status is considered an extramarital child.

A legitimate child is a child born of a legal marriage. A valid marriage is a marriage that is in accordance with its religion and beliefs and is recorded by a state institution According to Article 4 of the Compilation of Islamic Law, Marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage which states "Marriage is valid if it is carried out according to the laws of each religion and belief." Such marriages must be reported and recorded at the Office of Religious Affairs or in the Civil Registry for non-Muslims. This is in accordance with the provisions of Article 2 paragraph (2) of the Marriage Law which

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\item \textsuperscript{28} J. Satrio, \textit{Family Law on the Position of Children in Law}, PT Citra Aditya Bakti, Bandung, 2000, p. 5.
\end{itemize}
Jenal Wahidin, etc., *The inheritance rights of children from marriage are not* …………

states "Every marriage is recorded according to applicable laws and regulations.

Similarly, Article 5 of the IHL states:30

1. In order to ensure marital order for the Islamic community, every marriage must be recorded.

2. The registration of the marriage in paragraph (1), is carried out by the Marriage Registration Officer as stipulated in Law No. 22 of 1946 jo Law No. 32 of 1954. Children born from sirri marriages in this case include extramarital children because the child was born from a marriage that was not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely. According to the Compilation of Islamic Law, the status of a child born is considered an illegitimate child. Consequently, according to Article 100 of the Compilation of Islamic Law the child only has a civil relationship with the mother and the mother's family. That is, the son has no legal relationship with his father.

The marriage must be reported and recorded at the Office of Religious Affairs (KUA). Although sirri marriage is considered valid according to Islam, namely the existence of ijab and qabul, marriage guardians and brides who are of legal age, but the marriage must also be valid under the laws of the country, even in the birth certificate the status is considered as an extramarital child, so only the name of the mother who gave birth to it is included. Information in the form of status as an out-of-wedlock child and the absence of the father's name will have a very deep social and psychological impact on the child and his mother.31 From this explanation, children born from serial marriages even though they meet religious provisions and have rights and obligations according to Islamic law but are not registered with the state registration agency are considered extramarital children who do not get rights as well as children


born in legal marriages according to law.\textsuperscript{32} Therefore, to obtain legal certainty, marriage itsbat must be carried out in religious courts.

Application for isbat nikah, to determine the application for determination of the origin of the child, the panel of judges must conduct an examination to ensure that the marriage of the parents has fulfilled the requirements and harmony of marriage and does not violate the rules contained in the Compilation of Islamic Law Articles 14-38 and the child who is asked to determine the origin of the child is not the child of adultery or the child of illegal polygamy who is requested to be legalized. Parents can apply for isbat nikah to the religious court, by submitting itsbat nikah, then a married couple who perform a sirri marriage will get a marriage certificate whose position is proof of the existence of the marriage and also protect the rights of children born from the marriage. The rights of the child in question include birth certificates, inheritance.\textsuperscript{33}

If there is a refusal of marriage itsbat, the status of children from the serial marriage does not have legal force. According to Article 99 of the Compilation of Islamic Law that a legitimate child is a child born in or as a result of a valid marriage, while an illegitimate child is a child born outside a legal marriage or born in a legal marriage but denied by her husband. According to Article 100 of the Compilation of Islamic Law, children born from unregistered marriages are considered extramarital children (considered illegitimate) by the state, so the child only has a civil relationship with the mother and her family in a civil relationship. Without the existence of state legal registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers.\textsuperscript{34}

\textbf{Status of inheritance rights of children from Sirri marriage (marriage under hand) according to the Marriage Law}

In Law No. 1 of 1974 concerning marriage, what is meant by a legitimate child is a child born in or as a result of a valid marriage and only a legal child has the right to inherit property from his mother and father. The Marriage Law does not regulate in detail the inheritance


\textsuperscript{33} Farid et al.

\textsuperscript{34} Rosnidar Sembiring, \textit{op, cit.} hlm 129
The inheritance rights of extramarital children, so it depends on which legal heir wants to follow.\textsuperscript{35}

The legal status of children born out of wedlock is valid as a unification in the field of National Marriage Law as stated in Law Number 1 of 1974 concerning Marriage, that article 43 paragraph (1) of the Law, states that children born out of wedlock only have civil relations with their mother or their mother's family. The provisions of the article stipulate that a child born out of wedlock only has a familial relationship with consequences, especially the right to inherit only with his mother. On the other hand, a legitimate child has a civil relationship in addition to his mother and his mother's family, as well as a civil relationship with his father and his father's family.\textsuperscript{36}

Currently, the Constitutional Court has issued a ruling regarding the position of extramarital children. Based on the Constitutional Court Decision No. 46/PUU-VIII/2010 dated February 17, 2012 which tested Article 43 paragraph (1) of the Law, the article must read: "A child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology or other evidence according to law to have a blood relationship, including civil relations with his father's family".\textsuperscript{37}

In the provisions of Article 862 of the Civil Code, that an extramarital child who has been recognized by his biological father is entitled to inheritance in the provision of that article that in order to get a share of inheritance, an extramarital child must get recognition from his father. Therefore, if it is related to the Constitutional Court Decision No. 46/PUU-VIII/2010, the Constitutional Court decision overrides the Civil Code. In the Judgment, a child born out of wedlock has a civil relationship with his mother and his mother's family and with a man as his father which can be proven based on science and technology or other evidence according to law to have a blood relationship, including a civil

\begin{footnotes}
\footnote{Mahmurodhi Mahmurodhi, "THE LEGAL POSITION OF ADOPTED CHILDREN ACCORDING TO CIVIL LAW AND THE COMPILATION OF ISLAMIC LAW IN INHERITANCE" (2021), \url{https://doi.org/10.59635/jihk.v8i.156}}
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relationship with his father's family". The provision means, that an outside child born out of wedlock will get a share of inheritance rights (civil relations) as long as it can be proven based on science and technology and or other evidence according to law to have blood relations including civil relations and his father, without having to get recognition from the father of the child.

The status of inheritance rights of children from Sirri marriage according to the Compilation of Islamic Law (KHI)

In accordance with Article 186 of the Compilation of Islamic Law which states that: "A child born out of wedlock only has a relationship of inheritance with his mother and his mother's family".

Parents can apply for itsbat, the determination of marriage isbat is the emergence of inheritance that gets legal protection because of kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. So children born in marriage are entitled to inheritance from their parents and vice versa. If there is a refusal of marriage itsbat, the status of children from the serial marriage does not have legal force. So the child of the sirri marriage is still called an extramarital child.

Extramarital children who do not come to be recognized by the heir (his father). However, an extramarital child can inherit from his biological father if his biological father makes a will stating that the child gets a share of the estate left behind. A will is a tasharruf (release) of property that is executed after the death of a person.

According to the origin of law, a will is an act done by the will of the heart under any circumstances. Therefore, there is nothing in Islamic law that a will must be made by way of a judge's decision. Broadly speaking, a will is a gift of property from one person to another person or to several people after the death of that person. However, the share of inheritance from his biological father's will cannot be more than 1/3 of his estate, in order to protect the rights of the main heir.

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38 I. Ismayani and Syaiful Khoiri Harahap, "Child Custody in Islamic Law and Positive Law" (2023), https://doi.org/10.58939/afosj-las.v3i2.585
40 Dinda Ediningsih Dwi Utami and Taufik Yahya, "The Consequences of Siri Marriage Law on the Rights of Children and Wives in terms of the Compilation of Islamic Law" (2022), https://doi.org/10.22437/zaaken.v3i2.14767
CONCLUSION

From the results of this study, researchers concluded that, Children born from sirri marriages in this case include extramarital children because the child was born from marriages that were not recorded in the state administration in accordance with the provisions of the applicable laws and regulations, namely Law Number 1 of 1974 concerning Marriage. Without the existence of state legal registration, children born from such marriages cannot be legally proven to be legitimate children of their fathers. Another legal consequence of serial marriage on children is that children cannot take care of birth certificates. This can be seen from the application for a birth certificate submitted to the Civil Registration Office. According to the Compilation of Islamic Law, to obtain legal certainty, itsbat nikah must be carried out in religious courts. As evidence of the existence of the marriage and as well as protecting the rights of children born from marriage, if there is a refusal of marriage itsbat then the status of children from serial marriages does not have legal force and the status of children is still an extramarital child.

The inheritance status of a child from a sirri marriage according to the Marriage Law is only obtained from the mother and the mother's family, but after a decision from the Constitutional Court, an extramarital child can get inheritance rights from his father if it can be legally proven and clear that he has a blood relationship with his biological father. Meanwhile, the right of inheritance of sirri marriage according to the Compilation of Islamic Law remains in accordance with his position which states that he only has a sexual relationship and inheritance relationship inherits with his mother and his mother's family only but not with his father. Parents can apply for itsbat, the determination of marriage isbat is the emergence of inheritance that gets legal protection because of kinship or nasab relationship between the person who inherits and the person who inherits caused by birth. So children born in marriage are entitled to inheritance from their parents. If there is a refusal of marriage itsbat, then the status of children from the serial marriage does not have legal force. So the child of the sirri marriage is not entitled to receive an inheritance from his father.
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