



## ANALYSIS OF INHERITANCE DISTRIBUTION FOR CHILDREN FROM A SECOND WIFE ACCORDING TO INHERITANCE LAW IN INDONESIA

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### Abstract

In Indonesia, dividing an inheritance can become particularly challenging when it involves a second wife and children from different marriages. One of the most sensitive issues is determining each child's rightful share, especially when the legal status of the second marriage is uncertain. This study uses a qualitative library research method, drawing from both primary legal texts and supporting literature to explore this issue. The findings, based on the study "Analysis of Inheritance Distribution for Children of a Second Wife According to Indonesian Inheritance Law", show that Islamic inheritance law in Indonesia generally aims to provide a fair and balanced distribution through the principles of faraidh. As long as the second marriage is legally recognized, children from that union have the same inheritance rights as those from the first marriage. In practice, however, problems often occur when the second marriage hasn't been officially registered. This highlights the importance of legally documenting all marriages to protect the rights of every child and avoid future disputes among heirs.

**Keywords :** Inheritance, Children, Second Wife.

### Abstrak

Di Indonesia, membagi warisan dapat menjadi sangat menantang ketika melibatkan istri kedua dan anak-anak dari pernikahan yang berbeda. Salah satu isu yang paling sensitif adalah menentukan bagian yang menjadi hak masing-masing anak, terutama ketika status hukum pernikahan kedua tidak jelas. Penelitian ini menggunakan metode penelitian kepustakaan kualitatif, dengan menggunakan teks-teks hukum primer dan literatur pendukung untuk mengeksplorasi masalah ini. Temuan-temuan yang diperoleh dari penelitian "Analisis Pembagian Warisan untuk Anak dari Istri Kedua Menurut Hukum Waris Indonesia" menunjukkan bahwa hukum waris Islam di Indonesia secara umum bertujuan untuk memberikan pembagian yang adil dan seimbang melalui prinsip-prinsip faraidh. Selama pernikahan kedua diakui secara hukum, anak-anak dari pernikahan tersebut memiliki hak waris yang sama dengan anak-anak dari pernikahan pertama. Namun dalam praktiknya, masalah sering muncul ketika pernikahan kedua belum didaftarkan secara resmi. Hal ini menyoroti pentingnya mendokumentasikan semua pernikahan secara hukum untuk melindungi hak-hak setiap anak dan menghindari perselisihan di masa depan di antara para ahli waris.

**Kata Kunci :** Warisan, Anak, Istri Kedua.



## 1. INTRODUCTION

Marriage is a physical and mental bond between a man and a woman that aims to form a harmonious family and obtain offspring. In Indonesia, the provisions regarding marriage are regulated through two legal systems, namely the Civil Code (KUHPerduta) and Islamic law, each of which provides a different approach to the implementation of marriage, including in terms of polygamy. Based on Article 2 paragraph (1) of the Civil Code, a marriage is considered valid if it is conducted in accordance with the applicable law, namely through the consent of both parties and state recognition. (Kitab Undang-Undang Hukum Perdata [KUHPerduta], Pasal 2 ayat (1), 1847). Meanwhile, Article 1 of Law Number 1 of 1974 explains that marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting household, based on the value of God Almighty.<sup>1</sup>

In the context of Islamic law, polygamy is allowed but is limited by a number of strict requirements. According to Article 3 of Marriage Law No. 1/1974, a husband can only have more than one wife with the permission of the court and valid reasons, such as the wife's inability to carry out household obligations, and must be able to be fair to all wives. Islam also requires the husband to provide maintenance and treat all his wives and children fairly. If these conditions are not met, the practice of polygamy can lead to various legal issues, especially in the division of inheritance, as well as the rights of children and wives. (Undang-Undang Nomor 1 Tahun 1974)

The inheritance law in Indonesia, especially those derived from Islam, refers to the Qur'an, Hadith, and Ijtihad. Basically, inheritance law regulates the transfer of property ownership rights from the testator to the entitled heirs, according to the parts that have been determined in Islamic teachings. The Islamic inheritance system is bilateral, which means that inheritance rights can come from both parents. This is confirmed in the Qur'an, especially in Surah An-Nisa verses 11 and 12, which explain in detail the division of inheritance.

## 2. RESEARCH METHOD

This research method is a type of field research (library research) using qualitative research methods, where in the stages of data collection, data processing, and data analysis are carried out simultaneously and interactively from the main and supporting books related to the research title.

## 3. RESULTS AND DISCUSSION

### 1) The Law of Inheritance of Children of the Second Wife.

Issues related to the status of children of second wives are often highlighted in society, especially in relation to inheritance rights, legal recognition, and social perceptions. Children of second wives are often seen as having a lower position than children of first wives, especially if the parents' marriage is not officially recorded. However, in the perspective of Islamic law as stated in the Compilation of Islamic Law (KHI), there is no discrimination against children born from a marriage that is legal according to religion and the state. Article 99 of KHI confirms that legitimate children are children born from a legal marriage, and they have equal legal rights, including in terms of inheritance. (Republik Indonesia, Kompilasi Hukum Islam, Instruksi Presiden No. 1 Tahun 1991, Pasal 99).

Islam adheres to a system of inheritance based on legal lineage rather than the order of marriage or social status. Therefore, children born to a second wife in a legal marriage have the same inheritance rights as children born to the first wife. Muhammad Hasbi Ash-Shiddieqy and A. Djazuli emphasize that, through the faraidh system, Islam treats all legitimate children equally in the distribution of

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<sup>1</sup> Undang-Undang Nomor 1 Tahun 1974



inheritance, although the proportion allotted to boys and girls differs as stipulated in Surah An-Nisa' verse 11. (Ash-Shiddieqy, 1980, hlm. 71).

The legal status of children of second wives under Indonesian inheritance law is an important issue, particularly with regard to how Indonesian law treats the inheritance rights of children from polygamous marriages. The main legal system in this context is Islamic law, as outlined in the Compilation of Islamic Laws (KHI). This legal system bases inheritance on Islamic law principles. This legal system takes a specific approach to the position of children of second wives that requires careful analysis.

The views on inheritance in the applicable Indonesian Islamic law, as reflected in the Compilation of Islamic Law (KHI), differ somewhat, especially regarding the division of inheritance between sons and daughters. In the context of polygamy, which is also regulated by Islamic law, a man is permitted to have multiple wives, and children born to a second wife are still entitled to inherit. However, Islamic law distinguishes the inheritance rights of sons and daughters. Boys receive twice the inheritance of girls, as stated in Surah An-Nisa' verse 11. Therefore, although children of a second wife are entitled to inherit, the amount they receive may differ depending on their gender.

According to Article 190 of the KHI, each wife in a polygamous marriage is entitled to a share of the joint property (gono-gini), while the heirs have the right to the entire inheritance property. Thus, the children of the second wife have clear legal standing and equal inheritance rights. However, there are often disagreements and conflicts in practice, especially if the marital status of the parents is invalid or not recorded administratively. H.M. Arskal and Salim emphasize that, as long as the marriage is legally and religiously valid, the children's positions are equal. However, conflicts often arise due to the community's lack of understanding of inheritance law and a lack of transparency in inheritance division. (Salim, 2007, h. 101).

In resolving inheritance disputes between the children of the first and second wives, the courts play an important role. According to M. Fauzan, mediation or conciliation is often used to reach a fair settlement without the need for lengthy litigation. Wasiat can also be a legal instrument that helps clarify the distribution of inheritance, as explained by R. Subekti, so that the testator can wisely manage the distribution of his property. (Fauzan, 2010, h. 126).

Additionally, the existence of a will plays an important role in determining inheritance, particularly in cases of polygamy. In his book, R. Subekti explains that a will allows a testator to decide how their property will be divided after their death. With a valid will, a father can more clearly determine how his inheritance is divided between the children of his first and second wives. A will can help prevent inheritance disputes that often arise in families with more than one wife. (Subekti, 1991, h. 87).

Without a will, property is divided according to the prevailing legal system, whether civil law, which emphasizes equality, or Islamic law, which uses the principle of faraidh. In practice, unclear child or marital status can lead to injustice and disputes. Therefore, it is important for all parties to ensure the validity of marriage and birth documents to prevent disputes over children's status as heirs.

Overall, the Indonesian legal system, both Islamic law in the KHI and civil law, recognizes the inheritance rights of all legitimate children regardless of the order of marriage of the parents. The main principle in Islamic inheritance law is legitimate blood relations, and this is the basis for recognizing children's rights in the distribution of inheritance. According to A. Djazuli, "The main measure in the Islamic inheritance system is blood relationship, not social status or order of marriage." KHI adopts this principle unequivocally. Therefore, as long as the status of the child of the second wife is a biological child from a legal marriage, then he gets inheritance without reduction, elimination, or restriction of rights. (Djazuli, 2000, hlm. 92).

## **2) Division of Property for Children of First Wife and Second Wife.**

The division of inheritance between the children of the first wife and the second wife in Indonesian inheritance law is often a contentious topic, especially in the context of polygamous marriages. Indonesia's legal system is complex as it is a combination of civil law, Islamic law and customary law. The different legal systems used can affect the way the inheritance is distributed between the children



of the first and second wives. Therefore, a comprehensive understanding of how each legal system regulates the inheritance rights of the children of both wives is essential. (Mertokusumo, 2001, h. 185). In the Islamic legal system applicable in Indonesia and listed in the Compilation of Islamic Law (KHI), there are separate rules regarding the distribution of inheritance, especially regarding the difference in rights between boys and girls. This rule also applies to children born from the second wife, where boys get two parts of the inheritance, while girls get one part. H.M. Arskal Salim states that although the children of the second wife are entitled to inheritance, the distribution must be subject to the provisions of Islamic law. He emphasized that the division of inheritance in Islam gives more portion to sons because they bear the economic responsibility in the family, while girls do not have this burden. (Salim, 2007, h. 101).

Nevertheless, in Islamic law, children born to a second wife still have legitimate inheritance rights from their parents, as long as the marriage is recognized in a shar'i manner. Salim emphasized that although there is a difference in the proportion of inheritance between sons and daughters, Islamic law still guarantees inheritance rights for children of second wives regardless of the status of the wife or the order of birth of the children. Thus, within the framework of Islamic law, the children of the second wife get the same share of inheritance as the children of the first wife, provided that they are legitimate children according to religious and state law. This provision is reflected in Article 176 KHI which states that if there are sons and daughters, then the sons get twice the share of the daughters. (Republik Indonesia, 1991, Pasal 176). This article emphasizes that all legitimate children, regardless of the origin of the mother, have legal status as heirs, in accordance with the principle of faraidh derived from the Qur'an Surah An-Nisa verse 11.

In its application, this provision does not distinguish between children based on who their mother is. As long as the child is legally recognized, both according to state law and religion, then he is entitled to inheritance. Thus, both children of the first and second wife are still treated fairly in the calculation of inheritance, according to their gender. Despite the clear provisions of the law, inheritance disputes between the children of the first and second wives often occur. In this situation, the role of the court is very important to resolve the conflict that arises. According to M. Fauzan, the principles of justice and equality for all heirs must be upheld. He suggests that families can resolve issues through mediation to avoid lengthy and costly litigation. (Fauzan, 2010, h. 126).

One mechanism that can be used to avoid disputes is the existence of a will. A will is a legal means under Indonesian law that allows a testator to state how his or her estate will be divided. A will is a legal way to ensure that the inheritance is distributed in accordance with the will of the testator, including how the property is divided between the children of the first wife and the second wife. With a will, a father can specify the share of inheritance for the children of the second wife more clearly, thus preventing potential disputes between heirs. (Subekti, 1991, h. 87). The division of inheritance through a will can also provide legal certainty for the children of the second wife, especially in families that practice polygamy. As explained by Subekti, a will can be used to overcome confusion in the division of inheritance, especially if there is uncertainty about the rights of the children of the second wife. With a valid will, the division of inheritance can be done in a more structured manner and in accordance with the wishes of the testator.

However, under Islamic law, a will can only distribute up to one-third of the total estate. (Al-Bukhari, n.d., Hadis No. 2742; Muslim, n.d., Hadis No. 1628). Therefore, while the testator can specify how a portion of the estate is distributed, two-thirds must be divided according to Islamic law. This division prioritizes legal heirs, including the children of the second wife, as outlined in the Qur'an and Hadith. Thus, if the testator wishes to give a larger share to the children of the second wife, they can only do so through a will that does not exceed one-third of the estate. Additionally, when there is no will, inheritance is divided according to customary or Islamic law. In these cases, the children of the second wife still receive a share of the inheritance, though they are often marginalized in practice. Therefore,



it is important for all parties involved to understand their rights within the legal system. Legal education is crucial so that all heirs know their rights and can resolve inheritance issues fairly and legally.

In this case, the court also has a very important role in resolving inheritance disputes, especially if there are differences of opinion regarding the legitimacy of children or marriage. According to Mertokusumo, the court functions to ensure that the distribution of inheritance is carried out in accordance with the applicable legal provisions, be it civil law, Islamic law, or customary law. The court will consider existing evidence, such as birth certificates, marriage certificates, and other documents to ensure that the inheritance rights of the children of the second wife are respected in accordance with the law. (Mertokusumo, 2001, h. 118).

Ultimately, the mechanism of inheritance distribution between the children of the first wife and the second wife in the context of Indonesian inheritance law must pay attention to the applicable legal provisions, whether in the civil law system, Islamic law, or customary law. Each legal system has its own approach in ensuring fairness in the division of inheritance, but the most important thing is that the rights of all heirs are respected in a fair and legal manner. A clear, transparent and fair division can prevent inheritance disputes that can be detrimental to the parties involved.

### 3) Settlement of the Estate of the Child of the Second Wife.

In both the Islamic legal system and KHI, biological children from a legal marriage have equal rights to inheritance, regardless of the father's order of marriage (whether from the first or second wife). Based on Article 176 of the KHI, a son's share is twice that of a daughter and Article 171 letter c of the KHI, children are heirs because of blood and lineage relations with their biological parents. Children of the second wife are legitimate heirs, as long as they are born from a marriage that is legal in religion and state law.

If there is a dispute in the division of inheritance, the aggrieved party (including the child of the second wife) can file a lawsuit with the Religious Court. The general procedure is as follows:

1. Filing a Lawsuit or Application for Determination of Heirs  
The applicant (usually a child, widow or other heir) submits an application for determination of heirs to the Religious Court in the jurisdiction where the last heir resided.
2. Determination of Heirs by the Court  
The judge will determine who are the legal heirs, based on evidence:
  - a) Birth certificate
  - b) Marriage book
  - c) Certificate of inheritance (if any)
  - d) Proof of blood relation
3. Calculation and Distribution of Inheritance
  - a) After the determination, the inheritance will be divided based on Islamic law (KHI).
  - b) Children of the second wife will receive rights according to their gender, without being reduced due to the status of the mother.
  - c) If there is a dispute, the judge can resolve it through a division decision or through peace (ishlah).
  - d) If there is agreement, the heirs divide the property voluntarily.
  - e) If not, the Religious Court may issue a decree or judgment that is executorial in nature.

In the Islamic legal system implemented in Indonesia, the distribution of inheritance is regulated by the Compilation of Islamic Law (KHI). KHI regulates inheritance rights based on the principles of sharia, which distinguishes the division of inheritance between sons and daughters. Boys get twice as much as girls. However, this can lead to disputes if the children of the first wife and second wife feel unfair about the division. H.M. Arskal Salim explains that the legal solution in this case is to ensure that the division of inheritance is carried out as fairly as possible, in accordance with the provisions of applicable





Islamic law. The Religious Court can be a place to resolve inheritance disputes based on Islamic law. (Salim, 2007, h. 101).

In relation to Islamic inheritance law, if there is a dispute between sons and daughters, or between the children of the first wife and the second wife, the religious court can decide on the division of the inheritance based on the provisions of Islamic law. For example, in the case of a division that does not comply with the provisions of Islamic law, the parties involved may request the assistance of the religious court to verify the division. Salim stated that in these cases, the religious court will decide the division of inheritance with the principle of justice based on Islamic law, which clearly regulates the rights of sons and daughters. (Salim, 2007, h. 121).

Another legal solution that can be taken is to use a family approach to resolve the dispute. The division of inheritance often touches on emotional issues between family members, making it important for families to maintain good relations. This can be done by holding family meetings facilitated by a mediator or legal advisor. Fauzan explained that a family approach can create an atmosphere conducive to resolving disputes, so that the division of inheritance can be done in a more peaceful way and reduce the potential for long-term conflict. (Fauzan, 2010, h. 130).

Ultimately, the legal solution taken to resolve the inheritance division dispute between the children of the first wife and the second wife depends on the context and legal system applicable in Indonesia. Mediation, litigation, probate, and family deliberation are some of the alternatives that can be used to reach a settlement that is fair and in accordance with the rights of each party. In this case, it is important to ensure that every decision taken still refers to the principles of justice and in accordance with the applicable legal provisions in Indonesia.

In addition, one of the legal solutions that can be taken is by using a will. A will is a legal tool in Indonesian law that allows a testator to determine how his or her estate will be divided after death. In the case of the division of inheritance between the children of the first wife and the second wife, a will can be used to ensure that the division of inheritance is carried out in accordance with the wishes of the testator. Sudikno Mertokusumo states that a will can be used to regulate how the inheritance is distributed, including who is entitled and how much share each heir gets. With a will, inheritance disputes can be avoided because the testator has determined the share for each heir. (Mertokusumo, 2001, h. 120).

The author's analysis of inheritance disputes involving children from a second wife under Indonesian inheritance law reflects a deep understanding of the applicable legal frameworks, including civil law, Islamic law, and customary (adat) law. In this context, the author highlights various legal solutions that can be pursued to resolve such disputes and how each solution can be tailored to the needs and conditions of the families involved. The following is a more in-depth analysis of the approaches and solutions proposed in the discussion.

First and foremost, the author emphasizes the importance of mediation as the initial step in resolving inheritance disputes. Mediation offers the disputing parties an opportunity to reach a peaceful agreement without undergoing a lengthy and costly court process. This is especially relevant in inheritance cases, which often involve emotional considerations and fragile family relationships. The author cites the opinion of M. Fauzan, who asserts that mediation is an effective way to prevent the escalation of conflicts and to maintain good relations among heirs. The author considers mediation as the primary solution that should be prioritized due to its restorative and flexible nature, as well as its ability to expedite dispute resolution. (Fauzan, 2010, h. 130).

However, if mediation fails and the dispute proceeds to court, the author also highlights litigation as an alternative path. Within the context of Indonesian civil law, which emphasizes the principle of equality in inheritance distribution, the court plays a crucial role in ensuring that the inheritance rights of each child whether from the first or second wife are respected. The author cites the view of Sudikno Mertokusumo, who explains that the court serves as an institution that guarantees justice for all parties, while still adhering to the applicable legal provisions. According to the author, litigation through the



court is an appropriate solution when the parties are unable to reach an agreement through mediation. (Mertokusumo, 2001, h. 210).

On the other hand, the author also acknowledges the importance of using a will as a legally valid instrument to resolve inheritance disputes. A will allows the testator to clearly specify how the inheritance will be distributed, including among the children from both the first and second wives. In this context, the author refers to *Hukum Perdata Indonesia* by Sudikno Mertokusumo, which states that a will can provide legal certainty regarding inheritance distribution. The author views a will as a highly useful solution for avoiding uncertainty and potential conflict, as it enables the testator to clearly express their wishes concerning the division of assets.

However, the author also provides an important note on the limitations of wills under Islamic law, which only permits up to one-third of an estate to be distributed through a will. This poses a particular challenge for a testator who wishes to allocate a larger portion to children from the second wife, especially in the context of polygamy. The author cites H.M. Arskal Salim, who explains that while a will may allow for a more equitable distribution of assets, two-thirds of the estate must still be divided according to Islamic legal provisions, which differentiate between the shares of male and female heirs. The author notes that this may lead to dissatisfaction among the heirs, particularly if the children from the second wife feel they have not received an equal share. (Salim, 2007, h. 118).

Furthermore, the author also addresses customary law (*hukum adat*) as an alternative solution for resolving inheritance disputes. In Indonesia, customary law is still practiced in several regions and often offers different perspectives on inheritance rights, particularly within patrilineal inheritance systems. The author acknowledges that customary law has distinctive characteristics that set it apart from other legal systems, and in certain cases, it can be an effective means of resolving inheritance disputes. The author refers to the legal strength of customary law in some communities, which can provide a foundation for resolving disputes locally without relying on the formal judicial system.

However, the author also cautions that customary legal systems often prioritize the rights of male children over female children, which may lead to injustice for daughters from the second wife. This issue needs to be carefully considered in the search for solutions that are truly fair to all parties involved. The author's analysis also includes the importance of verifying the marital and child status, especially in situations where the legality of the marriage or the legitimacy of the children is in question. If there is uncertainty regarding the validity of the marriage or the child's legal status, the court must first resolve these issues before proceeding with the distribution of inheritance. The author cites the thoughts of Mertokusumo, who emphasizes the court's role in ensuring the legal status of each heir, whether they are children from the first or second wife. In this regard, resolving legal status issues is a prerequisite to ensuring a legitimate and fair division of the estate.

In the concluding section, the author emphasizes a more humanistic solution through a familial approach. Inheritance distribution often involves strong emotional aspects, especially when it concerns large families or polygamous marriages. In this context, the author proposes the importance of family meetings facilitated by a mediator or legal advisor to find a middle ground acceptable to all parties. The author cites Fauzan's view, which regards this approach as a means of preserving family relationships and avoiding further tension. Thus, the resolution of inheritance disputes should not be viewed solely from a legal standpoint, but also from the perspective of social and emotional reconciliation among family members.

Overall, the author's analysis reflects a comprehensive understanding of the dynamics of inheritance law in Indonesia, which involves multiple legal systems, as well as the importance of seeking fair and appropriate solutions within the social and familial context. The author recommends always considering the most suitable solution based on the family's needs and context whether through mediation, litigation, wills, or a familial approach. All these solutions must uphold the principles of justice, equality, and recognition of the rights of each heir in accordance with applicable laws.



#### 4. CONCLUSION

The mechanism for the distribution of inheritance among children born from the first and second wives, in the context of Islamic law, prioritizes sons who receive two portions while daughters receive one portion, regardless of the order of the wives. The inheritance rights of children from the second wife are still recognized, provided that the marriage is legally valid and the children are acknowledged as legitimate heirs. Legal solutions to resolve inheritance disputes involving children from the second wife involve several approaches. These range from mediation, which offers a peaceful resolution without going through judicial proceedings, to litigation in court to ensure a fair distribution of inheritance in accordance with applicable legal provisions. Additionally, the use of a will (*wasiat*) as a legal instrument can help prevent disputes by clearly expressing the wishes of the testator, although Islamic law limits the portion of the estate that can be allocated through a will to one-third.

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