

## INHERITANCE RIGHTS OF CHILDREN FROM UNREGISTERED MARRIAGES

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### Abstract

*This study examines the inheritance rights of children born from unregistered marriages from the perspective of Islamic law and positive law in Indonesia. Children born from unregistered marriages often face legal issues related to their legal status and rights, particularly regarding inheritance distribution. Under Islamic law, children from unregistered marriages retain certain rights, although there are differing views among Islamic scholars regarding their status. Meanwhile, under Indonesian positive law, as regulated in the Compilation of Islamic Law (KHI) and the Marriage Law, children from unregistered marriages are considered illegitimate children, thus their inheritance rights to their fathers are not fully recognized. This study uses a normative juridical method with a statutory regulatory approach, as well as an analysis of relevant court decisions. The results show that despite differences between Islamic law and positive law regarding the inheritance rights of children from unregistered marriages, solutions can be found through a legal justice approach that considers the best interests of the child. This is important so that children continue to receive legal protection and fair inheritance rights, without ignoring aspects of Islamic law and national legal provisions.*

Penelitian ini mengkaji tentang hak waris anak yang lahir dari pernikahan tidak tercatat dalam perspektif hukum Islam dan hukum positif di Indonesia. Anak yang lahir dari pernikahan tidak tercatat seringkali menghadapi masalah hukum terkait status hukum dan hak-hak mereka, terutama dalam hal pembagian waris. Dalam hukum Islam, anak hasil pernikahan yang tidak tercatat tetap memiliki hak-hak tertentu, meskipun terdapat perbedaan pandangan ulama terkait statusnya. Sementara itu, dalam hukum positif Indonesia, yang diatur dalam Kompilasi Hukum Islam (KHI) dan Undang-Undang Perkawinan, status anak dari pernikahan tidak tercatat dianggap sebagai anak luar nikah, sehingga hak waris mereka terhadap ayahnya tidak diakui secara penuh. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan peraturan perundang-undangan, serta analisis kasus putusan pengadilan terkait. Hasil penelitian menunjukkan bahwa meskipun terdapat perbedaan antara hukum Islam dan hukum positif terkait hak waris anak dari pernikahan tidak tercatat, solusi dapat ditemukan melalui pendekatan hukum keadilan yang mempertimbangkan kepentingan terbaik anak. Hal ini penting agar anak-anak tetap mendapatkan perlindungan hukum dan hak waris yang adil, tanpa mengabaikan aspek syariat Islam dan ketentuan hukum nasional.

**Keywords:** Inheritance Rights, Unregistered Marriage, Children, Islamic Law, Positive Law



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## A. INTRODUCTION

Marriage is a legal bond between a man and a woman, regulated by religion and the state. In Indonesia, every marriage must be officially registered according to applicable law, as stipulated in Law No. 1 of 1974 concerning Marriage.<sup>1</sup> However, in practice, many marriages are still found to be unregistered with the authorities. This phenomenon is common in society, especially in areas that still uphold customs and traditions, or due to legal ignorance.

This unregistered marriage gives rise to various legal problems, one of which is related to the status of children born from the marriage.<sup>2</sup> Children born from unregistered marriages are often considered illegitimate children under positive law in Indonesia, which results in the loss of their legal rights, including inheritance rights.<sup>3</sup> From an Islamic legal perspective, children born from unregistered marriages still have a certain status, even though there are different views among Islamic scholars regarding their status and inheritance rights.<sup>4</sup>

The issue of inheritance rights for children from unregistered marriages is crucial to discuss, given that inheritance rights are a fundamental right recognized by both Islamic law and national law. Legal uncertainty regarding the status of children can lead to injustice, particularly for children who are entitled to a share of their parents' inheritance.<sup>5</sup>

Previous research has discussed various aspects of the inheritance rights of illegitimate children. Rozy Fathor and Ahmad Izzuddin's (2024) study, "A Comparative Study of the Inheritance Rights of Illegitimate Children from the Perspectives of Islamic Law and Civil Law," reveals fundamental differences between Islamic inheritance law and civil law regarding the inheritance rights of illegitimate children. They found that under Islamic law, illegitimate children inherit only from their mother and their maternal family, while under civil law, illegitimate children can inherit from their parents who acknowledge them.<sup>6</sup>

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<sup>1</sup> Ananda Achjar Aditya, Faldi Nando Aditiya, and Patricia Sina Iwi, "The Position of Female Heirs in Inheritance Law According to the Civil Code," *Jurnal Syntax Fusion* 3, no. 01 (January 25, 2023): 32–40, <https://doi.org/10.54543/fusion.v3i01.242>.

<sup>2</sup> Maria Yosepin Endah Listyowati, Ferry Fauzi, and Teguh Rahayu, "The Position of Children Born Out of Wedlock Regarding Land Inheritance Rights Reviewed from Civil Law," *JIIP - Scientific Journal of Educational Sciences* 6, no. 2 (February 1, 2023): 985–92, <https://doi.org/10.54371/jiip.v6i2.1626>.

<sup>3</sup> Muhammad Habibullah Khan and Muhsan Syarafudin, "Inheritance Rights of Children Outside of Marriage: Comparative Study Between Islamic Law and Civil Law," *Alwatzikhoebillah Journal: Islamic Studies, Education, Economics, Humanities* 9, no. 2 (July 1, 2023): 443–49, <https://doi.org/10.37567/alwatzikhoebillah.v9i2.1899>.

<sup>4</sup> Muhamadi Khalidi, "Islamic Legal Study of the Provisions on Inheritance Rights of Children from Consanguineous Marriages," *Supremacy of Law: Journal of Legal Studies* 11, no. 1 (July 30, 2022): 105–23, <https://doi.org/10.14421/sh.v11i1.2549>.

<sup>5</sup> Salman Alfarisi, "Inheritance Rights of Unborn Children According to Shafi'i Jurisprudence and the Compilation of Islamic Law," *Juripol (Journal of the Ganesha Medan Polytechnic Institution)* 3, no. 1 (July 1, 2020): 134–40, <https://doi.org/10.33395/juripol.v3i1.10566>.

<sup>6</sup> Rozy Fathor and Ahmad Izzuddin, "Comparative Study of Inheritance Rights of Children Born Outside of Marriage from the Perspective of Islamic Law and Civil Law: Comparative Study of Inheritance Rights of Children Born Outside of Marriage from the Perspective of Islamic Law and Civil Law," *Journal of Islamic Economic and Law (JIEL)* 1, no. 1 (2024): 42–50.

Sutrisno and Istikharoh's (2021) research, "Comparative Study of Inheritance Rights for Illegitimate Children According to the Compilation of Islamic Law and the Civil Code," also discusses the inheritance rights of illegitimate children. They found that in the Compilation of Islamic Law (KHI), illegitimate children only have inheritance rights from their mother, while in the Civil Code, illegitimate children can inherit from parents who acknowledge them. However, children of adultery still have no legal relationship with their parents within the context of the Civil Code, unless authorized by law.<sup>7</sup>

The uniqueness of this research lies in its attempt to explore the inheritance rights of children from unregistered marriages, taking into account aspects of Islamic law and Indonesian positive law in greater depth. This research not only examines the legal status of children in general but also explores how Islamic law and national law can provide fair solutions for children from unregistered marriages. Therefore, this research is expected to make a significant contribution to the development of inheritance law studies, particularly in the context of legal protection for children from unregistered marriages.

This study aims to analyze how the inheritance rights of children from unregistered marriages are regulated under Islamic law and positive law in Indonesia. Furthermore, this study also seeks to find a fair and prudent solution for children from unregistered marriages to ensure they continue to receive their rights, both according to religious and state law.

## B. RESEARCH METHODS

This research uses a normative juridical approach method which aims to analyze the applicable legal regulations regarding the inheritance rights of children from unregistered marriages.<sup>8</sup> The juridical normative approach is used to understand the legal norms regulated in legislation and the principles of Islamic law, as well as how these rules are implemented in legal practice.<sup>9</sup> This approach is appropriate because this research focuses on the study and understanding of legal texts, and does not involve field observation or empirical data collection.

This research involved analysis of primary and secondary data sources. Primary data sources consisted of relevant laws and regulations, such as Law No. 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and the Civil Code (KUH-Perdata).<sup>10</sup> In addition, relevant court decisions were analyzed to gain an understanding of how these regulations are applied in real-life cases involving the inheritance rights of children from unregistered marriages. Secondary data sources

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<sup>7</sup> Sutrisno and Istikharoh, "Comparative Study of Inheritance Rights for Children Born Out of Wedlock According to the Compilation of Islamic Law and the Civil Code," *Al-Wasith Journal: Journal of Islamic Law Studies* 6, no. 2 (2017): 149–74.

<sup>8</sup> Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2009), 5.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: Rajawali Perss, 2001), 7.

<sup>10</sup> Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods* (Jakarta: Rajawali Press, 2010), 19.

included literature related to inheritance law, including books, scientific journals, articles, and previous research relevant to this topic.<sup>11</sup>

Data collection was carried out through library research, where data was collected by reviewing various literature and legal documents related to the problems discussed.<sup>12</sup> This research also includes an in-depth analysis of relevant court decisions, to see how cases concerning the inheritance rights of children from unregistered marriages were decided.<sup>13</sup> Data from the literature and legal documents are collected and analyzed to form a strong theoretical basis in explaining the phenomenon being studied.<sup>14</sup>

### C. THEORY

#### 1. Inheritance Rights of Children from Unregistered Marriages According to Islamic Law

From an Islamic legal perspective, children born from unregistered marriages are considered illegitimate children, having only a blood relationship with their mother. Such children have no inheritance rights to their biological father, unless specifically acknowledged through a legal mechanism, such as confirmation of their blood relationship in a religious court. As stipulated in the Compilation of Islamic Law (KHI), illegitimate children inherit only from their mother and their maternal family. Their legal relationship with their biological father is not recognized, so no inheritance rights arise from their father's side.<sup>15</sup>

*Itsbat Nasabis* the process of legally determining a child's kinship or lineage relationship with his or her father. In the context of Islamic law and positive law, itsbat nasab is crucial for clarifying a child's legal status, particularly in cases where the parents' marital status is not officially recorded or in cases where children are born out of wedlock. This itsbat process is conducted through religious courts, aiming to provide legal certainty for children in various aspects, such as inheritance rights, guardianship, maintenance, and legal identity status.

One situation where itsbat nasab is necessary is when a marriage is valid according to religious law (sharia) but not registered with a state institution. In this situation, children born from the marriage require itsbat nasab to obtain their legal rights, including inheritance rights from their father. Islamic law recognizes marriages

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<sup>11</sup> Ediwarman, Monograph on Legal Research Methodology (Yogyakarta: Genta Publishing, 2016), 21.

<sup>12</sup> Cornelius Benuf and Muhamad Azhar, "Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems," *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

<sup>13</sup> Johanes Supranto, Legal and Statistical Research Methods (Jakarta: Rineka Cipta, 2003), 27.

<sup>14</sup> Bambang Sunggono, Legal Research Methodology (Jakarta: PT. RajaGrafindo Persada, 2003), 27.

<sup>15</sup> Dwitya Laras Suharyati, Susilo Edi Purwanto, and I Nyoman Suarna, "Legal Analysis of Children's Inheritance Rights in Unregistered Marriages (Viewed from Positive Law and Hindu Law)," *Widya Kerta: Journal of Hindu Religious Law* 4, no. 2 (November 30, 2021): 117–29, <https://doi.org/10.53977/wk.v4i2.390>.

that are valid according to religion even if they are not registered, but under state law, official registration is crucial for clarifying the child's legal status and rights.

Furthermore, itsbat nasab is also submitted in cases of children born out of wedlock. In the Shaf'i school of thought, illegitimate children are only related to their mother and are not recognized as related to their biological father, unless there is an acknowledgment or a special interpretation regarding Islamic marriage after pregnancy. In religious courts, itsbat nasab can be submitted to establish the child's relationship to their biological father, either through written evidence, confessions, witnesses, or DNA testing.

The lineage confirmation process is carried out through a religious court. The interested party, such as the child's mother or guardian, will submit a request for lineage confirmation, presenting supporting evidence. This evidence can include a marriage certificate (if available), witness testimony, or DNA test results. The court will then conduct an examination and determine whether the child's lineage is valid and legally recognizable.<sup>16</sup> This decision provides legal certainty regarding the child's kinship relationship, which is important to ensure that the child has the same rights as other children, especially in terms of inheritance and other civil rights.<sup>17</sup>

Overall, itsbat nasab (family identification) is an important legal mechanism for protecting children's rights in situations of unregistered marriages or out-of-wedlock births. With itsbat nasab, children have clear legal status before the state and religion, and can access other legally recognized rights.

## **2. Inheritance Rights of Children from Unregistered Marriages According to the Civil Code**

Under the Civil Code, an illegitimate child who is acknowledged by their biological father or mother can inherit. However, the child can only inherit from the parent who acknowledges them, and not from the extended family of their biological father or mother. The Civil Code also stipulates that an unrecognized illegitimate child has no inheritance rights unless officially acknowledged by their parents. Therefore, under the Civil Code, legal recognition is a crucial factor in determining the inheritance rights of children from unregistered marriages.<sup>18</sup>

Under the Civil Code, an illegitimate child who is recognized by one or both of his or her biological parents has limited inheritance rights. The child can inherit from the parent who acknowledges him or her, but does not have inheritance rights from the extended family of the father or mother who acknowledges him or her, such as grandparents, or other relatives. The inheritance rights of illegitimate children are

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<sup>16</sup> Mety Darmayani, Sahal Afhami, and Rini Winarsih, "Implementation of Mandatory Wills for Children from Unregistered Marriages According to the Compilation of Islamic Law," *Justicia Journal* 13, no. 1 (March 31, 2024): 100–111, <https://doi.org/10.32492/jj.v13i1.13109>.

<sup>17</sup> Ibnu Rusydi, "Legal Review of the Inheritance Rights of Children from Unregistered Marriages," *Galuh Justisi Scientific Journal* 7, no. 1 (June 20, 2019): 49, <https://doi.org/10.25157/jigi.v7i1.2145>.

<sup>18</sup> Rian TR Simanjuntak et al., "Legal Consequences of Unregistered Marriage Practices at the Civil Registry Office in Relation to Inheritance Rights of Children Born Outside of Marriage According to Civil Law Studies," *Journal on Education* 6, no. 4 (June 12, 2024): 20546–54, <https://doi.org/10.31004/joe.v6i4.6117>.

expressly regulated in the Civil Code, which states that without official recognition, the child does not have inheritance rights from both parents.<sup>19</sup> Therefore, in the context of civil law, official recognition is a crucial factor in determining a child's inheritance rights, especially in cases of unregistered marriages or those outside of a legal marriage.<sup>20</sup>

### **3. Legal Gap between Islamic Law and Positive Law**

One of the gaps identified in this research is that Islamic law does not grant inheritance rights to illegitimate children from the father's side, while under Indonesian positive law, acknowledged illegitimate children still have inheritance rights from the parent who acknowledged them. This creates legal uncertainty for children of unregistered marriages, especially if their parents do not take steps to legally recognize the child.

One of the glaring gaps between Islamic law and Indonesian positive law regarding the inheritance rights of illegitimate children is the difference in the recognition of paternal inheritance rights. Under Islamic law, illegitimate children do not have inheritance rights from their fathers, while Indonesian positive law, as stipulated in the Civil Code and Constitutional Court rulings, grants inheritance rights to illegitimate children recognized by their fathers.<sup>21</sup> This gap creates legal uncertainty, especially for children from unregistered marriages, if their parents do not immediately take steps for official recognition, which has direct implications for the legal status and rights of these children.<sup>22</sup>

### **4. Implications of the Court's Decision**

Based on a study of religious court rulings in Indonesia, children from unregistered marriages often face difficulties in obtaining inheritance rights. Religious courts generally adhere to strict Islamic legal principles regarding lineage and inheritance, so illegitimate children can only inherit from their mother. On the other hand, district court rulings that refer to the Civil Code tend to be more flexible, provided there is official recognition from the parents.<sup>23</sup>

The implications of court decisions on the inheritance rights of children from unregistered marriages demonstrate the differing approaches between religious and district courts. Religious courts tend to adhere to strict Islamic legal principles regarding lineage and inheritance, which limit the inheritance rights of illegitimate

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<sup>19</sup> Saipul Bahrain, TI Purnamasari, Rendra Khaldun, Relevansi Al-Qur'an, Hak Asasi Manusia, dan Gender dalam Melindungi Hak Kehormatan Pribadi di Era Digital: Tinjauan Literatur, MODELING: Jurnal Program Studi PGMI 11 (4), 2024, 154-172

<sup>20</sup> Erni Agustina, "Protection of the Inheritance Rights of a Child Resulting from a Marriage in Which the Ijab Qabul is Not Registered in State Law," Lex Jurnalica 8, no. 1 (2010): 73–85.

<sup>21</sup> Constitutional Court Decision No. 46/PUU-VIII/2010

<sup>22</sup> Ardian Arista Wardana, "RECOGNITION OF CHILDREN OUT OF WEDDING: A Legal Review of the Status of Children Born Outside of Wedlock," Jurnal Jurisprudence 6, no. 2 (January 7, 2017): 160, <https://doi.org/10.23917/jurisprudence.v6i2.3013>.

<sup>23</sup> Riri Wulandari, "The Status of Children Born Out of Wedlock from the Perspective of the Hanafi and Syafi'i Schools and Its Implications for Children's Rights" (Thesis (Masters), Lampung, UIN Raden Intan Lampung, 2028), <http://repository.radenintan.ac.id/id/eprint/4212>.

children to their mothers.<sup>24</sup> This makes it difficult for illegitimate children to obtain their rights from their fathers. On the other hand, district courts, which refer to the Civil Code, provide more flexibility, allowing illegitimate children to obtain inheritance rights from their fathers if officially recognized. This gap creates inconsistencies in law enforcement and directly impacts the status and rights of children from unregistered marriages.<sup>25</sup>

## 5. Legal Recognition of Children from Unregistered Marriages

Based on the results of this study, it was found that unregistered marriages in Indonesia remain a significant problem. Many children born of these marriages lose their inheritance rights, especially if their parents failed to register their marriage with the Religious Affairs Office (KUA) or undergo itsbat nikah (marriage confirmation) in a religious court. These children are often in a vulnerable position, not only in terms of inheritance rights but also in terms of their legal status in general.<sup>26</sup>

Every child born has the right to legal protection. With clear legal status, this child can enjoy other rights as an equal citizen before the law. However, regarding the status of guardianship, lineage, maintenance, and inheritance rights of illegitimate children, there are differing opinions among Islamic scholars. This issue was also raised at the NU Ulama National Conference in Lombok at the end of 2017.<sup>27</sup>

Participants of the 2017 NU Ulama National Conference in Lombok defined an illegitimate child as a child born to a woman outside of a legally and religiously valid marriage. They followed the interpretation in the formulation of Islamic law regarding this issue. First, if the pregnant woman is married according to Islamic law, that is, carried out in accordance with the provisions of the conditions and pillars, then the laws of lineage, guardianship, inheritance, and maintenance apply. Second, if the pregnant woman is not married according to Islamic law, there is a more detailed interpretation: (1) If the child (fetus) is born when the mother is not married, then the child is related to the mother only; (2) If the child is born after the mother is married, either to the biological father or another person, there is an interpretation: (a) If (the fetus) is born more than 6 months after the marriage contract, then the child's lineage falls to the mother's husband; but (b) if it is born less than 6 months after the marriage contract, then the child cannot be related to the mother's husband.

Regarding the NU's view on the Constitutional Court's (MK) ruling on this issue, participants at the 2017 NU National Conference viewed the MK's ruling as not entirely inconsistent with Islamic jurisprudence. As is known, the MK ruled, "A

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<sup>24</sup> Soebekti and Tjitrosudibio, *Inheritance Law Without a Will* (Semarang: Diponegoro University Publishing Agency, Semarang, 2008), 43.

<sup>25</sup> Ahmad Nuryani, *Legal Basis for Marriage Registration in Indonesia* (Bandung: Gedebage District Religious Affairs Office, 2010), 17.

<sup>26</sup> Zainul Mu'en Husni et al., "Analysis of the Status of Children Born Out of Wedlock to Their Parents: A Comparative Study Between Positive Law and Islamic Law," *HAKAM: Journal of Islamic Law Studies and Islamic Economic Law* 5, no. 1 (July 4, 2021), <https://doi.org/10.33650/jhi.v5i1.2261>.

<sup>27</sup>Read the Status of Nasab and Inheritance Rights of Children Outside of Wedlock. Source:<https://nu.or.id/bahtsul-masail/status-nasab-dan-hak-waris-anak-di-luar-nikah-CIiJy>

child born out of wedlock has a civil relationship with his or her mother and her mother's family, as well as with a man who is his or her father, who can be proven by science and technology and/or other evidence according to law to be related by blood, including a civil relationship with his or her father's family."

The results of this study indicate that the recognition and legal protection of illegitimate children need to be further considered in the context of Islamic law and positive law in Indonesia, especially in relation to inheritance rights which are the basic rights of every child.

This study concludes that legal protection for children from unregistered marriages in Indonesia still requires improvement. Harmonization between Islamic law and positive law in Indonesia is crucial to provide justice and legal certainty for children born from unregistered marriages, particularly in the context of inheritance rights.

This study analyzes the inheritance rights of children born from unregistered marriages, comparing Islamic law, specifically the Compilation of Islamic Law (KHI), with Indonesian positive law, specifically the Civil Code (KUH-Perdata). The results indicate significant differences in the recognition and protection of inheritance rights for illegitimate children in these two legal systems. Table 1 compares the inheritance rights of children from unregistered marriages under Islamic law and Indonesian positive law.

**Table 1: Comparison of Inheritance Rights of Children from Unregistered Marriages According to Islamic Law and Indonesian Positive Law**

Aspect		Islamic Law (Compilation of Islamic Law - KHI)	Indonesian Positive Law (Civil Code)
Child Relationship	Lineage	Only has a blood relationship with the mother and family from the mother's side.	Children born out of wedlock can have a blood relationship with the parents who acknowledge them.
Children's Rights	Inheritance	Children only inherit from their mother and their maternal family.	A recognized child can inherit from the parent who recognized him.
Inheritance Rights from Biological Father		There are no inheritance rights from the biological father, unless there is a confirmation of lineage.	There are inheritance rights if the biological father legally acknowledges the child.
Legal Recognition of Children Born Out of Wedlock		Illegitimate children are not recognized as heirs on their father's side.	Formal recognition by parents is required to grant inheritance rights.
Inheritance Rights of the Extended Family		Only inherited from the mother's family.	There are no inheritance rights from the extended family, only from parents who acknowledge them.
Court ruling		Religious courts generally	District courts tend to

	do not grant inheritance rights from the father to illegitimate children.	grant inheritance rights if there is official recognition.
Implications of Marriage Registration	It does not affect inheritance rights, children still only inherit from their mother.	Marriage registration is important to obtain official recognition for children.

The table above compares the inheritance rights of children from unregistered marriages under Islamic law (based on the Compilation of Islamic Law) and Indonesian positive law (based on the Civil Code). Under Islamic law, illegitimate children only have blood ties and inheritance rights with their mother and her maternal family. They do not have the right to inherit from their biological father unless there is recognition through a blood relationship agreement in a religious court.

On the other hand, in Indonesian positive law (Civil Code), an illegitimate child who is acknowledged by his father or mother can have inheritance rights from the parent who acknowledged him.<sup>28</sup> However, these inheritance rights are limited to parents who provide formal recognition, and the child is not entitled to inherit from the parents' extended family. This research highlights the gap between Islamic law and positive law regarding the recognition and inheritance rights of illegitimate children, particularly in the context of unregistered marriages.

## D. ANALYSIS AND DISCUSSION

Based on the research findings presented, several important points are highlighted regarding the inheritance rights of children from unregistered marriages from the perspective of Islamic law and positive law in Indonesia. First, from an Islamic legal perspective, children from unregistered marriages (illegitimate children) generally only have inheritance rights from their mother. This refers to the principle of lineage in Islamic law, which states that children born outside of a valid marriage have no legal relationship with their father. This view is adopted by most religious courts in Indonesia, which adhere to sharia law in determining lineage status and inheritance rights.

However, on the other hand, Indonesian positive law, particularly the Civil Code, introduces a more flexible concept. An illegitimate child acknowledged by their biological father or mother still has inheritance rights, although limited to the acknowledging parent. The Constitutional Court's (MK) ruling, which states that a child born out of wedlock has a civil relationship with their biological father if proven, demonstrates a broader approach to protecting children's rights. However, the MK's ruling does not necessarily change the view of religious courts, which remain steadfast in their adherence to Islamic jurisprudence (fiqh) principles.

<sup>28</sup> Abnan Pancasilawati, "Legal Protection for the Civil Rights of Children Born Out of Wedlock," FENOMENA 6, no. 2 (December 1, 2014): 171, <https://doi.org/10.21093/fj.v6i2.168>.

The differences between these two legal systems create significant legal gaps, particularly for children born from unregistered marriages. Under Islamic law, illegitimate children are strictly deprived of inheritance rights from their father. However, under positive law, with official recognition, illegitimate children can still inherit. This creates uncertainty for these children, especially if the parents do not take the necessary legal steps to officially recognize the child.

A review of court decisions also shows that in practice, religious courts and district courts often issue differing rulings regarding the inheritance rights of children from unregistered marriages. Religious courts tend to prioritize strict Islamic law regarding lineage and inheritance, while district courts prioritize official recognition under the Civil Code.

The legal implications of this court ruling are significant, particularly for children born of unregistered marriages. They often face difficulties in obtaining inheritance rights, particularly from their fathers, without official recognition. The tension between these two legal systems demands harmonization or a more integrative legal solution that can accommodate the need for protection of the rights of children born of unregistered marriages, both from the perspective of religious law and positive law.

## **E. CONCLUSION**

This study reveals significant differences between Islamic law and Indonesian positive law in viewing the inheritance rights of children from unregistered marriages. Under Islamic law, illegitimate children only have a lineage and inheritance rights with their mother, while their relationship with their biological father is not recognized. This is based on the principle of sharia, which prioritizes the validity of the marriage in determining lineage and inheritance. In contrast, under Indonesian positive law, specifically the Civil Code and Constitutional Court decisions, illegitimate children who are officially recognized by their biological parents have the right to inherit from the party who recognizes them, including the biological father, although this right is limited.

The legal gap between the two systems creates uncertainty for children from unregistered marriages, especially in the absence of official recognition of the biological father. While positive law is more flexible in terms of lineage recognition and inheritance rights, religious courts often adhere to strict Islamic law, which limits the rights of illegitimate children to the mother. This gap implies an urgent need for harmonization between Islamic law and positive law in the Indonesian legal system. Measures to accommodate the rights of children from unregistered marriages, both in terms of lineage and inheritance, should be considered to provide better legal protection for all children, in accordance with the principles of justice and the best interests of the child. Thus, this study contributes to uncovering the challenges and opportunities in the application of Islamic law and positive law regarding the inheritance rights of illegitimate children, as well as the importance of a more inclusive and integrative approach within the national legal context.

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