

## POSITION OF CHILDREN IN THE DISTRIBUTION OF INHERITANCE FROM INCESTUAL MARRIAGE ACCORDING TO ISLAMIC AND CIVIL LAW

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### *Abstract*

*Marriage is a sacred process with several legal requirements that must be obeyed when one of the conditions for the validity of a marriage is not fulfilled. Furthermore, if things contained in the prohibition of marriage, such as committing inbreeding or incest, then 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, including 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 it results in the position that children born from incest relationships are illegitimate children 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 biological father, there are no relations at all because they have no obligation to inherit each other and only have a right to demand the necessary maintenance from their biological father asset's*

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### A. Introduction

God created humans in pairs between men and women so that humans can continue their descendants.<sup>1</sup> In terms of continuing their descendants, both by Allah SWT and by humans themselves, regulations are drawn up in such a way that humans can live their lives with complete order and goodness by carrying out a marriage, in Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning

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<sup>1</sup> S. Wells, *The Journey of Man: A Genetic Odyssey*, Vol. 51 (Princeton University Press, 2017).

Marriage: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Almighty God." Article 2, paragraph (1) states, "Marriage is valid if it is carried out according to the laws of each religion and belief."

In the above understanding, marriage is carried out by two people of different sexes, namely a man and a woman, to form a happy family based on the religion and beliefs of both parties.<sup>2</sup> A marriage is valid if it meets the requirements for a valid marriage. A marriage is valid if it has met all the requirements stipulated by the Marriage Law, Article 6, paragraph (1) to paragraph (6). In addition to having to meet the requirements for a valid marriage, as stipulated in Article 8 according to Article 8 of the Marriage Law,<sup>3</sup> there are also prohibitions related to marriage, namely for two people who:

- a. Blood related in a straight downward or upward lineage;
- b. Blood relations in a lateral lineage, namely between siblings, between a person and their parents' siblings, and between a person and their grandmother's siblings;
- c. Family-related, namely foster parents, foster children, foster siblings, and foster aunts/uncles;
- d. Those related to foster care, namely foster parents, foster children, foster siblings, and foster aunts/uncles;
- e. Relative to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
- f. Having a relationship that is prohibited by religion or other applicable regulations from marriage.

If one of the requirements 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, there are many cases of incest in Indonesia, such as a younger sibling impregnating an older sibling (North Lampung), consanguineous Marriage (East Kalimantan), incest to the point of having two children (South Sulawesi), a family molesting a girl (Lampung) and a student getting pregnant by her younger sibling (West Sumatra).

This phenomenon is what 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:<sup>4</sup>

- a. Incest = Blood defilement.
- b. Incest (adultery with siblings) is sexual relations between people of different sexes who are closely related by blood through blood ties.

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<sup>2</sup> Susi Susilawati et al., "Manifestations of Gender Injustice in Divorced Marriages: The Kabalutan Tradition," *Jambura Law Review* 5, no. 1 (2023): 136–55, <https://doi.org/10.33756/jlr.v5i1.17722>.

<sup>3</sup> Reka Desrina Wati, "The Marriage Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law," *Al Hurriyah : Jurnal Hukum Islam* 7, no. 2 (2022): 116, <https://doi.org/10.30983/alhurriyah.v7i2.4125>.

<sup>4</sup> M. Patterson, "Coming Too Close, Going Too Far: Theoretical and Cross-cultural Approaches to Incest and Its Prohibitions," *The Australian Journal of Anthropology* 16, no. 1 (2005): 95–115, <https://doi.org/https://doi.org/10.1111/j.1835-9310.2005.tb00112.x>.

- c. Incest is sexual relations between men and women inside or outside of marriage where they are related by very close relationships/kinship/descent. 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.

Based on the cases that occur, most sexual violence is committed in personal relationships. Data from the National Commission on Violence Against Women shows that out of 2,363 cases of violence against women, incest is one of the types of sexual violence in the personal realm with the highest percentage; incest ranks third with 433 cases or 18% in 2022. The invalidity of a marriage will have many legal consequences for the marriage itself and will also impact the children born, both in terms of their status and rights.

Incest is vehemently opposed and is strongly discouraged by almost all people in the world; this is due to the impact of the relationship; incest has a very negative impact on both the perpetrators of incest and the children born from incest. It is scientifically known that incest has a high potential to produce weak offspring both physically and mentally (disabled) or can even result in death (lethal). Marriage with blood relatives is strictly prohibited in both Civil and Islamic laws.

A marriage can be terminated or ended by several things, for example, because of a divorce issued by a husband to his wife, or because of a divorce that occurs between the two, or also because of other reasons, one of which is because of the cause of fasakh or the cancellation of marriage by law that occurs in court. One of the reasons for fasakh is when two people who are married are known to have very close blood relations so that the relationship they have is forbidden (incest)

A blood relationship or incestuous relationship is a sexual relationship carried out by a couple who have close family ties (kinship), usually between a father and his daughter, a mother and her son, or between siblings or unilateral siblings.<sup>5</sup> Apart from the polemic of incest itself, what needs to get attention is the legal consequences received by children born from incestuous marriage. Because many things will happen to children born from the incestuous relationship itself, so the author wants to research and review a normative study entitled "**The Position of Children in the Distribution of Inheritance from Incest Marriage Results According to Islamic and Civil Law.**"

## B. Problem Formulation

- a. What is the concept/norm of the position of children in Civil Law and Islamic Law?

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<sup>5</sup> Ginny Mega and Maulidia Hasibuan, "The Relation of the Law on Marriage of the Batak Indigenous Clan with the Incest Marriage Law," *Awang Long Law Review* 4, no. 2 (2022): 318–25, <https://doi.org/https://doi.org/10.56301/awl.v4i2.384>.

- b. What is the position of children born from incestuous marriages in receiving inheritance according to Civil Law and Islamic Law?

### C. Research Method

The research method is a way of doing something by using the mind carefully to achieve a goal by searching, recording, formulating, and analyzing until compiling a report.<sup>6</sup> Legal research is all efforts to find the correct answer and the answer that is sometimes wrong (true answer) regarding legal problems. Careful and valid research results are needed to address existing problems.

This study uses normative legal research, which uses doctrines and principles in legal science, starting from the creed as a teaching that provides rules for behavior.<sup>7</sup> Regarding the legal materials used, namely consisting of primary and tertiary legal materials, this method uses applicable norms, a conceptual approach referring to concepts, principles, and theories related to the legal problems discussed, and a content approach. The legal material collection technique used is literature study, where this technique studies, records, and reads doctrines. Furthermore, the data is analyzed qualitatively and descriptively.

### D. Research Results and Discussion

#### Concepts/norms regarding the position of children 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 children of adultery,<sup>8</sup> even though all children are pure human beings just like other children; what makes them different in the eyes of the law is that they are born from a relationship that is prohibited and opposed by both religion and positive law so that these children are often labeled with negative labels by society due to the actions of their parents.

1. The position of children according to the Civil Code (KUHPperdata) in the Civil Code recognizes several groups, including:
  - a. legitimate child

Legitimate children are children born from a legitimate marriage; legitimate children occupy the highest and most perfect position/stratum in the eyes of the law compared to other children. As stated in the Civil Code in the provisions of Article 250 of the

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<sup>6</sup> S. J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*. (John Wiley & Sons, Ltd, 2024).

<sup>7</sup> Tunggul Ansari Setia et al., "NORMATIVE LEGAL RESEARCH IN INDONESIA: ITS ORIGINS AND," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/https://doi.org/10.22219/aclj.v4i1.24855>.

<sup>8</sup> Ahdiyatul Hidayah and Nur Hapizah, "Legal Protection For Children Out Of Wedlock In The Perspective Of Islamic Family Law," *Sakena: Jurnal Hukum Keluarga* 9, no. 1 (2024), <https://doi.org/https://journals.fasya.uinib.org/index.php/sakena/article/view/456>.

Civil Code, "Every child who is born or grows up during a legitimate marriage obtains the husband of the mother of the child as his child." According to the provisions of Article 261 of the Civil Code, the legitimacy of a child is proven by a birth certificate. In addition to a birth certificate, proof of the legitimacy of a child is with the marriage certificate of his parents. If the marriage certificate is missing or lost, the position of the legitimate child cannot be disputed if his parents live like husband and wife.

b. Illegitimate Child

Based on Article 272 of the Civil Code, the definition of an illegitimate child is divided into 2 (two), namely:

- 1) An illegitimate child, in the broad sense, is all children born outside of marriage, including adulterous children and illegitimate children.<sup>9</sup> An illegitimate child is a child born to a woman or conceived 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 from marrying, according to the law, the man who conceived her. According to Article 280 of the Civil Code, an illegitimate child and his parents have a legal relationship (civil legal relationship); if the father and mother acknowledge it, then the illegitimate child only has a legal relationship with both parents. In principle, recognition is done voluntarily, meaning that the parents make a statement as determined in the Civil Code stating that a child has been born outside of marriage. The recognition must be done authentically and firmly and cannot be concluded. With this recognition, the status of the illegitimate child is recognized, among others, in granting marriage permits, reciprocal obligations in providing support, guardianship, the right to use a name, inherit, and so on.
- 2) An illegitimate child, in the narrow sense, is a child born outside of marriage, except for children of adultery and illegitimate children.<sup>10</sup> Children of adultery and illegitimate children do not have the right to inherit from their parents. The law only gives them the right to alimony or maintenance, as stated in Article 867 of the Civil Code that "the provisions referred to above do not apply to children born in adultery or illegitimate children, the law provides them with only the necessary maintenance" the maintenance referred to in the law is the right to maintenance that

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<sup>9</sup> Bahruddin Muhammad et al., "The Inheritance Rights of Illegitimate Children Outside Marriage in the Perspective of Children ' s Rights," *International Journal of Sciences: Basic and Applied Research (IJSBAR)* 14, no. 1 (2014): 49–62, <https://doi.org/https://core.ac.uk/download/pdf/249333582.pdf>.

<sup>10</sup> Melissa Murray, "What ' s So New about the New Illegitimacy WHAT ' S SO NEW ABOUT THE NEW," *Dukeminier Awards: Best Sexual Orientation and Gender Identity Law Review* 20, no. 3 (2012): 387, <https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/dukemini12&div=4&id=&page=>

they receive until they are adults, but this depends on the ability of the father or mother and is related to the number and condition of the legitimate heirs. Children of adultery and illegitimate children can inherit through a testament or a will or testament, but to inherit an instance or based on the law, children of adultery and illegitimate children do not have a position in it.

2. The position of children according to the Marriage Law.

The Marriage Law only recognizes two groups of children:

a. Legitimate child of both parents

Article 42 of Law Number 16 of 2019 concerning Marriage explains that a legitimate child is born in or resulting from a legitimate marriage. The position of a legitimate child in marriage law is the same as that explained in the Civil Code, as are their inheritance rights.

b. Illegitimate Child

An illegitimate child is born outside the marriage of both parents, as stated in Article 43 of Law Number 16 of 2019 concerning Marriage. An illegitimate child only has a civil relationship with the mother and the family of the mother who gave birth to him. Hence, an illegitimate child only inherits through the mother.

In Civil Law, only children born from a secret marriage (called illegitimate children) are protected by the Constitutional Court (MK) Decision No. 46/PUU-VII/2010, which confirms that illegitimate children have a civil relationship with their mother and their mother's family, as well as with their biological father and their biological father's family, which can be proven based on science and technology and other evidence according to the law to have blood relations, 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 blood relations which is forbidden for his mother to marry.

3. The position of children according to Islamic law

In Islamic law, there are various positions/statuses of children, according to the Source of origin of the child itself; the Source of origin is what will determine the status of a child, the position/status of a biological child, adopted child, milk child, adopted child, stepchild, and illegitimate children, each of the children mentioned above, receive special attention in Islamic law which determines their position/status, both in terms of descent and inheritance, as well as guardianship. The various positions of children in Islam are as follows:

a. Biological children

Biological children can also be considered legitimate children,<sup>11</sup> meaning that the child is born from a legitimate marriage between the mother and father. In positive law, it is stated that a legitimate child is

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<sup>11</sup> John Lawrence Hill, "WHAT DOES IT MEAN TO BE A " PARENT "? THE CLAIMS OF BIOLOGY AS THE BASIS FOR PARENTAL RIGHTS," in *Parental Rights and Responsibilities*, vol. 588 (Routledge., 2017), 29–96.

a child born in or as a result of a legitimate marriage. In the view of Islamic law, there are 4 (four) conditions for the child's lineage to be considered legitimate, namely:

- 1) Pregnancy for a wife is not impossible, meaning it is normal and natural to get pregnant; Imam Hanafi does not require this, according to him, even though the husband and wife do not have sexual intercourse if a child is born from a wife who is legally married, the child is legitimate.
- 2) The period between birth and the implementation of marriage is at least six months since the marriage was implemented; regarding this, there is a consensus of Islamic law experts (Fuqha) as the shortest pregnancy period.
- 3) The child is born at a time less than the length of the pregnancy. Islamic law experts still dispute this.
- 4) The husband does not deny the child through the institution of Xi'an; if a man is in doubt about the minimum or maximum limit of pregnancy being exceeded, then there is a reason for the husband to deny the child conceived by his wife through Xi'an.

Legitimate children have a specific position in their family;<sup>12</sup> parents are obliged to provide a living, adequate education, and maintain the child's life until he is an adult or until he can stand on his own to earn a living; legitimate children are the mainstay of their parent's hopes and at the same time become the successors of their descendants.

#### b. Adopted children

Adopted children in Islamic law can be understood from the meaning of Allah SWT's words in Surah Al-Ahzab verses 4 and 5, which state, "He did not make your adopted children your (own) biological children. That is just 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 of Islamic Law (KHI), the definition of an adopted child is "a child whose responsibility for his daily living, education costs and so on is transferred from his original parents to his adoptive parents based on a court decision. With the adoption of a child, the adopted child does not result in a change in the legal relationship between the adopted child and his adoptive parents, whether in the relationship of descent/blood or the relationship of mahram. The status of an adopted child regarding the inheritance of his adoptive parents is that he does not inherit it. However, he obtained it through a will from his adoptive parents, so he is given a mandatory will of a maximum of 1/3 of his adoptive parents' inheritance.

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<sup>12</sup> D. W. Archard, *Children, Family and the State* (Routledge., 2018).

In 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, adopted children are not used as a basis for inheritance because the basic principle for inheritance is a blood relationship of marriage. Likewise, adoption does not involve obstacles to carrying out marriage.

c. Stepchild

Stepchildren can occur if, in a marriage, there is one party, either the wife or the husband, or both parties each bring a child into their marriage. The child remains under the responsibility of his parents if, in a marriage, the wife brings a child who is underage (not yet an adult). According to the decision of the Islamic Court, the child still receives support from his father until he is an adult. The decision remains in effect even though his mother has remarried another man. The position of this stepchild in both Islamic Law and Customary Law, Western Civil Law regulates in detail. This is because a stepchild has a biological mother and father, so in terms of inheritance, he still gets inheritance rights from the inheritance (inheritance) of his biological mother and father if his biological mother and father die.

d. Foster child

Other foster children are also from the children mentioned above because, regarding this foster child, he is only assisted in terms of his survival and his living needs, both for daily needs and for education costs.

Some of these foster children live with their foster parents, but their legal relationship remains, and there is no legal relationship with their foster parents.<sup>13</sup> Apart from that, some foster children continue to follow their biological parents, but for their living expenses and education costs, they get from their foster parents. So, in terms of inheritance, the foster child does not receive any part at all unless the foster parents give their property through a gift or possibly through a will.

e. Illegitimate Child

An illegitimate child is a child born from extramarital sexual relations. In Islamic law, a child can be considered an illegitimate child if:

- 1) A child of adultery is a child born from sexual intercourse between a man and a woman not in a marriage contract or one that resembles such a contract.
- 2) A child of mula'anah is a child born to a wife whose existence is denied by the husband as his child, and he accuses his wife of

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<sup>13</sup> Tinggi Agama et al., "Transfer of Foster Parents ' Assets to Foster Children from the Perspective of Islamic Law," *Jurnal Pendidikan Agama Islam Indonesia (JPAAI)* 4, no. 2 (2023): 39–42, <https://doi.org/10.37251/jpaii.v4i2.660>.



committing adultery with another man by taking a loan oath against his wife.

- 3) A child of doubt is a child born to a woman who doubtfully has intercourse; what is meant by doubt in this case, according to the *jawad mughaniyah*, is a man having intercourse with a woman who is forbidden for him because he does not know that it is forbidden.

Regarding the status of illegitimate children, both in national law and Islamic law, the child only has a lineage with his mother. In contrast, a child born out of wedlock only has a relationship with his mother and his mother's family. This is stated in article 100 of the compilation of Islamic law, which reads, "A child born out of wedlock only has a lineage with his mother and his mother's family," so 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 since these signs are not visible; then, a child is considered an adult when he has reached the age of 15. In Islamic law, having sexual relations between men and women without a legal marriage bond is called *zina*. The sexual relationship does not distinguish between the perpetrators, whether they are girls, married or widowed, bachelors, married or widowed, as applies to civil law. After the position of the child in the provisions of Islamic law, then there will be a granting of rights or the escape of the child's rights, which must be recognized/believed and secured as an implementation of the practice received by the child from parents, society, nation, and state. This provision is confirmed in Surah Al-Isra's verse 17, which means, "Do not kill children for fear of poverty; we are the ones who provide sustenance for them and also for you. Indeed, killing them is a great sin."

Children's rights in the Islamic perspective have a universal aspect towards the interests of children, namely placing children's rights in the Islamic perspective, illustrating that the primary goal of Muslim life is to build a human race that adheres to Islamic teachings.<sup>14</sup> Thus, children's rights in the Islamic perspective include legal aspects in the living environment of an absolute person for Islam. The perspective in question does not only position Muslims who must submit to Islamic law, such as Islamic criminal law, Islamic civil law, Islamic marriage law, Islamic constitutional law, and inheritance law, as mandatory formalities that Muslims must obey, and if violated, then the act will receive a curse and torture from Allah SWT both in the world and in the hereafter. In other actions, a Muslim must obey in upholding children's human rights by fighting for positive national law. 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.

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<sup>14</sup> Sturla Sagberg, "Taking a Children's Rights Perspective on Children's Spirituality," *International Journal of Children's Spirituality* 22, no. 1 (2017): 24–35, <https://doi.org/10.1080/1364436X.2016.1276050>.

In Islamic law the sources of Islamic law (Quran and Sunnah) contain laws that prohibit incestuous marriage. Consanguineous Marriage is an event that must be anticipated/avoided by all means because it is related to balance in society, which must be maintained as much as possible. In Islamic and positive law nationally, the child only has a lineage with his mother. A child born out of wedlock only has a relationship with his mother and his mother's family, resulting in losing the father's responsibility and the child's rights to the father. The rights of children in the view of Islam are to build a human race that upholds the teachings of Islam. Thus, the rights of children in the view of Islam include legal aspects in the living environment of a person of Islam. In this case, it means that Muslims must submit to Islamic laws such as Islamic Criminal Law, Islamic Civil Law, Islamic Marriage Law, and Islamic inheritance, which, if violated, the child will be punished by Allah SWT both in the world and in the hereafter.

## 2. **The position of children born from incestuous marriages in receiving inheritance according to civil and Islamic law**

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

A marriage can be considered valid if it fulfills all its material and formal requirements.<sup>15</sup>

1. Material requirements are requirements concerning the personal matters of the parties who will enter into a marriage and the permits that must be granted by a third party in cases determined by law. Divided into two, namely:<sup>16</sup>

- a. Absolute Material Requirements must be met by every person who will marry, regardless of who they marry. These requirements apply generally; if not met, then the marriage cannot be carried out. The material requirements it is regulated in Law number 16 of 2019 concerning marriage, including:
  - 1) There is the consent of the prospective bride and groom.
  - 2) There is permission from the guardian's parents.
  - 3) The age of the prospective male student has reached 19 (Nineteen) years, and the prospective female student is 19 (Nineteen) years.

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<sup>15</sup> Murul Miqat et al., "The Validity of Marriage Agreement Regarding Properties in Unregistered Marriages," *Yustisia Jurnal Hukum* 10, no. 2 (2021): 291–305, <https://doi.org/10.20961/yustisia.v10i2.48751>.

<sup>16</sup> Prasasti Dyah Nugraheni, "The Implementation of Marriage Different Religion and Their Due To the Law of the Religion of Marriage Status," *Law and Justice* 4, no. 2 (2019): 68–82, <https://doi.org/10.23917/laj.v4i2.8015>.

- 4) There is no prohibition on marriage between 2 (two) people because a family or blood relationship is prohibited in marriage.
  - 5) Not tied to marriage with another person.
  - 6) Not divorcing a second time with the same husband and wife who wish to marry and
  - 7) A woman (widow) cannot remarry before the waiting period has passed.
  - b. Relative Material Requirements are requirements for the parties to be married.<sup>17</sup> A person who has fulfilled the absolute material requirements can carry out a marriage. However, he cannot marry random people, and he must also fulfill the relative material conditions, namely:
    - 1) The two have no blood relationship (descent) or close family relationship.
    - 2) There has never been an overspill between the two.
    - 3) Not marrying the same person after being divorced for the third time.
2. Formal requirements are requirements related to the methods or formalities of marriage. As explained in article 12 of Law No. 16 of 2019 concerning Marriage and realized in articles 3 to 13 of PP Number 9 of 1975 concerning the implementation of Law Number 16 of 2019 concerning marriage, in short, the formal requirements for marriage include:
- a. Every person going to get married must notify his/her wishes to the Marriage Registrar, where the marriage will be held at least ten days before the marriage takes place. Notification can be made verbally or in writing by the prospective bride and groom or by their parents or representatives. (Article 3-4).
  - b. The registrar, who receives notification of the intention to enter into a marriage, examines whether the requirements for marriage have been fulfilled and whether there are no obstacles to marriage according to the law (Article 6 paragraph (1)).
  - c. The research results are written in a list designated for that purpose (Article 7 paragraph (1)).
  - d. After the procedures and conditions for notification have been fulfilled. There are no obstacles to the marriage; the registrar will notify the intention to enter into a marriage by posting an announcement letter according to the form specified at the Marriage Registry Office in a designated place that is easy for the public to read (Article 8).

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<sup>17</sup> Imam Tabroni, Hisam Ahyani, and Dian Permana, "Philosophical Review of Materialism and Idealism Limits of Wedding Age in Indonesia; Study of Article 7 Paragraph (1) of Law 16 of 2019 Jo. Law 1 of 1974 Concerning Marriage," *Muttaqien; Indonesian Journal of Multidisciplinary Islamic Studies* 2, no. 01 (2021): 1–20, <https://doi.org/10.52593/mtq.02.1.01>.

When a marriage contains 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:

- a. Are related by blood in a straight line down or up;
- b. Are related by blood in a lateral line, namely siblings, between a person and a parent's sibling and between a person and a grandmother's sibling;
- c. Are related by marriage, namely in-laws, stepchildren, daughters-in-law, and stepmother/father;
- d. Are related by foster children, foster children, siblings, and aunts or nieces of the wife, in the case where a husband has more than one wife;
- e. Are related by siblings to the wife or as aunts or nieces of the wife, in the case where a husband and wife have more than one wife;
- f. Who has a relationship that is prohibited from marriage by their religion or other applicable regulations?

If one of the conditions is not met, then 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, then the marriage is invalid and must be annulled.

Prevention of Marriage is done by a third party to avoid a marriage contrary to the law, meaning that a third party carries out marriage prevention by applying to the court before the marriage in question takes place. In Islamic law, the term prevention of marriage is not known; what exists is *al-fasid* marriage, namely a marriage that does not meet one of the requirements of its requirements. The law of *fasid* marriage is invalid.

Cancellation of an annulled marriage is an effort made by a third party to annul a marriage that is contrary to the law, meaning that it is done after the marriage has taken place by submitting an application for annulment of marriage to the court.<sup>18</sup> Moreover, in Islamic law, *fasid* Marriage and invalid Marriage can be annulled because the law is invalid.

A valid marriage is a marriage that does not meet one of its requirements. The requirements for a valid marriage, according to Article 8 Letter (b) of Law Number 16 of 2019, states that marriage is prohibited between two people who are related by blood in a lateral line, namely between a person and a parent's sibling and between a person and a grandmother's sibling. Article 39 number 1 of the Compilation of Islamic Law also clearly states that. It is prohibited to carry out a marriage between a man and a woman due to blood ties.

- a. With a woman who gave birth or who gave birth to it or her descendants;

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<sup>18</sup> Mhd. Yadi Harahap, "Dispute Resolution of Marriage Cancellation through Religious Court Decisions in Indonesia," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 2 (2022): 111, <https://doi.org/10.30659/jua.v5i2.22473>.

- b. With a woman who is a descendant of the father or mother;
- c. With a woman who is a sibling who gave birth to it.

Consanguineous marriages are carried out due to negligence or previous ignorance that there is a blood relationship between them, so there is a prohibition on marriage. The marriage is considered a doubtful relationship.

When a marriage produces offspring, there will automatically be a relationship related to inheritance between parents and their children. There are many definitions of inheritance law, but basically, what is put forward by experts is the same: inheritance law is a regulation that regulates the assets of the testator when he has died and can be transferred to his heirs. Regarding the transfer of the testator's assets, what is meant in this case is the rights and obligations owned by a person with a monetary value. These things can be described as follows:

- a. Inheritance law is part of wealth law.
- b. Rights and obligations that do not have a monetary value cannot be inherited.
- c. Obligations, although they have the nature of wealth law but come from family law, are not included in inheritance.
- d. Certain legal relationships, although they have a monetary value, are personal and are not included in the rights and obligations that can be inherited.

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

- a. Source of the Quran
- b. Source of Al-Hadith
- c. Ijma' (Ulama Agreement)
- d. Ijtihad

The blood relationship or lineage between parents and their children is the most vital civil relationship and cannot be disturbed or limited by anyone or anything. Therefore, clarity of a child's lineage is needed because it will have legal consequences for the child, which will also bring rights and obligations that are obtained and must be carried out. After all, they have a legitimate legal status. The Civil Code recognizes various types of child positions, ranging from illegitimate children, natural illegitimate children, adulterous children, and incestuous children. All of these children have different rights and obligations in the eyes of the law. Some have direct inheritance rights; some must go through prior recognition before having inheritance rights towards their parents. Even children of adultery and children of donation do not have any inheritance rights at all toward their parents.

Civil law states in the definition of legitimate children and illegitimate children/children of adultery that the status of a child can be said to be legitimate or not if viewed from the age of pregnancy until birth, whether it has reached 180 days/6 months. If the child is born or grows throughout the marriage, then the mother's husband is the father (the child is legitimate), and if a child is born before the 180th day, then the husband can deny the child's status. This means that in civil law, it is stated that if a child is born and grows throughout the marriage and is born after 180 days, the child is clearly called a legitimate child. This is stated in articles 250 and 251 of the BW.

Islam views that children are the successors who will continue life in the family. Islam highly protects the honor and purity of their descendants, which is why it is essential to have clarity about the lineage of a child who is born. The issue of lineage is critical to fostering and maintaining the integrity of humanity. It is one of the main elements that must be kept pure by carrying out marriage and avoiding all forms of adultery. Inheritance in Islamic fiqh literature comes from the word al-merits; the singular word is al-might, also commonly called faith, which is the plural of the word faridhah, taken from the word fardh, which means "provision or destiny." Al-Fardh, in sharia terminology, is a portion that the heirs have determined. Acceptance of inheritance in Islamic inheritance law is based on the principle of hijab,<sup>19</sup> namely that inheritance transfers itself according to the provisions of Allah SWT without being dependent on the will of the testator or heirs. In the Compilation of Islamic Law, it is explained that inheritance is a law that regulates the transfer of ownership rights of inheritance (Tirkah) from the testator, determines who is entitled to be the heir, and how the distribution of the property is carried out for each heir. Article 186 of the Compilation of Islamic Law explains that children born out of wedlock only have a mutual inheritance relationship with their mother and the family from their mother's side. The Marriage Law states that marriages involving kinship relationships, such as siblings, half-siblings, parents and children, or grandparents and grandchildren, are considered null and void by law; in such cases, the child born from the relationship is considered an illegitimate child or an illegitimate child. In the civil law system in Indonesia, children born out of wedlock usually do not have inheritance rights from their biological parents. Children born from consanguineous marriages or incest do not have the right to inherit property. They are not entitled to receive inheritance from their biological father because they do not have a blood relationship and are also not recognized as the result of a legitimate marriage. The provision of inheritance will be contrary to Islamic Sharia Law, only children with blood ties and marriage have the right to inherit. Children born from

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<sup>19</sup> Aminuddin Anugrah Reskiani, Dian Furqani Tenrilawa, "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *Jurnal Ilmiah Syariah* 21, no. 1 (2022): 1–35, <https://doi.org/http://dx.doi.org/10.31958/juris.v21i1.5564>.

incestuous marriages or relationships can only receive the right to demand necessary maintenance from their parent's assets.

Similar to the Marriage Law, the compilation of Islamic law does not explicitly regulate incestuous relationships. However, incestuous relationships are one of the relationships that are prohibited in the implementation of marriage according to the Compilation of Islamic Law. The provisions regarding the prohibition of incestuous marriage are contained in Article 39, paragraph (1), letters a to c, where three types are categorized as incestuous relationships, namely:

a) With a woman who gave birth or who gave birth to it and its descendants, what is meant is sexual relations between a child and his biological parents.

b) The relationship between a man and a woman who is a descendant of the father or mother; what is meant is sexual relations between a man and a woman who is a biological mother or biological father.

c) The relationship between a man and a female sibling who gave birth to him, what is meant is sexual relations between a man and a woman who is a sibling of the biological mother or biological father.

In the matter of inheritance, the scholars of the schools of thought, in this case, agree that children born from an illegitimate marriage (adultery) only receive an inheritance from the inheritance of their mother or relatives.<sup>20</sup> Some scholars of the Hambali School, including Ibn Taimiyah, who in certain circumstances still attribute the child of adultery to the father and inherit the father's inheritance, the next problem arose when the provisions regarding the inheritance of illegitimate children were 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. Imam Sayfi'i and Imam Malik think that sexual intercourse with adultery does not result in legitimate offspring, so the child is only from the mother 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. There is no mutual inheritance relationship between the two. Thus, the status of children of incest in the Islamic view is equated with children of adultery, so the child only has a relationship with his mother. In contrast, his relationship with his father has been broken.

The conflict between incestuous sexual relations and several principles is the first principle, namely, the belief that the existence of God is part of what is allowed and what is not allowed to be violated by humans. In contrast, incestuous relations are acts that are strictly

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<sup>20</sup> Asih Susilowati, "The Study of the Indonesian Ulama Council 's ( MUI ) Fatwa Number 11 of 2012 Regarding the Status of Children Born out of Adultery and Their Treatment: Correlation with the Constitutional Court Decision Number," *Sinergi International Jjournal of Law* 2, no. 1 (2024): 49–60, <https://doi.org/https://journal.sinergi.or.id/index.php/law/article/view/110>.

prohibited by all religions. Then, contrary to the second principle, namely that the nature of humanity is just and civilized through actions, incestuous relations do not reflect just and civilized values but instead damage the moral order of society. The regulations on incest in the Criminal Code are stated in Article 285, Article 287, Article 294, paragraph (1) point (1). However, in 285, it tends towards the crime of rape, while Article 294 paragraph (1) and Article 295 paragraph (1) point (1) are relevant enough to be the legal basis for acts of incest. The inheritance rights of illegitimate children as regulated in the Civil Code are: if the deceased leaves legitimate descendants according to law or husband and wife, then the illegitimate children inherit one-third of the portion they were supposed to receive; if they were legitimate children according to law they inherit half of the inheritance if the deceased did not leave descendants of a husband or wife, but left blood relatives in the ascending line 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 illegitimate children or children of consanguineous marriages cannot inherit from their parents according to Article 867 of the Civil Code.

#### **E. Conclusion**

In Civil Law, the status of children is divided into two, namely legitimate children and illegitimate children; in this case, consanguineous marriage is strictly prohibited, so the marriage is invalid or canceled by law, as well as the status of this incest child becomes an illegitimate child because the relationship between the two is carried out through adultery. So that the child is subject to the provisions of adultery, children of Adultery or Contribution can only inherit through a testament or a will or testament, but to inherit an instance or based on statutory regulations, children of adultery and conjugal children do not have a position in it.

In Islam, there is no specific explanation regarding incest. However, in the Compilation of Islamic Law, the criteria for legitimate children are explained as stated: "children born outside of marriage only have a blood 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, namely "children born outside of marriage only have a mutual inheritance relationship with their mother and their mother's family." So if there is an illegitimate child in a family, then the illegitimate child from the female line can close the heirs below. In the Civil Code, illegitimate children have no right at all to inheritance from their parents and, at most, only receive sufficient sustenance from the assets of their biological father. Adulterous or illegitimate children can only inherit through a testament or a will or testament, but to inherit an instance or based on statutory regulations, adulterous children and illegitimate children do not have a position in it.



## REFERENCES

- Agama, Tinggi, Islam Nurul, Sumatera Utara, Article Info, and Inheritance Law. "Transfer of Foster Parents ' Assets to Foster Children from the Perspective of Islamic Law." *Jurnal Pendidikan Agama Islam Indonesia (JPAIL)* 4, no. 2 (2023): 39–42. <https://doi.org/10.37251/jpail.v4i2.660>.
- Anugrah Reskiani, Dian Furqani Tenrilawa, Aminuddin. "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence." *Jurnal Ilmiah Syariah* 21, no. 1 (2022): 1–35. <https://doi.org/http://dx.doi.org/10.31958/juris.v21i1.5564>.
- Archard, D. W. *Children, Family and the State*. Routledge., 2018.
- Harahap, Mhd. Yadi. "Dispute Resolution of Marriage Cancellation through Religious Court Decisions in Indonesia." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 2 (2022): 111. <https://doi.org/10.30659/jua.v5i2.22473>.
- Hidayah, Ahdiyatul, and Nur Hapizah. "Legal Protection For Children Out Of Wedlock In The Perspective Of Islamic Family Law." *Sakena: Jurnal Hukum Keluarga* 9, no. 1 (2024). <https://doi.org/https://journals.fasya.uinib.org/index.php/sakena/article/view/456>.
- Hill, John Lawrence. "WHAT DOES IT MEAN TO BE A " PARENT "? THE CLAIMS OF BIOLOGY AS THE BASIS FOR PARENTAL RIGHTS." In *Parental Rights and Responsibilities*, 588:29–96. Routledge., 2017.
- Mega, Ginny, and Maulidia Hasibuan. "The Relation of the Law on Marriage of the Batak Indigenous Clan with the Incest Marriage Law." *Awang Long Law Review* 4, no. 2 (2022): 318–25. <https://doi.org/https://doi.org/10.56301/awl.v4i2.384>.
- Miqat, Murul, Muhammad Iqbal, Adfiyanti Fadjar, Ratu Ratna Korompot, Handar Subhandi Bakhtiar, and Adies S.P. Syamsuddin. "The Validity of Marriage Agreement Regarding Properties in Unregistered Marriages." *Yustisia Jurnal Hukum* 10, no. 2 (2021): 291–305. <https://doi.org/10.20961/yustisia.v10i2.48751>.
- Muhammad, Bahruddin, Thohir Luth, Abdul Rachmad, and Jazim Hamidi. "The Inheritance Rights of Illegitimate Children Outside Marriage in the Perspective of Children ' s Rights." *International Journal of Sciences: Basic and Applied Research (IJSBAR)* 14, no. 1 (2014): 49–62. <https://doi.org/https://core.ac.uk/download/pdf/249333582.pdf>.
- Murray, Melissa. "What ' s So New about the New Illegitimacy WHAT ' S SO NEW ABOUT THE NEW." *Dukeminier Awards: Best Sexual Orientation and Gender Identity Law Review* 20, no. 3 (2012): 387. [https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/dukemini12&div=4&id=&page=.](https://doi.org/https://heinonline.org/HOL/LandingPage?handle=hein.journals/dukemini12&div=4&id=&page=)
- Nugraheni, Prasasti Dyah. "The Implementation of Marriage Different Religion and Their Due To the Law of the Religion of Marriage Status." *Law and Justice* 4, no. 2 (2019): 68–82. <https://doi.org/10.23917/laj.v4i2.8015>.
- Patterson, M. "Coming Too Close, Going Too Far: Theoretical and Cross-cultural

- Approaches to Incest and Its Prohibitions.” *The Australian Journal of Anthropology* 16, no. 1 (2005): 95–115. <https://doi.org/https://doi.org/10.1111/j.1835-9310.2005.tb00112.x>.
- Sagberg, Sturla. “Taking a Children’s Rights Perspective on Children’s Spirituality.” *International Journal of Children’s Spirituality* 22, no. 1 (2017): 24–35. <https://doi.org/10.1080/1364436X.2016.1276050>.
- Setia, Tunggul Ansari, Tunggul Ansari, Setia Negara, and Universitas Brawijaya. “NORMATIVE LEGAL RESEARCH IN INDONESIA : ITS ORIGINS AND.” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9. <https://doi.org/https://doi.org/10.22219/aclj.v4i1.24855>.
- Susilawati, Susi, Baliana Amir, Muhammad Ikbal, Rafika Nur, and Sitti Fatimah Maddusila. “Manifestations of Gender Injustice in Divorced Marriages: The Kabalutan Tradition.” *Jambura Law Review* 5, no. 1 (2023): 136–55. <https://doi.org/10.33756/jlr.v5i1.17722>.
- Susilowati, Asih. “The Study of the Indonesian Ulama Council ’ s ( MUI ) Fatwa Number 11 of 2012 Regarding the Status of Children Born out of Adultery and Their Treatment : Correlation with the Constitutional Court Decision Number.” *Sinergi International Jjournal of Law* 2, no. 1 (2024): 49–60. <https://doi.org/https://journal.sinergi.or.id/index.php/law/article/view/110>.
- Tabroni, Imam, Hisam Ahyani, and Dian Permana. “Philosophical Review of Materialism and Idealism Limits of Wedding Age in Indonesia; Study of Article 7 Paragraph (1) of Law 16 of 2019 Jo. Law 1 of 1974 Concerning Marriage.” *Muttaqien; Indonesian Journal of Multidisciplinary Islamic Studies* 2, no. 01 (2021): 1–20. <https://doi.org/10.52593/mtq.02.1.01>.
- Tracy, S. J. *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*. John Wiley & Sons, Ltd, 2024.
- Wati, Reka Desrina. “The Marriage Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law.” *Al Hurriyah : Jurnal Hukum Islam* 7, no. 2 (2022): 116. <https://doi.org/10.30983/alhurriyah.v7i2.4125>.
- Wells, S. *The Journey of Man: A Genetic Odyssey*. Vol. 51. Princeton University Press, 2017.