

Distribution of Stepchildren's Rights in Inheritance According to Islam

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Abstract

The distribution of stepchildren's rights in inheritance according to Islamic law is an important thing that we must know and need to understand. The technique for preparing this article uses research from previous research results after collecting several journals and information that has been searched through social media. Stepchildren in Islamic inheritance law are not directly classified as heirs because there is no hereditary cause (asbabul miirats). (deliberation). As a result, according to the general view, stepchildren do not automatically have the right to inherit their stepparent's inheritance. However, by using other alternatives (other methods) in Islamic inheritance law, stepchildren will not lose their right to receive protection from their parents, as the inherited children of their biological father and mother. And in Islamic inheritance law, stepchildren can inherit assets from the marriage of their biological father or new mother (their new family) by means of Qiyas and Wasiat Wajibah in the amount of 1/3. The aim is to find out the position and understanding of stepchildren's inheritance rights in Islamic inheritance law and how to obtain a share of stepchildren's inheritance rights in Islamic inheritance law.

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1. INTRODUCTION

Background

Basically, inheritance law is a part of civil law as a whole and is the smallest part of family law. Inheritance law is closely related to the scope of human life. In modern society, families are usually formed from the nuclear family type, namely families consisting of only core members, namely father, mother and children. Meanwhile, families in rural areas usually still practice the extended family (Extended Family) which consists of the nuclear family and also extended family such as grandparents, uncles and aunts. However, there is also a type of family which is a marriage between a widower and a widow, each of whom has inherited children, so that the new father or mother becomes the father or stepmother for their respective inherited children. Inheritance law in Indonesia has basically been stipulated in a regulation based on the Republic of Indonesia Law No. 62 / 1958 and Presidential Decree no. 240 / 1957, but the inheritance provisions in Indonesia still use customary inheritance provisions.

In Islamic inheritance, stepchildren only have a kinship relationship with their biological father and mother and do not have a kinship relationship with their father or stepmother. This means that stepchildren only inherit property from their biological father or mother, they cannot inherit property from their father or stepmother, even if stepparents already consider their stepchildren as their own children. The emotional closeness of stepchildren to stepparents cannot be a way for stepchildren to inherit property in the Islamic view. Sometimes the judge decides to give inheritance to stepchildren through a mandatory will. This means that even if a stepparent does not have a will to give their assets

to their stepchildren, the government can take a maximum of one third of the deceased stepparent's assets to give to the stepchildren.

In fact, in the Compilation of Islamic Law (KHI), which is one of the reference sources for judges in making decisions, it does not explain the share of inheritance between stepchildren and their stepparents, supported by research by Jazari (2019) showing that stepchildren can be equated with adopted children, so they are in trouble. Inheritance, stepchildren have the right to inherit property from their father or stepmother through a mandatory will and qiyas made to the adopted child. That a stepchild gets an inheritance if he is devoted to his adoptive parents and has a close relationship.

Formulation of the problem

1. Do stepchildren have inheritance rights in Islam?
2. How do stepchildren get a share in Islamic inheritance law?

2. RESEARCH METHOD

Research regarding the distribution of stepchildren's rights to inherit according to Islamic law can be carried out using research methods. In this study, it was concluded that stepchildren are basically the husband's or wife's inherited children from a previous marriage, who are legally related to a new, valid marriage by their father or mother. Status as a stepchild does not eliminate the stepchild's inheritance rights as a biological child. The biological father or mother who brings a stepchild into a new marriage, as well as the stepchild's position in inheritance rights are also recognized under Islamic inheritance law as *Hijab Nuqshan* (a barrier that results in a reduction in the share of the heir). Stepchildren in Islamic inheritance law is not directly classified as heirs because there is no reason to inherit (*asbabul miirats*). However, by using other alternatives in Islamic inheritance law, stepchildren will not lose their right to receive protection from their parents, as the inherited children of their biological father and mother. Stepchildren can inherit assets from the marriage of their biological father or mother (their new family) by means of *Qiyas* and *Wasiat Wajibah* in the amount of 1/3.

3. DISCUSSION

In Islam, stepchildren are not automatically entitled to inheritance from their stepparents. This is because stepchildren do not have a blood relationship with their stepparents, however, there are several exceptions where stepchildren can inherit in the following ways:

1. Through a Will

Stepparents have the right to give inheritance to their stepchildren through a will. This will can be given while still alive or after death. The amount of inheritance given through the will is a maximum of 1/3 of the total inherited assets. This inheritance must not reduce the inheritance rights of other heirs as determined in Islam.

2. As an heir to your mother or biological father

Stepchildren still have the right to inherit from their biological mother or father. This is not affected by their status as a stepchild. However, they must ask for the consent of the biological child and also the family agreement if the stepchild is devoted to his father or stepmother throughout his life.

3. Through Qiyas

In the opinion of some scholars, stepchildren have the right to inherit from their stepparents through *qiyas*. *Qiyas* is an analogous method in Islam for establishing new laws based on existing laws. In this case, *qiyas* is carried out by equating stepchildren with adopted children. Adopted children, according to some scholars, have the right to

inherit from their adoptive parents. It is important to note that the opinion regarding the inheritance rights of stepchildren through qiyas is still debated by scholars.

Muhammad 'Ali Ash Shabuniy that, although he argued in the Gharaqiy case, that stepchildren do not receive any share from the inheritance of their mother or stepfather, in another part he stated that stepchildren can also be Hijab Nuqshan (barriers that resulting in a reduction in the share of heirs) for the mother or stepfather, as the Word of Allah SWT says. In QS. An-Nisaa` verse 12, with the explanation that the husband gets 1/4 share if the wife has children or

children from sons (grandchildren) and so on down, whether the children are from that husband, or from others (previous husbands). The wife gets a 1/4 share if the husband does not have children or children from sons (grandchildren) and so on down, whether the children are from that wife or from other wives. 13 Stepchildren are basically the husband's or wife's inherited children. previous marriage. Those who are legally related to a new legal marriage by their father or mother, where the husband's or wife's inherited children have the status of stepchildren in the father's or mother's new family or marriage. Status as a stepchild does not eliminate the stepchild's inheritance rights as a biological child of the biological father or mother who brought the stepchild into a new marriage, and the stepchild's position in inheritance rights is also recognized according to Islamic inheritance law as Hijab Nuqshan.

If the biological parents (of stepchildren) are not well off, then the issue of property becomes very important for them, in order to support the welfare of their lives now and in the future, both for education, medical treatment and other development. The solution to solve this problem alternatively or cumulatively is the Qiyas route for adopted children and stepchildren to obtain inheritance through a will and/or grant.

4. CONCLUSION

Providing a mandatory will to stepchildren is considered a new breakthrough as a way for stepchildren to inherit property from their stepparents. Based on the reality in the field, there are several cases where judges give mandatory wills to stepchildren, although there are also judges who do not give them. This is confirmed by the adopted child receiving inheritance from his adoptive parents through a mandatory will. In the Islamic view, giving a mandatory will to stepchildren is not appropriate because stepchildren are not among the heirs who have the right to inherit property from their stepparents. Stepchildren only inherit property from their parents and siblings. The solutions that can be taken to deal with inherited income from stepchildren and biological children are quite different.

5. SUGGESTION

In Islam, a child has the same rights as a newborn baby. They are still obliged to protect their mother's heart, but it is different from the heart of a biological child. To protect their mother's heart, but their heart is different from that of a biological child. different wills. Different wills in Islam, even though there are differences in inheritance portions between stepchildren and biological children, justice in the distribution of inheritance is highly respected. The difference between the inheritance portions of stepchildren and biological children means that justice in inheritance distribution is very important. held in high esteem.

6. BIBLIOGRAPHY

5790-15516-1-PB.pdf. (n.d.).

Arafat, M., & Syibli, M. R. (2023). *PENERAPAN BAGIAN WASIAT WAJIBAH TERHADAP ANAK ANGKAT DALAM HUKUM WARIS ISLAM (PERSPEKTIF FILOSOFIS)*. 1(4). <https://doi.org/10.58540/jipsi.v1i4.112>

- Ari, P., & Deviyanti, S. (n.d.). *Hak anak tiri terhadap waris dan hibah orang tua ditinjau dari hukum waris islam*. 1–5.
- Hafas, I. (2020). *PANDANGAN HUKUM ISLAM DAN HUKUM POSITIF TERHADAP*. 7(1), 16–28.
- Ilmiah, J., Syakhshiyah, A., Studi, P., Syakhshiyah, A., Agama, F., Universitas, I., Malang, I., Commons, C., Non, A., & Available, I. L. (2019). *JAS : Jurnal Ilmiah Ahwal Syakhshiyah Volume 1 Nomor 1 Tahun 2019 e-ISSN: 1*.
- Kasus, S., Lueng, S., Timur, K. L., Langsa, K., & Abdillah, M. A. (2022). *Sistem pembagian harta warisan dalam hukum islam*. 9(1), 285–305. <https://doi.org/10.32505/qadha.v9i1.4134>
- Khi, I., Kajian, D., & Yuridis, N. (n.d.). *Penerapan wasiat wajibah menurut kompilasi hukum islam (khi) dalam kajian normatif yuridis*. 3, 43–62.
- Komparatif, A., Islam, H., & Hukum, D. A. N. (2019). *Ulumuddin : Jurnal Ilmu-ilmu Keislaman*. 9, 81–96.
- Negeri, A. I. (n.d.). *PEMBAGIAN WARISAN ANAK TIRI DITINJAU DARI HUKUM ISLAM (Studi kasus Desa Bumi Mulya, Logas Tanah Darat, Kabupaten Kuantan Singingi)*.
No Title. (2012). 554.
No Title. (2022).
- Skripsi, A., Pembimbing, D., Maramis, R. A., & Lengkong, N. L. (2017). *No Title*. VI(3), 29–36.
- Studies, F. (2021). *No Title*. 3(2), 25–47.
 (5790-15516-1-PB.Pdf, n.d.; *No Title*, 2012; *No Title*, 2022; Arafat & Syibli, 2023; Ari & Deviyanti, n.d.; Hafas, 2020; Ilmiah et al., 2019; Kasus et al., 2022; Khi et al., n.d.; Komparatif et al., 2019; Negeri, n.d.; Skripsi et al., 2017; Studies, 2021)
 5790-15516-1-PB.pdf. (n.d.).
- Arafat, M., & Syibli, M. R. (2023). *PENERAPAN BAGIAN WASIAT WAJIBAH TERHADAP ANAK ANGKAT DALAM HUKUM WARIS ISLAM (PERSPEKTIF FILOSOFIS)*. 1(4). <https://doi.org/10.58540/jipsi.v1i4.112>
- Ari, P., & Deviyanti, S. (n.d.). *Hak anak tiri terhadap waris dan hibah orang tua ditinjau dari hukum waris islam*. 1–5.
- Hafas, I. (2020). *PANDANGAN HUKUM ISLAM DAN HUKUM POSITIF TERHADAP*. 7(1), 16–28.
- Ilmiah, J., Syakhshiyah, A., Studi, P., Syakhshiyah, A., Agama, F., Universitas, I., Malang, I., Commons, C., Non, A., & Available, I. L. (2019). *JAS : Jurnal Ilmiah Ahwal Syakhshiyah Volume 1 Nomor 1 Tahun 2019 e-ISSN: 1*.
- Kasus, S., Lueng, S., Timur, K. L., Langsa, K., & Abdillah, M. A. (2022). *Sistem pembagian harta warisan dalam hukum islam*. 9(1), 285–305. <https://doi.org/10.32505/qadha.v9i1.4134>
- Khi, I., Kajian, D., & Yuridis, N. (n.d.). *Penerapan wasiat wajibah menurut kompilasi hukum islam (khi) dalam kajian normatif yuridis*. 3, 43–62.
- Komparatif, A., Islam, H., & Hukum, D. A. N. (2019). *Ulumuddin : Jurnal Ilmu-ilmu Keislaman*. 9, 81–96.
- Negeri, A. I. (n.d.). *PEMBAGIAN WARISAN ANAK TIRI DITINJAU DARI HUKUM ISLAM (Studi kasus Desa Bumi Mulya, Logas Tanah Darat, Kabupaten Kuantan Singingi)*.
No Title. (2012). 554.
No Title. (2022).
- Skripsi, A., Pembimbing, D., Maramis, R. A., & Lengkong, N. L. (2017). *No Title*. VI(3), 29–36.

Studies, F. (2021). *No Title*. 3(2), 25–47.