

Legal Protection of Wife's Inheritance Rights in Polygamous Marriages Not Recorded: an Analysis of Islamic Legal Perspectives

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Abstract

*Unregistered polygamous marriages pose serious problems related to the protection of wives' inheritance rights in Indonesia. This study aims to analyze the protection of wives' inheritance rights in unregistered polygamous marriages according to Islamic law and the implementation of the principle of justice in that context. The research method used is normative juridical with a library approach, using primary, secondary, and tertiary legal materials analyzed through legal interpretation, descriptive-analytical analysis, comparative, and maqashid sharia. The results of the study indicate that from an Islamic legal perspective, wives in unregistered polygamous marriages still have the same inheritance rights as regulated in the Qur'an, Surah An-Nisa, verse 12 and the Compilation of Islamic Law Article 180, namely 1/4 if the husband leaves no children and 1/8 if the husband leaves children, which are divided equally among all wives. However, in the practice of positive law in Indonesia, unregistered marriages face legal obstacles that cause wives' inheritance rights to not be optimally protected. The implementation of the principle of justice faces challenges in the form of legal dualism between religious legitimacy and state recognition, unequal access to legal protection, and minimal public understanding of wives' inheritance rights. From the perspective of maqashid sharia, this lack of legal protection violates the principles of *hifdz al-nasl* (protection of offspring) and *hifdz al-mal* (protection of property). This study recommends five strategies to achieve justice: facilitating access to marriage *itsbat*, increasing legal socialization, strengthening judges' judicial *ijtihad*, integrating maqashid sharia into legislation, and developing alternative mechanisms for resolving inheritance disputes.*

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1. INTRODUCTION

Marriage in Islam is a sacred bond that not only establishes a physical and spiritual relationship between husband and wife, but also gives rise to various complex legal implications, especially regarding the rights and obligations of each party. One crucial aspect in the context of marriage is the protection of inheritance rights, which is a fundamental mechanism for ensuring justice and welfare for heirs after the testator's death. In the Indonesian context, the practice of polygamy, strictly regulated by Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), creates its own problems, particularly when polygamous marriages are conducted without official registration.

Data from the Central Statistics Agency (BPS) shows that in 2024, there were 849 divorce cases caused by polygamy in Indonesia, with East Java recording the highest number of 180 cases, followed by West Java with 147 cases, and Central Java with 59 cases. These figures indicate that polygamy remains a significant phenomenon in Indonesian society, despite strict legal regulations. Even more worrying, in practice, many polygamous marriages are not officially registered with marriage registration agencies due to difficulties obtaining permission from the Religious Court and the consent of the first wife. This unregistered polygamous marriage has serious legal consequences, especially regarding the legal status of the wife and children born from the marriage, including in terms of inheritance rights.

Marriages that are not officially registered result in the wife and children not having legal certainty in various aspects of civil law, including inheritance rights, rights to maintenance, making birth certificates, and managing family cards. This places wives in unregistered polygamous marriages in a very vulnerable position, because even though the marriage is valid according to religious law if it fulfills the pillars and requirements of Islamic marriage, under state law the marriage is considered to have no legal force. This condition has the potential to cause significant injustice, especially when the husband dies and the inheritance is divided.

From an Islamic legal perspective, as regulated in the Compilation of Islamic Law Article 180, wives in a polygamous marriage have equal inheritance rights, namely 1/4 if the husband does not leave children and 1/8 if the husband leaves children, without distinguishing whether the marriage is registered or not, as long as it meets the requirements and pillars of Islamic marriage. However, in the practice of positive Indonesian law, unregistered marriages have difficulty in having their validity recognized, so that the wife's inheritance rights become complex and require a court decision to obtain legal recognition. This problem is even more complicated considering that Article 402 of the Criminal Code threatens a prison sentence of up to four years and six months for a husband who marries without the permission of his previous wife, while on the other hand, wives who are in unregistered marriages are actually victims who do not receive adequate legal protection.

Several previous studies have examined the problems of polygamous marriages from various perspectives. Research conducted by Sugianto (2017) discussed the status of heirs in polygamous marriages and concluded that, in practice, polygamous marriages that are not registered with a marriage registry will create obstacles later in determining inheritance rights and joint property. Meanwhile, Rizkita Putri's (2022) research analyzed the distribution of wives' inheritance in polygamous marriages from a comparative perspective between the Compilation of Islamic Law and the Civil Code, but the focus of her study was more on the inheritance distribution mechanism in the context of legally registered polygamous marriages. Another study conducted by Wijaya examined children's inheritance rights in polygamous marriages, but did not specifically analyze the protection of wives' inheritance rights in the context of unregistered polygamous marriages from an Islamic law perspective.

Based on the review of previous studies, it can be identified that there is still a significant research gap, namely the absence of a comprehensive study that specifically discusses the protection of wives' inheritance rights in unregistered polygamous marriages using an in-depth analysis of Islamic law perspectives. Previous studies tend to focus on the aspect of inheritance distribution in legally registered polygamous marriages, or examine the position of children from unregistered polygamous marriages, but have not specifically explored how Islamic law protects the inheritance rights of wives who are in a

vulnerable position due to unregistered marriages, as well as how the concept of *maqashid sharia* can be applied to provide a just and equitable legal solution.

The urgency of this research lies in the fact that the phenomenon of unregistered polygamous marriages is still widespread in Indonesian society, while legal protection for wives in such marriages, particularly regarding inheritance rights, remains an unresolved issue. This legal uncertainty not only harms wives materially but also violates the principles of justice upheld in Islamic law. Based on these problems, this research is formulated to answer two fundamental questions: first, how are wives' inheritance rights protected in unregistered polygamous marriages according to Islamic law; and second, how are the principles of justice in Islamic law implemented in protecting wives' inheritance rights in unregistered polygamous marriages. This research aims to comprehensively analyze these two issues, with the hope of providing theoretical contributions to the development of Islamic family law, while also providing practical recommendations for law enforcement, policymakers, and the public in ensuring the protection of women's rights in the context of unregistered polygamous marriages.

2. RESEARCH METHODS

This research uses a normative juridical legal research method with a library approach (*library research*). The normative juridical method is a legal research method that is carried out by examining library materials or secondary data as basic material for research by conducting searches of regulations and literature related to the problem being researched. This approach was chosen because this research aims to examine the internal aspects of positive law, especially Islamic law relating to the protection of wives' inheritance rights in unregistered polygamous marriages.

The normative juridical research applied in this research is research that positions law as a system of norms, which includes legal principles, legal norms, rules of statutory regulations, doctrines, and legal concepts related to the protection of wives' inheritance rights in the context of unregistered polygamous marriages. The selection of this method is based on the characteristics of the research, which analyzes Islamic legal norms and Indonesian positive law that are relevant to the research problem, without conducting empirical field research.

In the context of Islamic law research, this research also uses an approach *maqashid sharia* as an analytical knife (*tools of analysis*) to understand and interpret Islamic legal texts or sources relating to inheritance rights and legal protection for wives in unregistered polygamous marriages. *maqashid sharia* was chosen because it has a very urgent position in reasoning contemporary legal problems in a unique way, namely by paying attention to the universal goals of Islamic legal regulation (*al-kulliyat al-khamsah*) which includes protection of religion (*Hifz al-Din*), soul (*hifdz al-nafs*), reason (*hifz al-'aql*), descendants (*hifdz al-nasl*), and property (*hifdz al-mal*).

The legal data and materials used are sourced from a literature review of various secondary data, encompassing three main categories: primary legal materials such as statute books and regulations; secondary legal materials in the form of scientific works and court decisions; and tertiary legal materials such as dictionaries to complement the analysis. The data collection process was carried out by studying documents and literature, including reviewing various related regulations and jurisprudence. In the analysis stage, the data were then processed qualitatively by selecting and reviewing relevant legal principles, norms, doctrines, and articles. The final step was to systematically organize and describe the findings to ultimately produce answers to the legal issues that were the focus of the study.

3. DISCUSSION

Protection of the Wife's Inheritance Rights in Unregistered Polygamous Marriages According to Islamic Law

Marriage in Islamic law is seen as a very strong contract (*mitsaqan ghalizhan*) which binds the relationship between men and women to form a family that is *sakinah*, *mawaddah*, and *rahmah*. The validity of a marriage according to Islamic law is determined by the fulfillment of the pillars and conditions of marriage, which include the presence of a prospective husband and wife, a marriage guardian, two witnesses, the *ijab kabul*, and a dowry. In this context, a polygamous marriage that is carried out by fulfilling the pillars and requirements of Islamic marriage is substantially valid according to religious law, even if it is not officially registered with a marriage registration agency.

The Quran, Surah An-Nisa, verse 12, confirms that the wife has a clear and certain right to inherit from her husband's property. Allah SWT says: And for wives is a quarter of what you leave behind if you have no child. If you have a child, then for them is an eighth of what you leave behind (after fulfilling any bequests you may have made and after paying your debts. This verse shows that the wife's inheritance rights are not differentiated based on the order of marriage (first, second, third, or fourth wife), but are divided equally among all the legitimate wives.

The Compilation of Islamic Law (KHI), as the material law applicable in the Indonesian Religious Courts, adopts this provision in Article 180, which states: A widow receives a quarter of the share if the testator does not leave children, and if the testator leaves children, the widow receives an eighth of the share. Based on this provision, in a polygamous marriage, the wives' share of the inheritance is the same, namely 1/4 if the husband does not leave any children and 1/8 if the husband leaves any children, which is then divided equally among all the wives.

However, problems arise when polygamous marriages are not officially registered. Law Number 1 of 1974 concerning Marriage in Article 2 paragraph (2) states that every marriage is registered according to applicable laws and regulations. Marriage registration is not a requirement for a valid marriage according to Islamic law, but is an administrative requirement that has very significant legal implications in the Indonesian positive legal system. Unregistered marriages result in the wife and children not having authentic proof in the form of a marriage certificate, which is needed to access various civil rights, including inheritance rights.

From a substantive Islamic legal perspective, the wife's inheritance rights in an unregistered polygamous marriage remain valid as long as the marriage fulfills the pillars and requirements of religious marriage. Imam Asy-Syaukani, in his interpretation, *Fath al-Qadir* states that the letter An-Nisa verse 12 is one of the pillars of the Islamic religion and a legal pillar that regulates the distribution of inheritance in detail and fairly. The principle of justice in the distribution of Islamic inheritance does not recognize discrimination based on administrative marital status, but rather based on lineage and legal marital relations according to sharia.

However, in Indonesian positive law practice, unregistered marriages face serious legal obstacles. The absence of a marriage certificate as authentic proof of the marriage makes it difficult for wives in unregistered marriages to legally prove the existence of the marital relationship, thus preventing their inheritance rights from being optimally protected.

To overcome this problem, Islamic law in Indonesia provides a mechanism for marriage *confirmation* (marriage ratification) as regulated in Article 7 paragraphs (2) and (3) of the Compilation of Islamic Law. Marriage confirmation is a religious court decision

that declares the validity of a marriage that has been carried out according to Islamic law but is not officially registered. Through the marriage validation mechanism, marriages that were previously only recognized by religion can obtain state legal recognition, thus opening access for wives and children to obtain their civil rights, including inheritance rights.

However, the marriage validation process has several limitations. First, the process requires time, expense, and complex legal procedures, placing an additional burden on wives who are often in a weak economic position. Second, in cases of unregistered polygamous marriages, the application for marriage validation must be filed through contentious means (lawsuit) if the husband has died, which involves other heirs as interested parties. This has the potential to cause family disputes and prolong the process of resolving inheritance rights. Third, even if the marriage validation is granted, the wife still faces social stigma and potential conflict with the other wife or other heirs regarding the distribution of inheritance.

The phenomenon of unregistered polygamous marriages exposes the legal dualism that exists in Indonesia: Islamic law, the religious law that substantially regulates the validity of marriage, and positive state law that regulates the administrative requirements for marriage. This dualism creates a gray area (*grey area*) where a marriage that is valid according to religious law is not immediately recognized by state law without official registration.

From the perspective of maqashid *sharia*, this legal dualism actually has the potential to give rise to *corruption* (damage), which is contrary to the universal objectives of sharia, namely protection of descendants (*hifdz al-nasl*) and protection of property (*hifdz al-mal*). The lack of legal protection for a wife's inheritance rights in an unregistered marriage not only harms the wife materially but also violates the principle of justice that is at the heart of Islamic law. The principle of justice in Islam demands that everyone receive their full rights without discrimination, including the inheritance rights established by Allah SWT in the Quran.

Furthermore, from the perspective of *hifdz al-nafs* (life protection), the legal uncertainty experienced by wives in unregistered marriages can lead to serious psychological distress and social vulnerability. Research shows that women in unregistered marriages often experience marginalization, subordination, and economic violence due to the lack of adequate legal protection. This condition clearly contradicts the Islamic mission of rahmatan lil 'alamin and the commitment to protecting women's rights.

Implementation of the Principle of Justice in Islamic Law Regarding the Protection of Wives' Inheritance Rights in Unregistered Polygamous Marriages

Justice (*al-'is*) is one of the fundamental principles in Islamic law which is the basis for the entire Islamic legal system, including inheritance law. Allah SWT commands justice in various verses of the Quran, including in Surah An-Nisa verse 58 which means: Indeed, Allah commands you to deliver the trust to those who are entitled to it, and (commands you) when you judge between people, that you judge with justice.

In the context of inheritance law, justice is not defined as absolute mathematical equality, but rather as proportionality that takes into account various factors, including the responsibilities, needs, and roles of each heir. However, regarding a wife's inheritance rights, the Quran has established a definite share that cannot be changed or reduced by anyone, including other heirs. This determination of a definite share demonstrates Islamic law's commitment to protecting women's rights, particularly wives, from potential injustice and deprivation.

In the context of polygamous marriage, the principle of justice is an absolute requirement that must be met by the husband. The Quran, Surah An-Nisa, verse 3, states:

So marry women of your choice, two, three, or four. But if you fear that you will not be able to deal justly, then (marry) only one. This verse shows that the ability to act fairly is a prerequisite for practicing polygamy, and if one is not able to do so, then monogamy is a better choice.

Article 180 of the Compilation of Islamic Law implements this principle of justice by stipulating that the inheritance shares of all wives in a polygamous marriage are equal, regardless of the order of marriage. This means that the first, second, third, and fourth wives have the same inheritance rights: 1/4 if the husband leaves no children, or 1/8 if the husband leaves children, which is then divided equally among them. This provision reflects distributive justice, ensuring that each wife receives an equal share, regardless of when the marriage took place.

Although the principle of justice has been normatively stipulated in Islamic law and the Compilation of Islamic Law, its practical implementation, particularly in cases of unregistered polygamous marriages, faces various challenges. First, the lack of marriage registration leads to unequal access to legal protection between wives whose marriages are registered and those whose marriages are not. A wife in an unregistered marriage must first go through the marriage confirmation process to prove the validity of her marriage, while a wife in a registered marriage can directly access her inheritance rights by showing the marriage certificate.

Second, in the practice of inheritance distribution, injustice often occurs due to a lack of understanding among other heirs about the wife's inheritance rights in polygamous marriages. In fact, wives in unregistered marriages may not receive any inheritance at all because their marriage is not recognized by the husband's family or other heirs. This situation clearly contradicts Islamic law, which establishes a wife's inheritance rights as definite and inviolable.

Third, from an economic perspective, wives in unregistered polygamous marriages are often in a very vulnerable position because, apart from not having access to inheritance rights, they also do not have access to joint property (*marital relations*), which should be their right. According to Article 94 of the KHI, joint assets in a polygamous marriage are separate and independent for each spouse. However, without registering the marriage, proving the existence of joint assets becomes very difficult, so the wife has the potential to lose her rights to the assets they have built together with her husband during the marriage.

To overcome the problem of injustice experienced by wives in unregistered polygamous marriages, the approach of maqashid *sharia* can be a comprehensive and solutive framework of analysis. Maqashid *sharia*, as formulated by Imam Al-Ghazali and perfected by Imam Ash-Syatibi, includes five universal objectives of *sharia* (*al-kulliyat al-khamsah*), namely protection of religion (*Hifz al-Din*), soul (*hifdz al-nafs*), reason (*hifz al-'aql*), descendants (*hifdz al-nasl*), and property (*hifdz al-mal*).

In the context of protecting the wife's inheritance rights, the principle of *hifdz al-nasl* (protection of lineage) and *hifdz al-mal* (Protection of property) becomes very relevant. Protection of offspring not only means maintaining the continuity of generations through legal marriage, but also ensuring that the family formed from that marriage receives adequate legal protection, including economic rights such as inheritance rights. Meanwhile, the principle of *hifdz al-mal* demands that property that is a person's right not be confiscated or reduced without a valid legal basis.

From the perspective of maqashid *sharia*, the lack of legal protection for the inheritance rights of wives in unregistered marriages is a violation of both principles. Therefore, concrete efforts are needed to achieve justice for wives, including: First, facilitating access to the marriage validation mechanism by reducing costs and simplifying

legal procedures, so that wives in unregistered marriages can obtain legal recognition of their marriages more easily and quickly. This is in line with the principle *taysir* (ease) in Islamic law, which teaches that Islamic law is not intended to make things difficult for humans, but rather to provide ease and benefit.

Second, increase public awareness and legal education about the importance of marriage registration and the inheritance rights of wives in polygamous marriages, thereby increasing public legal awareness and minimizing the practice of unregistered marriages. This education should also emphasize that marriage registration is not an innovation or violation of Islamic law, but rather an effort to protect the rights of women and children in accordance with the spirit of Islamic teachings of *maqashid sharia*.

Third, strengthening the role of judges in exercising judicial *ijtihad* to provide fair legal protection for wives in unregistered marriages. Judges have the authority to explore, follow, and understand the legal values and sense of justice that exist in society, as mandated by Article 26 of Law Number 48 of 2009 concerning Judicial Power. In this context, *maqashid sharia* can function as an unwritten source of law that guides judges in enforcing the law fairly and justly, prioritizing the public interest (*blessings*) and avoiding damage (*corruption*).

Fourth, integrating approaches to *maqashid sharia* in the legislative process and reform of Islamic family law in Indonesia, so that existing legal provisions can be more responsive to the need to protect women's rights, particularly in the context of unregistered polygamous marriages. This approach aligns with the concept of progressive law, which views law as an adaptive tool for pursuing justice, not merely a rigid and inflexible formal text.

Fifth, encourage the development of alternative mechanisms for resolving inheritance disputes based on principles of justice and public welfare, such as mediation or family consultation facilitated by religious leaders or competent mediation institutions. This mechanism can be a faster, more affordable solution, and less likely to lead to prolonged conflict than litigation in the courts.

By implementing the five strategies above, it is hoped that the principle of justice in Islamic law can be effectively realized by protecting the inheritance rights of wives in unregistered polygamous marriages. This aligns with Islam's mission as a religion of mercy for all the world's people, prioritizing justice, equality, and protection for vulnerable groups, including women and children.

4. CLOSING

Based on the discussion that has been described, it can be concluded that the protection of the wife's inheritance rights in unregistered polygamous marriages according to Islamic law is substantive and based on the principles of justice that have been established in the Qur'an and Hadith. Normatively, the inheritance rights of wives in unregistered polygamous marriages are still recognized as long as the marriage fulfills the pillars and requirements of Islamic marriage, with equal inheritance shares among all wives, namely 1/4 if the husband does not leave children and 1/8 if the husband leaves children, as regulated in the letter An-Nisa verse 12 and the Compilation of Islamic Law Article 180. However, in the practice of positive law in Indonesia, there is a legal dualism that creates a gap between the recognition of the validity of marriage according to religion and the recognition of state law, which requires official registration.

The lack of marriage registration results in wives facing serious legal obstacles in accessing their inheritance rights, as unregistered marriages are considered legally void, even if valid according to Islamic law. To address this issue, Islamic law in Indonesia

provides a marriage validation mechanism to grant legal recognition to unregistered marriages. However, the marriage validation process has limitations such as cost, time, complex procedures, and potential conflicts with other heirs, which further increase the vulnerability of wives in unregistered marriages.

The implementation of the principle of justice in Islamic law regarding the protection of wives' inheritance rights in unregistered polygamous marriages faces various practical challenges. The principle of justice (*al-'adalah*), which underlies Islamic inheritance law, requires that each wife receive an equal share without discrimination based on marital order or administrative status. However, in practice, the lack of marriage registration leads to unequal access to legal protection between wives whose marriages are registered and those whose marriages are not. Furthermore, the lack of understanding among other heirs regarding wives' inheritance rights in polygamous marriages, coupled with the lack of access to joint property (*gono-gini*), places wives in a highly vulnerable position economically and legally.

From the perspective of *maqashid sharia*, the lack of adequate legal protection for the inheritance rights of wives in unregistered marriages violates two universal objectives of *sharia*, namely *hifdz al-nasl* (protection of offspring) and *hifdz al-mal* (protection of property). This condition also contradicts the principle of *hifdz al-nafs* (protection of life) because it causes psychological stress and social vulnerability for women in unregistered marriages. Therefore, comprehensive efforts are needed to realize justice through five main strategies: (1) facilitating access to the marriage confirmation mechanism by reducing costs and simplifying procedures; (2) increasing socialization and legal education about the importance of marriage registration and wives' inheritance rights; (3) strengthening the role of judges in conducting judicial *ijtihad* based on *maqashid sharia*; (4) integrating the *maqashid sharia* approach into the legislative process and reform of Islamic family law; and (5) developing alternative mechanisms for resolving inheritance disputes based on justice and welfare.

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