



## **DISTRIBUTION OF INHERITANCE RIGHTS FOR CHILDREN RESULTING FROM EXTRAMARITAL RELATIONS FROM THE PERSPECTIVE OF THE INDONESIAN ULEMA COUNCIL AND THE CIVIL CODE**

**Siti Zahroh<sup>1</sup>, Taofiq Hidayatulloh<sup>2</sup>**

*<sup>1</sup>Sunan Ampel State Islamic University Surabaya (c95219057@student.uinsby.ac.id)*

*<sup>2</sup>Sunan Ampel State Islamic University Surabaya (c95219060@student.uinsby.ac.id)*

**Abstract:** The article entitled Distribution of Inheritance Rights for Children Resulting from Extramarital Relations, Perspective of the Indonesian Ulema Council and the Civil Code is the result of literature research to answer questions about what is the position of children born from extramarital relationships in terms of inheritance and what is the legal basis for the distribution of inheritance rights for children resulting from extramarital relationships according to the perspective of the Indonesian Ulema Council and the Civil Code. This research uses a descriptive research method with a qualitative approach, where this research attempts to explain problem solving based on data in the field. This research data was collected through a literature review, and then analyzed using descriptive analysis techniques. The research results concluded that, According to the fatwa of the Indonesian Ulema Council, children born from extramarital relations do not have a civil relationship with their biological father. So if the biological father dies the child cannot inherit the father's property. However, the MUI explained in its fatwa that men who cause the birth of a child without a valid marriage bond can be punished in two ways, namely by providing maintenance or a mandatory will to their biological child. According to the Civil Code, children born as a result of relationships outside of marriage receive inheritance rights as children if the child is recognized and the distribution of the amount of inheritance obtained is stated in 863 of the Civil Code. The MUI explained in its fatwa that a man who causes the birth of a child without a valid marriage bond can be punished in two ways, namely by providing maintenance or a mandatory will to his biological child. According to the Civil Code, children born as a result of relationships outside of marriage receive inheritance rights as children if the child is recognized and the distribution of the amount of inheritance obtained is stated in 863 of the Civil Code. The MUI explained in its fatwa that a man who causes the birth of a child without a valid marriage bond can be punished in two ways, namely by providing maintenance or a mandatory will to his biological child. According to the Civil Code, children born as a result of relationships outside of marriage receive inheritance rights as children if the child is recognized and the distribution of the amount of inheritance obtained is stated in 863 of the Civil Code.

**Keywords:** MUI; Civil Code; Inheritance; Illegitimate Children.

### **1. INTRODUCTION**

A human being is born into the world in a pure state without sin even though he is born as a result of a relationship outside the bonds of marriage. As is often found in Indonesian society, there are many cases of children being abandoned for reasons of unwanted birth, not wanting to bear the shame, men not wanting to take responsibility and so on. As the number of cases increased, the Constitutional Court issued a decision on MK decision no. 46/PUU-VIII/2010 which contains the position of children born out of wedlock, the child's civil relationship follows the mother and the mother's family as



well as the father and the father's family if it can be proven by technology or the like that the child is related by blood to him.

As previously known, it has been explained in the compilation of Islamic law and civil law that if a child is born outside a valid marriage, the child's civil relationship and lineage follow those of the mother. So, after the Constitutional Court's decision emerged, questions arose among the Muslim community regarding lineage, inheritance, maintenance and guardianship of children resulting from extramarital relationships. In response to this, the Indonesian Ulema Council issued a fatwa which has also been formalized, namely fatwa number 11 of 2012 which explains the position of children resulting from extramarital relationships.

The Indonesian Ulema Council in its fatwa explains the definition of a child resulting from adultery/a relationship outside of marriage and what the nasab position is that the nasab of a child resulting from adultery is to follow the mother so that in its position a child resulting from adultery can only inherit his mother and his mother's family. However, the government also has the right to impose punishment or hadd on the biological father of the child resulting from adultery. The punishment that can be imposed is in the form of providing support for the child or giving assets after he dies through a mandatory will.

In the Civil Code there is an definition of a child in the womb, namely "a child in the womb of a woman is considered to have been born, if interests require it, dies while being born, it is considered that he never existed" (Subekti andTjitrosudibio, 2009, p. 3). Based on this understanding, it gives the view that a child in the womb has received an inheritance because he is considered to be alive. Then it is emphasized in article 836 of the Civil Code that it is stated that: "keeping in mind the provisions in article 2 of this book, in order to act as an heir, a person must be present when the inheritance falls by chance" (Subekti andTjitrosudibio, 2009, p. 3).

Based on these two articles, it can be seen that a child in the womb can, on the one hand, receive an inheritance because it is considered alive. However, on the other hand, if the baby dies during birth or before birth, it will automatically not inherit. Apart from provisions regarding the nature of the life of unborn children, the Civil Code also regulates the legality of unborn children who can receive inheritance. Basically, inheritance for children is based on the legitimacy of the child in one family. Because the Civil Code does not allow inheritance for unborn children resulting from adultery. Even though it is not mentioned directly in textual form, this can be seen from the existence of article 867 which reads as follows: "The provisions mentioned above do not apply to children born from adultery or blood staining. The law only provides them with necessary support."

Then this article was reaffirmed in article 869 which reads: "if the father or mother while alive has provided necessary support for those born of adultery or blood staining, then the child has no further right to claim inheritance from the father or mother"

From the articles of the Civil Code, problems may arise if the biological father then marries the biological mother and gives birth to a second child, which child is born after a legal marriage. Then there will be a difference in position or status between the first child and the second child, namely the first child is the result of adultery and the second child is the result of a legal marriage. A big problem is likely to arise when the father of the two children dies and according to Article 869, children resulting from adultery cannot be heirs. This is different from the Indonesian Ulema Council which provides a choice as a punishment for biological fathers, namely that the father can give inheritance in the form of a mandatory will.



Based on the problems above, the author is interested in studying and then explaining in detail how the ulama council responds to the status of illegitimate children and the Civil Code.

## **2. ANALYSIS OF STUDY FINDINGS**

### **2. 1. Analysis of the Rights and Status of Children's Inheritance in Extramarital Relations According to the Indonesian Ulema Council Based on MUI fatwa no. 11 of 2012 and Article 867 of the Civil Code**

#### **a) Analysis of the Rights and Inheritance Position of Children Resulting from Extramarital Relationships According to the MUI**

In the fatwa of the Indonesian Ulema Council no. 11 of 2012 concerning the civil rights of children resulting from adultery, namely in the form of legal standing to determine lineage, inheritance and all rights regarding children. So the Indonesian Ulema Council regarding the position of children resulting from adultery and their treatment states: That the child resulting from adultery has no relationship, marriage guardian, or support with the man who caused his birth. And the child resulting from adultery only has a relationship of lineage, inheritance and livelihood with his mother and his mother's family only.

So in Indonesian Islamic Law the civil rights of children outside of marriage only have a civil relationship to their mother, and not to the man who caused their birth. This is explained in the Compilation of Islamic Law in Article 100. From the description above, it is clear that the civil rights of children the result of adultery which has been determined by the Indonesian Ulema Council only with his mother, he is only related to his mother's family. And not with his biological father. Then, in Indonesian Islamic law, a child's civil rights are only with the mother, and can be related to the biological father, but by means of a DNA test with the biological father.

The position of a child resulting from an extramarital relationship in terms of inheritance rights is that if the mother dies, the child will receive inheritance rights as regulated in Islam, but if the child's father dies, the child cannot inherit the property of his biological father.

From the explanation above, the author agrees with the fatwa issued, because based on Islamic law, children born out of wedlock can only have a civil relationship with their mother, in other words, children born out of wedlock cannot inherit the property of their biological father. The author also agrees with the existence of ta'zir to men which causes the birth of a child, namely by providing for the child's needs and providing a mandatory will. Because with ta'zir in the form of the two things that have been mentioned, it will reduce the number of child neglect.

#### **b) Analysis of the Distribution of Inheritance Rights for Children Outside of Marriage according to the Civil Code**

Based on the Civil Code, a child is born outside a valid marriage and then the child is recognized, a civil relationship arises between the child and his father and mother, where the child can inherit his mother's or father's property. With this provision, it can prevent undesirable things after the death of the father or mother, such as inheritance disputes between illegitimate children and children born as a result of a legal marriage.

With the provisions on the amount of assets listed in the Civil Code, it also makes it easier for parents who are in a similar situation, as for the distribution mentioned above with the conclusion that if they are together- -the same as group I gets 1/3, if together- -groups II and III get 1/2 and inherit together- -with group IV then you get 3/4.



So, big The share that a recognized illegitimate child will receive is determined by what class of inheritance he or she falls into inherit the property.

### 3. CONCLUSION

According to the MUI, children born out of wedlock only have a civil relationship with their mother, so that in terms of inheritance, children resulting from extramarital relations can only inherit from their mother. However, the MUI stated that the biological father of the child must make a will when he dies. This was determined by the MUI to protect children's rights. In the Civil Code, illegitimate children who can be recognized can be assigned to their father so that illegitimate children receive inheritance rights as stated in 863 of the Civil Code.

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