

LEGAL RESTRICTION INTERESTS IN A PERFORMANCE OF APPLICABLE LEGAL LAW IN INDONESIA

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ABSTRACT:The case of Muhammad Iqbal, a child who is a result of an unrecorded marriage between Aisha Muchtar alias Machicha Muchtar and Murdiono, raises an interesting discussion in the legal domain, as it concerns the rights of the child, for example the right to obtain State recognition in the field of population administration, children in the civil sector such as inheritance rights. This case then get a decision from the Constitutional Court of the Republic of Indonesia related to the legal status of children outside marriage. The wide range of regulations relating to outsiders, again creates a kind of disorder associated with protection, certainty and legal justice for outsiders. Between Islamic law and the Civil Code differ in their understanding of the definition of outsiders, the rights of children outside marriage.

Keywords: *inheritance rights, children, outside marriage, inheritance*

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I. Introduction

A child can be said to have a legitimate relationship with his father if born from a legal marriage. Conversely, a child born outside a legal marriage can not be called a legitimate child, commonly referred to as an adulterous child or a child outside a legal marriage (Nuruddin & Akmal, 2004: 276). Islam strongly prohibits adultery. Islamic law provides a very severe punishment for zina because it can make the descriptions of heredity and also cause many diseases According to Islamic Law and the Civil Code of the offspring the illegitimate child or offspring does not have a nasab relationship with his biological father. So also with children born from marriage of children outside marriage, the status of the born child is considered illegitimate child because according to the law of the marriage of the child outside marriage is an illegitimate marriage, consequently the child only has a civil relationship with mother and mother's family only in accordance with the Law -The Marriage Article 42 and Article 43 and also in the Compilation of Islamic Law Article 100.

In Article 2 paragraph (1) of Law No. 1 of 1974 on Marriage stated that, "Marriage is lawful if done according to the law of each religion and belief". Then in paragraph (2) it states that: "Every marriage is recorded by law in the presence of the marriage registry officer". Thus in order for the marriage to be authorized under the laws of the State, each marriage must be recorded. Article 42 of Law Number 1 Year 1974 regulating the marriage states that, legitimate child is a child born in or as a result of a legal marriage.

Based on the birth certificate was regarded as an illegitimate child, so the name of the mother who gave birth to it. Information about marital status and the unfamiliarity of the father's name Unclear status of the child before the law, resulting in his father's father denied that the child is not his biological child (Koro, 2012: 152)

Furthermore, according to the Civil Code, an outsider is a child born of a relationship between a man and a woman outside a legal marriage. Legitimate here in the sense that in the legal recognition of the State. Predicate as a child outside of marriage will certainly be attached to children born outside the marriage. Children outside of this marriage of course cause obscurity nasab the child

One case of obscurity of this child nasab is a case experienced by Aisyah Muchtar due to marriage of a child outside of marriage which he did without any marriage registration. His side filed an

application to the Constitutional Court so that nasab his son can be fathered to his father (husband who married Aisha Muchtar without going through marriage record). After the judicial review, the Constitutional Court granted the proposed petition and presented a new decision in the Decision of the Constitutional Court Number 46 / PUU-VIII / 2010 concerning the examination of Article 43 paragraph (1) of Law Number 1 Year 1974, nasab biological father after proved by science and technology and / or other tools according to law have blood relation

B. Right of Inheritance of Extraordinary Children of Marriage According to the Civil Code

The subject of marital offices is set forth in the first book concerning persons in the twelfth chapter of the second part of the ratification of marriageable children from Article 272 of the Civil Code to Article 279 of the Indonesian Civil Code and the third part on the recognition of marital offspring from Article 280 KUHPer up to Article 289 of the Civil Code. Based on the systematics it can be seen that the issue of marital offspring is a legal event that belongs to the family law group (Satrio, 1882: 51).

An outsider is a child born outside a legal marriage, when looking at the regulatory system of an outsider, it can be concluded that an outsider can be legally recognized as a legal child. Regarding the adoption of an offshore marriage is stipulated in Article 272 of the Civil Code which defines as follows:

"Except the children who were seeded in adultery or in discord. Each child who is baptized outside marriage with the marriage of his father and mother shall be valid if both parents before marrying have acknowledged them according to the provisions of the law or if the confession is made in the marriage certificate itself. "

Looking at this provision it can be concluded that there are some requirements of a child outside marriage in order to be regarded as legitimate child according to law. Not all outsiders can be recognized as legitimate children. This conclusion refers to the description "except for children who have been immersed in adultery or in discord". This means that outsiders born out of adultery and offspring, should not be acknowledged and ratified.

The definition of adultery in this perspective refers to the juridical terminology specified in Article 284 of the Criminal Code which determines that intercourse is committed if either one or both of the perpetrators have been bound in legitimate marriage ties with others. If the adultery resulted in the seed of a child, the child shall be a child outside of marriage under the provisions of Article 272 of the Civil Code.

One of the conditions again is the child who was born in a state of discord that the child who was born of the existence of the ban on marriage. Article 30 of the Civil Code prescribes that marriages are prohibited between those who each other relate to families in a straight line up and down either because the legitimate and illegitimate or because of marriage and in the perverted line between the brother and sister are legitimate or not legitimate

Position of marriage out of which there is a recognition by both parents then the child becomes a recognized child and become the heirs of both parents

Furthermore, Article 31 of the Civil Code which reads as follows:

Marriage is also prohibited:

1e. between a brother-in-law and a sister-in-law due to a legal or illegitimate marriage unless the husband or the wife causing the cessation has died or if due to the absence of the husband or the wife to the wife or husband whom he left behind by the judge shall be allowed to marry other people.

2e. Between your uncle or his parents 'uncle and your sister's or granddaughters' daughter as between aunt or parent's aunt and sister's brother or grandson's legitimate or illegitimate brother. "

Both of these circumstances, whether children born in adultery or discordant can not be recognized as a legitimate child. Against a born child whose conception takes place before marriage takes place can be recognized as a legitimate child on the condition of marriage and the perpetrator acknowledges it. In fact, concerning the outsider and being recognized as a legitimate child can be divided into 2 (two) circumstances:

1. The child is born before the marriage, but then the offender is bound in marriage and recognizes it as a legitimate child.
2. The child is born in marriage, but its fertilization occurs before marriage

The married child has a legal relationship with his father or mother after his father or mother confessed the offshoot person lawfully. This law is limited in nature, meaning that there is only between the married child and the father or mother who acknowledges it; whereas with other family members, the outsider has no legal relationship. According to Article 865 of the Civil Code, if the testator does not leave a legitimate heir, all married children shall have all inheritance. Outside married children may be inherited with Group I, Group II or Group IV heirs, therefore marital offspring constitute their own heirs and are not included in the heirs according to the law. The inheritance of a recognized marriage is a group of independent heirs (Simanjuntak, 2009: 265). Taking into account the inheritance of the husband or wife and their children born into the marriage, the outsider is considered absent.

The magnitude of the inheritance earned by a child outside of marriage is dependent on the jointly with whom the outsider marries (or with the category of inheritance that the marriage child inherits), in accordance with Article 863 of the Civil Code:

"If the deceased leave a legitimate offspring or a husband or wife, the married children inherit a third of the part they receive, if they are legitimate children;

If the testator does not leave a descendant or a husband or wife, but leaves the family in the upward bloodline or the brother and the woman or their offspring, they inherit half of the inheritance. If there are only relatives in a further degree, the outsider marries three quarters of the estate. "

The division of inheritance of the child outside marriage by way of acknowledgment by a father, for those subject to civil law, with the mother's consent, a father may acknowledge the child. Based on the description of Article 272 of the Civil Code it can be seen that the terms of recognition must be in accordance with the provisions of the law or moreover the recognition is made in the marriage certificate itself. If both parents who have held a marriage have not acknowledged their child born before marriage, the adoption of a child may only be made by a letter of attestation from the Head of State. The President should seek consideration from the Supreme Court.

Recognition of a child can not be made secretly but merely done in advance of a Marriage Recording with a record in the child's birth certificate, or in a marriage certificate of a parent, or in a separate certificate of employee of a Civil Registry, even permitted by notarial deed. The subject of this recognition is also affirmed in Article 273 of the Civil Code which provides that a child born to the father and mother between whom no dispensation from the president shall not be married can not be ratified but by acknowledging it in the marriage certificate

The recognition of illegitimate children is important, according to Liliانا and Wiewiek because an acknowledgment will create a civil rights between parent and child, as stated in Article 280 of the Civil Code that with the recognition of an outsider, a civil relationship arises between the child with his father or mother (Tedjosaputro & Wibowo, 1989: 67). Although there are provisions that allow a man or father to recognize the child, but the recognition can only be done with the mother's consent. Article 284 of the Civil Code states that an acknowledgment of a child outside of marriage can only be done as long as the mother approves the confession. Article 284 of the Civil Code states that no child acknowledgment outside marriage is acceptable as long as the mother is alive, even if the mother belongs to the Indonesian class or is likened to that class, if the mother does not approve of the confession. Without the consent of the mother or mother of the child outside marriage is dead then there is no recognition received by children outside marriage

To the sons and daughters of adultery, the Law does not grant a right of inheritance, but the Law gives them the right to demand for the provision of the necessary provision to the boedel (inheritance, inheritance or inheritance) (Article 867 paragraph (2)) of which the amount is not certain, depending on the size of the ability of father or mother and the state of the legitimate heirs. The rights are not inheritance rights, but can be compared with the creditor's rights. The state of the legitimate heirs, whether they are capable or poor, contributes to the magnitude of the right of allimization of children of adultery or discord. Here it appears that the legislators put the legitimate family interests first, which was put forward by the children of adultery and discordant against the boedel. After the father or mother who membenihkannya died. At the time of his life the father or mother who these children have enjoyed the guarantee of livelihood from him, then the children have no right to claim again on the father or mother's legacy who set them aside (Satrio, 1992: 173)

The married child has only inheritance rights as long as the man or woman who confirms it recognizes it. If it has not been acknowledged, then there is no civil relationship (meaning no

family ties), so there is no inheritance relationship between them. To the right of inheritance of a recognized married child is divided into 2 types of rights, namely the right of inheritance and the right of passive inheritance

1. Inheritance rights are active

In this case the outsider child acts as an heir. The principle of inheritance law according to BW is compiled in four groups called by the name of the heirs, consisting of class I to class IV is measured according to the proximity of the blood relation with the testator, where the closer class closes the farther group. Recognized offshoots are not included in any of these groups, but are a distinct group. It should be remembered that the legal relationship between the outsider and the father / mother confessing is very limited, meaning that it does not cover legal relations with other family members. For other members of the family the outsider is another person therefore he has no inheritance rights to the family inheritance of the father / mother who acknowledges (Art. 872 BW). Against this principle there is an exception, namely in the case of family members of the legal blood of a father / mother who confesses, dies without leaving relatives in a degree which still gives them the right to inherit and also not leave the spouse / husband then the outsider marries the State, to withdraw all their inheritance (Article 873 BW). (Satrio, 1992: 155)

2. Passive inheritance rights

In this case the married offspring domiciled as the heir. It is regulated in Article 870, Article 871, and Article 873 paragraph (2) and (3) BW. Article 870 BW provides that: "The inheritance of an unmarried child who passes away with no offspring or husband or wife is to the father or mother who has confessed to it, or to both of them in half if both have acknowledged it.

In the case of an out-of-wedlock child, the outsider is regarded as an ordinary heir, equal to another heir. In this case apply Book II Chapter XII number 1 on General Enforcement and Part II on the Inheritance of the Sedarah Family. In this case, also applies the replacement of the place in the offspring of a child outside marriage dies first from the heir (outsider). In civil law, what is meant by an outsider here is a child born outside a legal marriage. The married child is a child who has received recognition from his father as the heir, before his father died. In the case of the married child being legalized in the marriage certificate of both parents, the position of the child is no longer an outsider, but as a legal child (Article 272 of the Civil Code). (Satrio, 1992: 108-109) The married child gets an inheritance from his father if he is legally recognized by his father by using an Authentic Children Recognition Act (Article 281 Civil Code). Recognition of the offshore child shall not prejudice the wife / husband and children born from the marriage available at the time of admission (Article 285 of the Civil Code). The objective is not to cause a change in the calculation of inheritance shares, the part of the wife and the existing children should not be reduced because of the recognition of the child outside of the marriage. Thus, the outsider is considered non-existent. The division should be the same as before the recognition of the child outside the marriage. The married child may obtain an inheritance from his father, if it is recognized before marriage (or second marriage) takes place (Purnamasari, 2012: 110) The problem of marriage outsiders is not only to the understanding and meaning of outsiders in the Constitutional Court Decision No.46 / PUUVIII / 2010 only, because in the Constitutional Court's decision to discuss about the rights of the married child with the father of biology of course the next problem how the rights of civilization a child outside marriage from the father got it. Mahfud MD states, civil relationships given to children outside of marriage is not in the form nasab, inheritance, and marriage guardian. The rights that can be claimed by a child outside of unregulated marriage, among other things, are the right to demand the financing of education or the right to demand for compensation due to unlawful acts that harm others. The point is civil rights other than the rights of nasab, inheritance rights, marriage guardian, or any civil rights not related to the principles of "munakahat" according to fiqh (Ardilla 2013: 79) An outsider in the Constitutional Court Decision No.46 / PUU-VIII / 2010 is a child who was born in a legal marriage but not yet registered as advocated by the Marriage Law. In Islamic Law, then the child is the same as a legitimate child, because marriage is a legitimate marriage. So that the inheritance is the same as the legitimate in general. According to Akil Mochtar, a child born in a marriage of sirri should be included in a legitimate child because with the verdict of the Constitutional Court it has been acknowledged that the marriage done in accordance with the requirements stipulated by the religion of each spouse is a

legitimate marriage even though the marriage not recorded in the administrative records of the country. (Ardilla, 2013: 79)

Decision of the Constitutional Court No.46 / PUU-VIII / 2010 enables marriage offspring as a person having a legal status (*persona in judicio*) in court inheritance cases and is entitled to the inheritance of his biological father by being able to prove the existence of a blood relation based on science and technology and / or other evidence according to law.

According Syafran Syofwan with the recognition of the child outside marriage (biological results) as a legitimate child means will have inheritance relationship with his biological father without having to be preceded by recognition and endorsement. The court ruling that has been able to prove that a man as a biological father is sad, then the child is entitled to the cost of maintenance and education from his biological father is the obligation to the lawful as provided for in Article 45 UUP.

The purpose of the amendment of Article 43 Paragraph (1) of the UUP as quoted by A. Mukti Arto is to provide legal legality of blood relation between the child and his biological father, to provide legal protection for the basic rights of the child, to give fair treatment to every child, affirming the civil relationship of each child with his biological father and his father's family, affirming the duty of the biological father, protecting the inheritance of the child, ensuring the future and the rights of the child as children in general, affirming that every man should be responsible for his actions and consequences arising from his actions. (Muhammad, www.badilag.net)

The Constitutional Court Decision No.46 / PUU-VIII / 2010 actually provides protection for the fate of children who are fathered by the father because marital status with the mother is unclear. By the Constitutional Court Decision No.46 / PUU-VIII / 2010 the child has the right to so that a father can the meaning should not abandon the child even if the resulting out of wedlock. Currently it must be acknowledged, there is still a misunderstanding of understanding, related to the decision, namely children born outside marriage does not have a *nasab*, but have the right civil. It must be admitted that the decision of the Constitutional Court related to children outside of marriage and their rights there are still multiple interpretations, so that can be interpreted anything. Mahfud MD for example distinguish between rights *nasab* with civil rights. Whereas in Islamic law, civil rights exist because there is a connection *nasab*. The Constitutional Court's decision will at least give new hope for outsiders to get their rights even if they are limited to civil rights, not theirs. The Constitutional Court's decision can clarify the position of the unmarried child as it can be used as the basis for obtaining legal certainty regarding the legal status of the child outside of marriage. The position becomes important because the child should get the fairest treatment, especially from both parents in getting their rights, concerning the rights of children.

C. Inheritance Rights of Married Children According to Law Number 1 Year 1974 on Marriage and Compilation of Islamic Law

Mahmud Syaltut said there are five basic principles of inheritance rights in Islam especially related to the rights to obtain part of the inheritance itself (*istihqaq al-irtsi*), namely:

1. The inheritance is based on the basis of two kinship and marital relations (*'alaqaty al-qarabah wa al-zaujiyyah*). Kinship includes: kinship by birth of parent and child (*al-aba 'wa al-abna'*), and kinship of brotherhood with its three sides namely brother and mother, brother and siblings *seibu*.
2. The neglect of gender in the sense of not questioning the kind of male or paternal (*patrilineal*) nor femininity or maternity (*matrilineal*), nor the neglect of age in the sense of not questioning whether the heirs were child or adult.
3. The heirs of the line up and down, that is *al-ushul* and *al-furu'*, there is absolutely no fall let alone be aborted from the right to inheritance under what circumstances and conditions however, although under certain circumstances may be the existence of the heir this can change or even alter the (inherited) part of the one with another.
4. Basically there is no inheritance rights for both brothers and sisters because of the existence of both parents even though they occupy the mother's place with the right of 1/3 to 1/6.
5. When the group of heirs is assembled by men and women, the male heirs obtain multiples of the women's section (Suma, 2013: 63-64)

Article 42 of Law Number 1 Year 1974 concerning Marriage (hereinafter referred to as UUP) referred to as a legal child is a child born during marriage, or in other words can be interpreted as a child born as a result of a legal marriage.

The illegitimate child is not explicitly explained in the Articles of the Civil Code nor the UUP, but by a contrary an illegitimate child may be defined as a child born to an unbound woman in a legal marriage with a man. Based on the different positions of children in this law there is a very decisive element, namely marriage. An illegitimate child is essentially a descendant whose birth is not based on a legal marriage. Invalid children in the broadest sense include outsiders, children of adultery, and offspring, whereas in a narrow sense the meaning of illegitimate children is limited to outsiders only.

The legal status of a child to his or her parents is determined by the birth status of the child. Legal children have legal status in the eyes of law so that it has a civil relationship with their parents. Outside married children under the provisions of article 43 paragraph (1) UUP, only have a civil relationship with mother and family of his mother.

The position of outsiders in life in the midst of everyday society is difficult. There is still discrimination against the protection of law for children outside marriage, adultery and children of discord. The law of religion and law of the State prohibits the actions of the child's parents, and the children born as the fruits of their forbidden parents' actions are ultimately victimized, because of such status, the child is despised and despised by some societies. In terms of welfare and civil rights, children with marital offspring, adulterous and discriminatory children, still have restrictions.

A lot of things that can lead to a child's nasab is not clear, the problems that arise in the midst of society is a free sex that many occur in the association of young people in this age of globalization. Starting from the dating custom that has fallen on the promiscuity to result in pregnancy out of wedlock. The marriage of many outsiders, on the grounds of the perpetrators avoiding the sin of fornication. Marriage of a marriageable child is religiously legitimate, because it has fulfilled the marriage pill.

According to Islamic Law, the right to have a right to inheritance or right of heir is based on alqarabah (blood relation), al-mushaharah (marriage relationship), al-wala '(liberation of the slave) (Rofiq 1997: 398- 402). The law of inheritance is often known as faraidh. This is because in Islam, portions of inheritance that are the right of the heirs have been determined in the Qur'an. The law of inheritance in Islam receives great attention, since inheritance sharing often causes unfavorable consequences.

A person who gets inheritance due to heredity or blood relation has been renewed, that is, all the heirs with whom there is a blood connection, whether male, female, and child are given the right to receive parts according to the proximity of their kinship. Even babies who are still in the womb of his mother also has the same rights as adults. This applies to the provisions of the close heirs who can cover (hijab) a distant heir, in accordance with the provisions of the Qur'an and Hadith. It can be said that the kinship system used in Islamic inheritance law is a bilateral or parent kinship system. This means the determination of relationships relative to the mother and father. (Rofiq, 1997: 398-402)

The legal basis of the inheritance of this kinship relationship is explained by Allah SWT in the letter of al-Nisa verse 7:



This means: "For men there is a right of the inheritance of the mother of her father and to her relatives, and to the woman there is a right of the heritage of her father's mother and his relatives, whether little or much according to the portion".

The Qur'an prescribes the principal heirs who can not shake each other (hijab) among them, the surviving husband or wife, father, mother, and child. If a wife dies and leaves husband, father, mother and child, then the division of the living husband gets ¼ part, and if the husband dies, the living wife gets 1/8 part, the father and mother each get 1 / 6 parts, while the child gets the rest. (Zamzami, 2013: 60)

Based on the above argument if you see the problem about the child's status of the result of the marriage of a pregnant woman either with a man who is pregnant or with a man who is not pregnant, especially regarding whether or not the child gets the heirs from his "father" the difference of opinion between the opinion of fiqh scholars and the Compilation of Islamic Law.

The difference is closely related to marital status between the mother of the child of the pregnant woman and the man who is not pregnant.

Article 100 Compilation of Islamic Law as it has been stated, it is stated that a child born out of marriage only has a nasab relationship with his mother and his mother's family alone. It is thus lawless the child can not be attributed to his natural father / father, even though the real father / the natural father (genetic) is the man who impregnated the woman who gave birth to it.

The legal position for the adulterous child is not naughty to the man who commits adultery against his mother. The adulterous child does not follow the male sperm's owner's nasab, but the nasab follows to the mother who gave birth to it, which also results in the loss of father's duty to the child and the loss of the child's right to the father. Between the others is as someone else (ajnaby).

Significantly the result received by child of adultery result (child outside marriage) as follows:

1. The loss of dignity muhrim in the family, if the child is a woman then between the father (sperm owner) with the child is allowed to marry.
2. The loss of inheritance between the child and his father. Islamic law does not establish the inheritance relationship to the adulterous child with the father (the man who fertilizes it), because the adulterous child has no kinship relationship with him, whereas the kinship relationship arises on the basis of the legal marriage contract (Yango, 2005: 180)

Although at first glance looks inhuman and unbalanced between the burden placed on the mother's shoulders alone, without connecting to the man who became the child's genetic father, but such a condition is considered upheld the nobility of marital institutions, as well as avoid the justification of the institution of marriage.

As a result of the continuation of the nasab relationship as it is proposed, the child has only inherited inheritance relationship with his mother and his mother's family, as affirmed in Article 186 of the Compilation of Islamic Law: "a child born out of marriage has only a mutual inheritance relationship with his mother and his family on his mother's side". Thus, the child is not legally related to each other inherited with the father / father natural (genetic).

Based on Article 99KHI, the child is a child of a husband. This is because the legitimate child is:

- a. Children born in or due to legal marriage.
- b. The result of conception of a legal husband and wife outside the womb and born by the wife.

Based on Article 99 paragraph a, it is clear that the child of adultery born after her mother married her pregnant as set forth in article 53 paragraph 1 KHI is legitimate child. The reason is that the child was born into a legal marriage. This child is not a child born outside marriage.

Children born outside marriage under article 186 KHI only have mutual inheritance relationship with their mother and their mother's family. A child born in a legal marriage, he is inherited not only with his mother and his mother's family, but also mutual inheritance with the father and family of his father. That is, there is no difference between this child and a child born due to a legal marriage.

The illegality of marriage under the laws of the country has a negative impact on the status of the child born in the eyes of the law, ie the status of the born child is considered an illegitimate child. This brings consequences to such a child having only a legal relationship with the mother who gave birth to him, in the sense of having no legal relationship with his father. Juridically he has no father. Children born in these conditions are classified as outsiders.

Although it refers to the Jurisprudence books, it turns out that in relation to the status of a child born in marriage, the KHI does not impose limits, as is fikh. Jurisprudence gives a grace period of at least 6 months between the birth and marriage ceremony according to Abu Hanifah, or between birth and intercourse that occurred after the marriage ceremony according to Malik and Shafi'i new children can be dinasabkan to his father. If less than 6 months, can not be attributed to the nasab. (Isnaini, www.journal.unisla.ac.id)

Article 99 a KHI above is interpreted by the jurisprudence of Malik and al-Shafi'i, even if the child is born once the marriage contract is over, remains a legitimate child as long as the intercourse takes place at least 6 months before the child is born. Abu Hanifah jurisprudence benchmarks used, just considered legitimate if the child is born at least 6 months after the occurrence of the marriage contract. Article 53 paragraph 1 and Article 99 a KHI, among other purposes to protect the child, the yardstick of Malik and Al-Shafii fiqh more in line with the goal. (Isnaini, www.journal.unisla.ac.id)

The scholars have agreed that a child can not be fathered to his father as a legitimate child, if the child is born less than 6 months after the marriage contract, because according to them the shortest

interval that must exist between the birth of the child with the marriage is 6 (six) months. This means that if a child is born not reaching six months after his or her parent's marriage, the child can not be fathered to his father as a legitimate child. (Sari, www.repository.usu.ac.id)

The case of a pregnant woman who will marry another man who does not impregnate her, there are two opinions about it.

1. Must wait until the birth of the child conceived by the woman. The status of the child born later, may be considered a boy who marries the woman by agreement of both parties.
2. Any man who marries is considered true as a man who impregnates, unless the woman denies it. This is the opinion of the Hanafi scholars who claimed that establishing the existence of a nasab (descendant) of a child is better than assuming a child without a descendant alias an illegitimate child. (Ashary, 2014: 105)

The provisions of Article 42 paragraph (1) of Law Number 1 Year 1974 concerning Marriage and Article 99 paragraph (1) Compilation of Islamic Law, seems to legitimize the view that as long as the child is born in a legal marriage, whether one day or one month after marriage of the parents the child is regarded as the legitimate child of the married couple, the purpose is to provide certainty of the legal status of the child born. (Ashary, 2014: 106)

According to Islamic law perspective, marriage contract is a dividing milestone between the haram and the lawful. Since the marriage ceremony was implemented then since then also the biological relationship of the couple who was originally haram to be lawful. The logical consequence is that the embryo implanted after the marriage contract is acknowledged by syar'i has a nasab relationship with the man as his father. As for the fetus who was nurtured before the marriage ceremony was performed, then if the child was born, only had a nasab relationship with the mother who gave birth, even though the mother and her partner married. (Ashary, 2014: 106)

Similarly, according to the positive law in Indonesia, the Law on Marriage and Compilation of Islamic Law, as long as a child is born into a legitimate marriage of both parents, the child is a legitimate child of both, and has a nasab relationship with his father, even though the child is born a week after marriage is carried out.

Under the above conditions, if a child is born of a pregnant woman married to adultery, the child's status is a legal child, and thus the child is entitled to the inheritance of a man who is not impregnating the child's mother. Article 99 point (a) The Compilation of Islamic Law legitimizes the status of the child into a legitimate child.

Islamic law does not establish the inheritance relationship to the adulterous child with the father (the man who fertilizes it), because the adulterous child has no kinship relationship with him. The kinship relationship arises on the basis of a legitimate marriage contract as determined by the Islamic Shari'a. The adulterous child has only a relationship with his mother and relatives and he is entitled to the inheritance of his mother and mother. There is no acknowledgment and endorsement of the adulterous child, because Islamic law only knows the legitimate child, that is, the child born of marriage and marriage according to syara'.

Marriage is the basis for the establishment of a blood relation (heredity) and legally this gives birth to the rights and duties among those belonging to the inheritance. A legal marriage will produce legitimate offspring (sons). Thus, the legal status of a child and also the legal relationship of a child with his parents depends on the validity of the marriage of their parents.

The four priests' sects agree that the child of adultery is equal to the resultant child in relation to the question of inheritance rights-inherited between himself and his father, and the right of inheritance between him and his mother (Mughniyah 2001: 578). In Islam, when a person has a light there is a relationship of blood to his father's mother, then inherited his father's mother and his father's mother inherited it as long as there is no inheritance barrier and as long as the conditions of the heritage have been quite perfect, and can not be seen as having a blood relationship with the father without regard to the mother, (Shiddieqy, 1997: 288) that can be viewed, is the blood relationship with the mother just not with the father, as in adultery and children li'an. Syara 'has determined that both of these children are spared to his mother and have not recognized his blood relation with the father. Based on that then there is no relationship between the child's kinship with his father.

In the 'modern urf is called wa'ad ghairu syar'i (the unconfessed child). Just as his father was called ghairu syar'i's father. The child of adultery, whether male or female, does not recognize the blood relationship with his father, so he does not inherit his father and nor any father's relative, as his father did not inherit it. Because there is no cause for mutual use between the two, namely the relationship of blood. The adulteress is acknowledged by his blood relationship with his mother, so

he inherits his mother, as inherited by his mother's relatives, and vice versa. When a religious child dies, leaving his unconfessed father and mother, all his treasures to his mother

Based on the provision that the married child only has a relationship with his mother, in the event that the father dies, in the absence of marriage (marriage / legalization of marriage under Article 7 verse 2 and 3 KHI) between the father and the mother, the outsider not inherited from his father. Decision of the Constitutional Court No. 46 / PUU-VII / 2010 which states that an outsider has a relationship with his / her father if it can be proved by technological tools, only that the child is entitled to daily living and costs until he / she matures. This is also affirmed by the Indonesian Ulema Council, Rakernas of the Supreme Court of the Republic of Indonesia in Manado in 2012 in its Decision dated October 31, 2012 stating that the married child is only entitled to the mandatory (Purnamasari, 2012: 114)

Regarding the magnitude of the inheritance of the child outside of marriage to her mother's property according to Islamic law, her share is equal to that of a legitimate child born in or resulted from a legitimate marriage, even an outsider can inherit from her mother's family (Sudjono, 2013: 4)

Against men who impregnate their mothers according to Islamic law, the outsider does not have a legal relationship or a nasab relationship with a man who impregnates her mother even if the man who impregnates her mother wishes to acknowledge her offspring, so that there is no inheritance relationship. This looks very different from the adopted child, where the adopted child is a child who has no blood relation at all with his adoptive parents. The adopted child shall still be entitled to a grant, a will or testament of the maximum of one-third of the property of his adoptive parents. It is wise for a child to be married to an adopted child, since the outsider is the biological child of the man who impregnates her mother, so the bond of the outsider with her biological father is stronger than the adopted son because of the blood relationship between them. The married child may also obtain his right from his biological father, whether in the form of grants, wills or mandatory shall as much as one-third of the estate.

II. CONCLUSION

Inheritance rights of children outside marriage (adultery) according to Islamic jurisprudence that the married child does not get the inheritance from his biological father even though the father is married to his mother, because nasab child adultery only to his mother and his mother's family. The solution is to give grants or testament to the child. According to the Criminal Code the Child outside marriage has a legal relationship with his father or mother after his father or mother confessed the offshoot person lawfully. This law is limited in nature, meaning that there is only between the married child and the father or mother who acknowledges it; whereas with other family members, the outsider has no legal relationship. According to Article 865 of the Civil Code, if the testator does not leave a legitimate heir, all married children shall have all inheritance.

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