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The Position of Children in the Distribution of Inheritance from Incest Marriages According to Islamic Law and Civil Law

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ABSTRACT

Marriage is a sacred process that has several legal requirements that must be obeyed. One of the conditions for the validity of a marriage is that all conditions must be fulfilled; furthermore, any conditions things are contained in the marriage are invalid, such as committing inbreeding or incest. The marriage is considered invalid or can even be canceled by law. When a marriage is considered invalid or even annulled by law, it will have legal consequences for the position of children born from the marriage, one of which is the position of children in inheritance. This research uses a normative legal approach method that uses doctrines and principles of law as a reference and uses primary and tertiary legal materials. From this research, it can be concluded that inbreeding or incest is considered invalid in Indonesia, so that the position of children born from an incest relationship is illegitimate and are also referred to as adulterous children or discordant children (civil code). In terms of inheritance, children of incest have no inheritance at all. Both Islamic and Civil Law state that children of incest only have relation to their biological mother and mother's family, while to their bio-logical father, there are no relation at all, it cause they are have not obligation to inherit each other and only have a right to demand the necessary maintenance from their biological father asset's.

KEYWORDS

Inheritance;
Marriage; Incest



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INTRODUCTION

Allah created humans in pairs between men and women so that humans can continue their offspring, and in terms of continuing offspring, both by Allah SWT and by humans themselves, such regulations are arranged so that humans can carry out life with full order and goodness by entering into a marriage. In Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage: "Marriage is the inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the Almighty God." Article 2, paragraph (1) states, "Marriage is valid if performed according to the laws of each religion and belief."

In the above understanding that marriage is carried out by two people of different sexes, namely between a man and a woman, by forming the aim of form a happy family based on the religion and beliefs of the bride and groom. The validity of a marriage is determined by the conditions for the validity of marriage.¹ Marriage is valid if it fulfills all the conditions stipulated by the Marriage Law Article 6, paragraphs (1) to (6). In addition to having to fulfill the conditions for the validity of a marriage, as stipulated in Article 8 of the Marriage Law, there are also prohibitions relating to marriage, namely for two people who are:

- a. Related by blood in a straight line of descent down or up;
- b. Related by blood in the lateral line of descent, namely between siblings, between a person and his parents' siblings, and between a person and his grandmother's siblings;
- c. Related by consanguinity, namely breastfeeding parents, breastfeeding children, breastfeeding siblings, and aunts/uncles;
- d. Related to breastfeeding, namely breastfeeding parents, breastfeeding children, breastfeeding siblings, and breastfeeding aunts/uncles;
- e. Related to the wife or as an aunt or niece of the wife, if a husband has more than one wife;
- f. Has a relationship that, by his religion or other applicable regulations, prohibits marriage.

If one of the conditions is not met, the marriage is invalid. Based on Article 8 above, it is clear that the marriage is invalid and must be annulled. However, the fact is that many cases of inbreeding occur in Indonesia, such as younger siblings impregnating older siblings (North Lampung), inbreeding marriage (East Kalimantan), inbreeding to have two children (South Sulawesi), a family molesting a girl (Lampung) and a student getting pregnant by her sister (West Sumatra).²

This phenomenon that occurs is known as incest or sexual relations with close relatives. The close relatives referred to here are relatives in the context of genes or blood relations. There are several definitions of incest:

¹ Muhammad, "Receptio A Contrario in Practice: Harmonizing Islamic and Customary Inheritance Law through Mediation in Aikmel" (2025) 1:1 *Iuris Philos J* 35-52, online: <<https://jurnal.jurisprudenceinsights.com/index.php/Iurisphilosophiajournal/article/view/7>>.

² Kompas Cyber Media, "5 Kasus Hubungan Sedarah di Tanah Air, Dipergoki Orangtua hingga Miliki Dua Anak", (2020), online: *Kompas* <<https://regional.kompas.com/read/2020/02/20/05350091/5-kasus-hubungan-sedarah-di-tanah-air-dipergoki-orangtua-hingga-miliki-dua>>.



- a. Incest = Desecration of blood.³
- b. Incest (adultery with relatives) is sexual relations between people of the same sex who are closely related by blood, through blood ties.
- c. Incest is sexual intercourse between a man and a woman within or outside marriage, where they are closely related by blood. Legally and health-wise, such sexual relations are not permitted.
- d. Incest is sexual violence that occurs between family members. The perpetrators are usually older family members, and the victims are children.⁴

Based on the cases that occurred, most sexual violence is committed in personal relationships. Data from Komnas Perempuan shows that out of 2,363 cases of violence against women, incest is one of the types of sexual violence in the personal sphere with the highest percentage; incest ranked third with 433 case findings or 18% in 2022.⁵ The invalidity of a marriage will have many legal consequences both for the marriage itself, and will also have an impact on the children who are born, both on their position and rights.

Inbreeding is strongly opposed and not justified by almost all societies in the world. This is due to the impact of the relationship; inbreeding has a very negative impact on both the perpetrators of incest and the children born from inbreeding. Inbreeding is scientifically known to have a high potential to produce weak offspring, both physically and mentally (defects), or can even result in death (lethal). This is the reason why marriage with blood relatives is prohibited in both the Civil Code and Islamic Law.

Marriage is supposed to be done only once for all time, even until death separates, but in certain circumstances, some things can require the breakup of marriage, in the sense that if the household is continued, there will be more harm or badness than good. In this case, Islamic Law allows the dissolution of marriage as a last step to maintain the household, so that the dissolution of marriage will be a good solution for him and his spouse.

A marriage can be terminated or ended by several things, for example because of the divorce that the husband gives to his wife, or because of the divorce that occurs between the two, or also for other reasons, one of which is due to the cause of *fasakh* or the annulment of marriage by law that occurs in court. One of the causes of *fasakh* is when two people who enter into a marriage are found to be related by blood so closely that the relationship they establish is forbidden (incest).

Inbreeding or incestuous relationships are sexual relationships committed by couples who have close family ties (kinship), usually between fathers and daughters, mothers and sons, or between siblings or half-siblings.⁶ Apart from the incest polemic itself, what needs attention is the legal consequences faced by children born from incest marriages. Because many things will happen to children born from the

³ K Kartono, *Psikologi Abnormal dan Abnormalitas Seksual dalam Nur Rokhmad, Kedudukan Anak Sumbang dalam Penerimaan Harta warisan IAIN Walisongo*, 2010) [unpublished].

⁴ Elli Nur Hayati, *Panduan untu Pendampingan Perempuan Korban Kekerasan, Konseling Berwawasan Gender IAIN Walisongo*, 2010) [unpublished].

⁵ NU Online, "Melihat Lebih Dalam Fenomena Inses di Indonesia", (2023), online: <<https://www.nu.or.id/nasional/melihat-lebih-dalam-fenomena-inses-di-indonesia-HLW5m>>.

⁶ Wikipedia, "Inses" in *Ensiklopedia Bebas*.



incestuous relationship itself, the author wants to examine and study a normative research entitled “The Position of Children in the Distribution of Inheritance from Incest Marriages According to Islamic Law and Civil Law”.

METHOD

Research method is a way of doing something by using the mind carefully to achieve a goal by searching, recording, formulating, and analyzing until preparing a report.⁷ Legal research is an entire effort to seek and find the right answer and/or the answer that is never wrong (true answer) about legal problems, requiring careful and valid research results to run and answer existing problems.

This research uses normative legal research, which uses the method of doctrines and principles in legal science, namely, starting from faith as a teaching that provides rules for behavior. Regarding the legal materials used, which consist of primary legal materials, tertiary legal materials, this method uses the applicable norms conceptual approach, which refers to concepts, principles, and theories that have to do with the legal issues discussed, content approach. The technique of collecting legal materials used is literature study, where this technique studies, records, and reads doctrines. Furthermore, the data is analyzed in a descriptive quantitative manner.⁸

RESULT & DISCUSSION

I. Concepts/Norms Regarding Child Status in Civil Law and Islamic Law

Children born from incestuous relationships are included in the group of children born out of wedlock and are equivalent to adulterous children, even though all children are sacred human beings just like other children, what makes them different in the eyes of the law is because they are born from relationships that are prohibited and opposed by both religion and positive law, so these children are often labeled with negative labels by the community as a result of the actions of their parents.

1. The position of children according to the Civil Code (*KUHPerdata*) in the Civil Code recognizes several groups, among others:

a. Legal Child

Legal children are children born from a legal marriage; legal children occupy the highest and most perfect position/strata in the eyes of the law compared to other children.⁹ As stated in the Civil Code in the provisions of Article 250 of the Civil Code, “Every child born or grown during a legal marriage gets the husband of the mother of the child as his child.” According to the provisions of Article 261 of the Civil Code, the validity of a child is proven by a birth certificate. In addition to the birth certificate, proof of the validity of a child is the marriage certificate of the parents. If the marriage certificate does not exist or is lost, the position of the legitimate child cannot be disputed if the parents live as husband and wife.

⁷ Cholid Nabuko & Abu Achmadi, *Metodologi Penelitian* (Jakarta: PT Bumi Aksara, 2009).

⁸ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2016).

⁹ DY Witanto, *Hukum Keluarga, Hak dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK tentang Uji Material UU Perkawinan* (Jakarta: Prestasi Pustakaraya, 2012).



b. Unmarried Children

Based on Article 272 of the Civil Code, the definition of extra-marital children is divided into 2 two, namely:

- 1) Extra-marital children in the broadest sense are: all children born outside of marriage, including adulterous children and discordant children. An adulterous child is a child born to a woman or fathered by a man while the woman or man is married to another person. An illegitimate child is a child born to a mother who is prohibited by law from marrying the man who fathered her. According to Article 280 of the Civil Code between extramarital children and their parents have a legal relationship (civil law relationship), if the father and mother recognize it, then the extramarital child only has a legal relationship with the two parents. In principle, recognition is carried out voluntarily, meaning that the parents make a statement in the form as specified in the Civil Code stating that a child has been born outside of marriage, the recognition must be made authentically and explicitly, and cannot be inferred. With this recognition, the status of the out-of-wedlock child is recognized, among others, in the granting of marriage licenses, reciprocal obligations in providing maintenance, guardianship, the right to use names, inheritance, and so on.
- 2) Extra-marital children in the narrow sense are children born outside of marriage, except for adultery and illegitimate children. Adulterous children and discordant children do not have the right to inherit from their parents. The law only gives him the right of alimony or maintenance, as stated in Article 867 of the Civil Code, that "the provisions referred to above do not apply to children who are born in adultery or discord, the law gives them only the necessary maintenance." The maintenance referred to in the law is the right to maintenance that he gets until he grows up, but this depends on the ability of the father or mother and is related to the number and condition of the legal heirs. Adulterers and sumbang children can inherit through a testator or a will or testament, but to inherit ab instance or based on the law, adulterers and sumbang children do not get a position in it.

2. The position of children according to the Marriage Law

a. The Marriage Law only recognizes 2 classes of children:

1) Legal children of both parents

Article 42 of Law Number 16 of 2019 concerning Marriage explains that a legitimate child is a child born in or as a result of a legal marriage. The position of legitimate children in marriage law is the same as that described in the Civil Code, as well as their inheritance rights.

2) Extramarital child

An unmarried child is a child who is born outside of the marriage of his or her parents, as stated in Article 43 of Law Number 16 of 2019 concerning marriage. Extra-marital children only have a civil relationship with the mother and the mother's family who gave birth to them, so that extra-marital children only inherit through the mother.

In civil law, only children born from these siri marriages (called extra-marital children) are protected by the Constitutional Court Decision (MK) No.46/PUU-VII/2010, which emphasizes that extra-marital children have a



civil relationship with their mother and her family, as well as with their biological father and their biological father's family,¹⁰ which can be proven based on science and technology and/or other evidence according to the law has a blood relationship, what is meant by science and technology is a DNA test but the problem is that the biological father of the child is still his own family who still has a blood relationship whose law is forbidden to be married by his mother.

3. Position of the child according to Islamic law

In Islamic law there are various kinds of position/status of children, according to the source of origin of the child itself, the source of origin that will determine the status of a child, the position/status of biological children, adopted children, milk children, adopted children, stepchildren, and children out of wedlock, each of the children mentioned above, gets special attention in Islamic law which determines the position/status, both in descent and inheritance, and guardianship. The following are the various kinds of children's positions in Islam:

a. Natural child

A biological child can also be said to be a legitimate child; the understanding is that the child is born from a legal marriage between the mother and father. In positive law, it is stated that a legitimate child is a child born in or as a result of a legal marriage. In the view of Islamic law, there are 4 (four) conditions so that the child's *nasab* is considered valid, namely:

- 1) Pregnancy for a wife is not impossible, meaning that it is normal and natural to become pregnant, Imam Hanafi does not require this, according to him, even if the husband and wife do not have sexual intercourse, if the child is born to a wife who is legally married, the child is legitimate.
- 2) The period between the birth and the consummation of the marriage is at least six months from the time of the marriage, and there is consensus among Islamic jurists (*Fuqha*) that this is the shortest period of pregnancy.
- 3) The child was born in less than the full term of the pregnancy. There is a dispute among Islamic jurists about this.
- 4) The husband does not deny the child through the institution of *li'an*. If a man has doubts about the maximum limit of pregnancy being exceeded, then there is a reason for the husband to deny the child conceived by his wife using *li'an*.

Legitimate children have a certain position towards their families, parents are obliged to provide a living, adequate education, maintain the life of the child until he grows up or until he can stand alone looking for a living, legitimate children are the foundation of their parents' hopes and at the same time become the successor of their descendants.

b. Adopted child

Adopted children in Islamic law, can be understood from the meaning of the words of Allah SWT in *Surah Al-Ahzab* verses 4 and 5 which states "He does not make your adopted children your biological children (themselves) which is only what you say in your mouth. Call them (the adopted children) by (using) the names of their fathers". According to Article 171 letter h of the Compilation

¹⁰ Komariah, *Hukum Perdata*, revisi ed (Malang: UMM Press, 2019).



of Islamic Law (KHI), the definition of an adopted child is "a child in whose maintenance for daily life, education costs, and so on, the responsibility shifts from the original parents to the adoptive parents based on a court decision. With the appointment of a child, the adopted child does not result in a change in the legal relationship between the adopted child and his adoptive parents, both in the relationship of descent/blood and in the relationship of *muhrim*. So that the status of the adopted child against the inheritance of his adoptive parents, he does not inherit but obtains it through the will of his adoptive parents, then he is given a mandatory share of as much as 1/3 of the inheritance of his adoptive parents.

The institution (regulation) of child adoption in Islamic Law, the adopted child does not have a blood relationship between the adoptive parents and the adopted child. This means that in Islamic Law, the adopted child is not used as a basis for inheritance, because the basic principle for inheritance is marital blood relations, so also the adoption of a child does not involve an obstacle to entering into marriage.

c. Stepchildren

Stepchildren can occur if, in a marriage, there is one party, either the wife or the husband, or both parties, each brings children into the marriage. The child remains in the responsibility of his parents, if in a marriage the wife brings a child who is a minor (not yet an adult) and according to the decision of the Court the child Islam still gets maintenance from his father until he grows up, then the decision remains valid even though the mother has remarried with another man. The position of stepchildren in both Islamic Law and Customary Law, Western Civil Law is regulated in detail. That is because a stepchild has a biological mother and father, so in terms of inheritance, he still has the right to inherit from the inherited property (inheritance) of his biological mother and father if his biological mother and father die.

d. Foster child/foster child

Anak pira/another foster child is also from the children mentioned above, because regarding this *piara*/nanny, he is only assisted in terms of his survival and his life needs, both for daily needs and for education costs. There are foster children whose lives follow foster parents, but their legal relationship remains, and there is no legal relationship with foster parents. Apart from that, some foster children continue to follow their biological parents, but for their living expenses and education costs, they get support from foster parents. Thus, in terms of inheritance, the foster child does not get a share at all, unless the foster parents give their property through a grant or possibly through a will.

e. Out-of-wedlock child

Extramarital children are children born as a result of extramarital sex. In Islamic Law, a child can be considered a child outside of marriage if:

- 1) Adultery is a child born as a result of sexual intercourse between a man and a woman not within the framework of a marriage contract or anything resembling such a contract.¹¹

¹¹ M Nurul Irfan, *Nasab dan Status Anak dalam Hukum Islam* 2016) [unpublished].



- 2) A *Mula'annah* child is a child born to a wife whose existence is denied by the husband as his child, and accuses his wife of committing adultery with another man by taking an oath of *li'an* against his wife.
- 3) A *syubhat* child is a child born to a woman who has sexual intercourse in a *syubhat* manner. What is meant by *syubhat* in this case, according to *Jawad Mughaniyah*, is a man having sexual intercourse with a woman who is forbidden to him because he does not know that it is forbidden.

Regarding the status of children out of wedlock, both in national law and Islamic law that the child only has *nasab* with his mother, and children born outside of marriage have a relationship with their mother and their mother's family. This is stated in Article 100 of the Compilation of Islamic Law which reads "Children born outside marriage only have a *nasab* relationship with their mother and their mother's family", then it also results in the loss of the father's responsibility to the child and the loss of the child's rights to the father. In Islamic law, adulthood is seen from the moment there are no visible signs of this, so a child is considered an adult when he has reached the age of 15 years. In Islamic law, sexual intercourse between a man and a woman without a legal marriage is called *zina*. The sexual relationship does not distinguish whether the perpetrator whether a girl, married or widowed, *jejaka*, married or widowed, as it applies to civil law. After the existence of the child's position in the provisions of Islamic Law, there will then be a grant of rights or escape rights for children that must be recognized/believed, and secured as an implementation of the practice received by the child from parents, society, nation, and state. The provision is confirmed in *Surah Al-Isra'* verse 17, which means "and do not kill children for fear of poverty, we are the ones who provide for them and also for you. Indeed, killing them is a great sin".

Children's rights in the view of Islam have a universal aspect towards the interests of children, namely, putting children's rights in the view of Islam, illustrating that the basic purpose of the life of Muslims is to build a human race that upholds the teachings of Islam. Thus, children's rights in the view of Islam include legal aspects in the environment of an absolute for Islam. The perspective in question does not only position Muslims who must comply with Islamic laws such as Islamic criminal law, Islamic civil law, Islamic marriage law, Islamic constitutional law and inheritance law as mandatory formalities that must be obeyed by Muslims and if violated, the act will get the curse and punishment of Allah SWT both in this world and in the hereafter. In other actions, Muslims must obey in upholding children's human rights by fighting against positive national laws. Islam also places children's human rights, which can be based on Civil Law, Criminal Law, and Constitutional Law that apply within the scope of the territory of Indonesia.

In Islamic law, the sources of Islamic law (Quran and Sunnah) contain laws that prohibit incestuous marriages.¹² Inbreeding is an event that must be anticipated/avoided at all costs because this is related to the balance in society, which must be maintained as much as possible. In Islamic law and national

¹² Tsuwaibah Abidah et al, "Comparison of the Civil Law System between the Netherlands and Indonesia in the Application of Criminal Law" (2025) 1:1 J Verum Legis Indones 38-44, online: <<https://journal.abhinaya.co.id/index.php/jvli/article/view/41>>.



positive law, the child only has a *nasab* with the mother, that children born outside of marriage only have a relationship with the mother and the mother's family, so this results in the loss of the father's responsibility to the child and the loss of the child's rights to the father. Children's rights in the view of Islam are to build a human race that upholds the teachings of Islam; thus, children's rights in the view of Islam include legal aspects in the environment of an Islamic life. In this case, it means that Muslims must comply with Islamic laws such as Islamic Criminal Law, Islamic Civil Law, Islamic Marriage Law, and Islamic inheritance, and if violated, the child will get punishment from Allah SWT both in this world and in the hereafter.

II. The Position of Children Born from Incest Marriages in Receiving Inheritance according to Civil Law and Islam

The occurrence of inheritance is always related to marriage; the regulation governing marriage is Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. The definition of marriage is regulated in Article 1, which reads as follows: "Marriage is the inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on God Almighty".

A marriage can be said to be valid if it has fulfilled all the material and formal requirements of marriage:

1. Material conditions are conditions that concern the personalities of the parties to the marriage and the permissions that must be granted by third parties in the cases specified by the law.¹³ Divided into two, namely:
 - a. Absolute material requirements, namely requirements that must be met by everyone who will enter into a marriage, regardless of who he is marrying. This requirement applies generally; if it is not fulfilled, then the marriage cannot take place. Regarding the marital requirements, it is regulated in Law number 16 of 2019 concerning Marriage, among others:
 - 1) Consent of the prospective bride and groom;
 - 2) Permission from parents/guardians;
 - 3) The age of the prospective groom has reached 19 (Nineteen) years and the prospective bride 19 (Nineteen) years;
 - 4) There is no prohibition of marriage between 2 people because there is a family relationship or blood relationship that is prohibited in marriage;
 - 5) Not bound by marriage to other people;
 - 6) Not divorced for the second time with the same husband and wife, who is to be married; and
 - 7) A woman (widow) can not marry again before the passing of the waiting period.
 - b. Relative Material Requirements are requirements for the party to be married. A person who has fulfilled the absolute material requirements can marry; however, he cannot marry just anyone, and he must fulfill the relative material requirements, namely:

¹³ R Soetojo Prawirohamidjojo & Marthalena Pohan, *Hukum orang dan keluarga (Personen en Familie-Recht)* (Surabaya: Airlangga University Press, 2008).



- 1) There is no blood relationship (descent) or close family relationship between the two of them;
 - 2) Neither of them has ever committed adultery;
 - 3) Not to marry the same person after being divorced for the third time.
2. Formal conditions are conditions that relate to the methods or formalities of marriage. Explained in article 12 of Law No. 16 of 2019 concerning marriage, and realized in articles 3 to 13 of PP No. 9 of 1975 concerning the implementation of Law No. 16 of 2019 concerning marriage, in brief, the formal requirements of marriage include, among others:
- a. Every person who intends to enter into a marriage shall give notice of his/her intention to the Marriage Registrar of the place where the marriage is to take place, at least 10 days before the marriage takes place. The notification may be made orally or in writing by the prospective bride and groom or by their parents or representatives (Article 3-4).
 - b. The registrar who receives the notification of intention to marry shall examine whether the conditions for marriage have been fulfilled and whether there are no impediments to marriage under the Law (Article 6, paragraph (1)).
 - c. The results of the research shall be written in a list designated for that purpose (Article 7, paragraph (1)).
 - d. After the procedures and requirements for notification have been fulfilled and there are no impediments to marriage, the Recording Officer shall announce the intention to solemnize the marriage by affixing an announcement letter according to the form prescribed at the Marriage Registration Office in a place that has been determined and is easily read by the public (Article 8).

When a marriage is found to contain elements of a marriage prohibition, the marriage can be prevented or annulled by law. The prohibition of marriage is regulated in Article 8 of Law No. 16 of 2019 concerning marriage, namely between two people who are:

- a. Related by blood in a straight line of descent downward or upward;
- b. Related by blood in the sideways line of descent, namely siblings, between a person and a parent's sibling, and between a person and a grandparent's sibling;
- c. Related by consanguinity, i.e., in-laws, stepchildren, sons-in-law, and mothers/stepfathers;
- d. Related to breastfeeding, children of breastfeeding, brother and aunt or niece of the wife, if a husband has more than one wife;
- e. Related to the wife or as an aunt or niece of the wife, if a husband has more than one wife;
- f. Those who have a relationship that is prohibited by their religion or other applicable regulations from marrying; f.
- g. Who has a relationship that is prohibited by their religion or other applicable regulations.

If one of the conditions is not met, the marriage is invalid. Based on Article 8 above, it is clear that marriages that occur in blood relations or close kinship are prohibited; if this happens, the marriage is invalid and must be canceled. Prevention of marriage is something that is done by a third party to avoid a



marriage that is contrary to the law.¹⁴ This means that the prevention of marriage is carried out by a third party by applying to the court before the marriage in question takes place. In Islamic law, there is no term known as prevention of marriage; what exists is *nikah al-fasid*, namely marriage that does not fulfill one of the conditions of marriage.¹⁵ The ruling on a *fasid* marriage is that it is invalid.

Marriage annulment is an attempt by a third party to cancel a marriage that is contrary to the law, meaning that it is carried out after the marriage takes place, by applying for marriage annulment to the court. And in Islamic law, *nikah fasid* and *nikah batil* can be annulled, because the law is invalid. A false marriage is a marriage that does not fulfill one of its conditions. The conditions for the validity of marriage are by Article 8, Letter (b) of Law Number 16 of 2019 that marriage is prohibited between two people who are related by blood in a lateral line, namely between a person and his parents' siblings and between a person and his grandmother's siblings. Article 39, number 1 of the Compilation of Islamic Law also clearly states that. Marriage between a man and a woman is prohibited due to a blood relationship.

- a. By a woman who gave birth to him or who descended from him or his descendants;
- b. By a woman descended from the father or mother;
- c. By a woman who is a relative of the woman who gave birth to him.

Blood marriages that are entered into because of negligence or prior ignorance that there is a blood relationship between them, and thus a prohibition on marriage, are considered to be *shubhat* relationships. When a marriage produces offspring, there will automatically be a relationship related to inheritance between parents and their children. Related to inheritance law, there are quite a lot of definitions, but basically, what is stated by experts is the same, namely, inheritance law is a regulation that regulates the wealth of the heir if he has died and can pass on to his heirs. Regarding the transfer of the heir's property, what is meant in this case is the rights and obligations of a person who has a monetary value. These things can be described as follows:¹⁶

- a. Inheritance law is part of property law.
- b. Rights and obligations that have no monetary value cannot be inherited.
- c. Engagement, although it has the nature of wealth law, is derived from family law, excluding inheritance.
- d. Certain legal relationships, although they have a monetary value, are personal, are not included in the rights and obligations that can be inherited.

Inheritance in the Civil Code is contained in BOOK II on property in Chapter Twelve on marriage due to death. This provision starts from Article 830 of the Civil Code up to Article 113. In Islamic inheritance, the rules or legal basis are:¹⁷

- a. Quranic sources
- b. Source of Al-Hadith

¹⁴ Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan* (Yogyakarta: Liberty, 1999).

¹⁵ Madani, *Hukum Keluarga Islam di Indonesia* (Jakarta: Kencana Prenada Media Group, 2016).

¹⁶ Maman Suparman, *Hukum Waris Perdata* (Jakarta: Sinar Grafika, 2015).

¹⁷ Mardani, *Hukum Keluarga Islam di Indonesia* (Jakarta: Kencana, 2017).



- c. *Ijma'* (Ulama Agreement)
- d. *Ijtihad*.

The blood relationship or *nasab* between parents and their children is the strongest civil relationship and cannot be contested or limited by anyone or anything. Therefore, it is necessary to clarify the lineage of a child because it will bring legal consequences to the child, which will also bring rights and obligations that are obtained and must be carried out. After all, they have a legal status. The Civil Code recognizes various positions of children, ranging from legal children, children outside natural marriage, adultery, and discordant children. All of these children's positions have different rights and obligations in the eyes of the law. Some have direct inheritance rights, some must go through recognition first, so that they can only have inheritance rights against their parents; even for adulterous children, they do not have inheritance rights at all against their parents.

Civil law states in the definition of a legitimate child of extramarital funds/adulterous children that the status of a child can be said to be a legitimate child or not if seen from the age of pregnancy until childbirth, whether it has reached 180 days/6 months. If the child is born or grows during the marriage, the husband of the mother is the father (the child is legitimate), and if a child is born before the 180th day, then the husband can deny the status of the child. This means that in civil law, it is stated that if a child is born and grows during the marriage and is born after 180 days, then it is clear that the child is legitimate. This is stated in articles 250 and 251 BW.

Islam views children as successors who will continue life in the family. The issue of lineage is very important to foster and maintain the integrity of mankind and is one of the main elements that must be maintained by carrying out marriage and avoiding all forms of adultery. Inheritance in Islamic *fiqh* literature comes from the word *al-muwarits*, the single word *al-mirat*, commonly also called *faraidh*, which is the plural of the word *faridhah*, taken from the word *fardh*, which means "provision or destiny". *Al-Fardh* in *shari'i* terminology is the share that has been determined by the heirs.¹⁸

Acceptance of inheritance property in Islamic inheritance law is based on the principle of *ijabri*, namely the inheritance property moves by itself according to the decree of Allah SWT without depending on the will of the heir or heir. In the Compilation of Islamic Law, it is described that inheritance is a law that regulates the transfer of property rights to the inheritance (*tirkah*) of the heir, determines who is entitled to become an heir, and how the division of the property is carried out for each heir.¹⁹ Article 186 of the Compilation of Islamic Law explains that children born outside of marriage only have a relationship of mutual inheritance with their mother and their mother's family. The Marriage Law states that marriages involving kinship relationships such as siblings, step-siblings, parents and children, or grandmothers and grandchildren, are considered void according to the law; in such cases, the child born from the

¹⁸ Sayuti Thalib, *Hukum Kewarisan Islam di Indonesia* (Jakarta: Sinar Grafika, 2022).

¹⁹ Mahkamah Agung RI, *Himpunan Peraturan Perundang-undangan yang Berkaitan dengan Kompilasi Hukum Islam Serta Pengertian dalam Pembahasannya* (2011).



relationship is considered an illegitimate child or a child out of wedlock. In the Indonesian civil law system, children born out of wedlock usually do not have inheritance rights from their biological parents. Children born from inbreeding or incest, do not have the right to inherit property and are not entitled to receive inheritance from their biological father, because they do not have a *nasab* relationship and are also not recognized as the result of a legal marriage, and the granting of inheritance will be contrary to Islamic Sharia Law, only children with ties of *nasab* and marriage are entitled to inherit. Children born out of a marriage or incestuous relationship can only receive the right to claim the necessary maintenance from their parents' property.

Similar to the Marriage Law, the Compilation of Islamic Law does not specifically regulate incestuous relationships. However, incest is one of the relationships prohibited in the implementation of marriage according to the Compilation of Islamic Law. The provisions regarding the prohibition of incestuous marriages are contained in Article 39, paragraph (1), letters a to c, in which 3 types are categorized as incestuous relationships, namely:

- a. With the woman who gave birth to him or who begot him and his descendants, meaning sexual intercourse between a child and his biological parents.
- b. Relationship between a man and a woman who is a descendant of the father or mother, meaning sexual intercourse between a man and a woman who is the mother of a sibling or the father of a sibling.
- c. Sexual intercourse between a man and a woman who is a relative of his mother or father, meaning sexual intercourse between a man and a woman who is a relative of his mother or father.

In the matter of inheritance, the scholars of the madhhabs are unanimous in this regard that children born from an invalid marriage (adultery) only get inheritance from the legacy of the mother or her relatives.²⁰ Some scholars from the Hambali Mazhab, including Ibn Taymiyyah, who in certain circumstances still attribute adulterous children to their father and inherit their father's inheritance, the next problem arises when the provisions regarding the inheritance of children out of wedlock are stipulated in Indonesia, although in general the inheritance law that applies to Muslims, namely the inheritance law formulated by the majority of scholars, especially the Sayfi'i school of thought.²¹ Imam Sayfi'i and Imam Malik are of the view that the adulterous intercourse does not result in a legitimate offspring, so the child is born to the mother only, because there is no blood relationship between the man and the child according to the law, so the man is not obliged to provide for the child, and there is no relationship of mutual inheritance between the two.²² Thus, the status of incestuous children in the view of Islam is equated with adultery, so that the child is only related to the mother, while with the father, the *nasab* relationship has been broken.

The contradiction between incestuous sexual relations with several precepts, namely the first precept of belief in the existence of God, being part of

²⁰ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab: Ja'fari, Hanafi, Maliki, Syafi'i, Hambali* (Jakarta: Lentera, 2015).

²¹ Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia* (Gema Media, 2001).

²² Mahmud Yunus, *Hukum Perkawinan dalam Islam Menurut Empat Mazhab* (Jakarta: Hidayakarya Agung, 1996).



what can be done and what should not be violated by humans, while incestuous relations are acts that are strictly prohibited by all religions. Then, contrary to the second principle, namely that human nature is fair and civilized through actions, incest does not reflect the value of fairness and civilization; it damages the moral order of society. Regulations on incest in the Criminal Code are listed in Article 285, Article 287, Article 294, paragraph (1), item (1). However, Article 285 tends to criminalize rape, while Article 294 paragraph (1), and Article 295 paragraph (1) item (1) are quite relevant to be the legal basis for the act of incestuous relationships.

The inheritance rights of children outside of marriage as regulated in the Civil Code, namely: if the deceased leaves legitimate descendants according to the law or husband and wife, then the children outside the marriage inherit one third of the portion they would have received, if they were legitimate children according to the Law they inherit half of the estate if the deceased does not leave descendants of the husband or wife, but leaves blood relatives in the line up or brothers and sisters or their descendants and three quarters if only blood relatives are still alive in a more distant degree. Regarding the inheritance rights of children of discord or children of inbreeding cannot inherit from their parents by Article 867 of the Civil Code.

CONCLUSION

In Civil Law, the position of children is divided into two, namely legitimate children and illegitimate children, in this case inbreeding is strictly prohibited so that the marriage is invalid or canceled by law, as well as the status of this incestuous child being an illegitimate child because the relationship between the two is carried out using adultery. So that the child applies the provisions of adultery. Adulterous or sumbang children can only inherit through a testator or a will or testament, but to inherit ab instance or based on legislation, adulterous children and sumbang children have no position in it. In Islam does not explain specifically about incest but in the Compilation of Islamic Law the criteria for legitimate children are explained as stated "children born outside of marriage only have a *nasab* relationship with their mother and their mother's family, the inheritance rights of children from incest in the compilation of Islamic law only inherit from their mother and their mother's family this is stated in Article 186 of the Compilation of Islamic Law is "children born outside of marriage only have a relationship of mutual inheritance with their mother and family from their mother's side." So that if in a family there is a discordant child, then from the female line then the discordant child can close the heirs under him. In the Civil Code, illegitimate children are not entitled to inheritance from their parents at all, and as much as possible, only get enough maintenance from the property of their biological father. Adulterous or discordant children can only inherit through a testator or a will or testament, but to inherit ab instance or based on statutory regulations, adulterous children and discordant children have no position in it.

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