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Inheritance Of Children From Incest Seen From The Perspective Of Islamic Family Law Analysis Of Maqashid Syari'ah And Positive Law

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Abstract

The problematic status of children in Islamic law, especially children born from illicit relationships such as incest, whether done due to ignorance of blood or intentional is a complex and sensitive issue, both from normative, social, and humanitarian aspects, especially those related to the legal interests of children born from incestuous marriages. Incest or consanguineous marriages are marriages carried out between men and women who have close blood relations, including blood relations in a straight line (grandfather-grandchild) or sideways. Problem Formulation What is the legal status of incestuous child marriages in the perspective of Islamic law and positive law? What is the concept of inheritance of children resulting from incest according to Islamic fiqh in the perspective of maqashidu Sharia? Maslahah Mursalah Theory, Maslahah Mursalah theory is a concept or method of determining Islamic law based on the principle of seeking maslahah (welfare or general benefit) which is not specifically supported or rejected by certain sharia arguments (the Qur'an and Hadith). that the position of children in an incestuous marriage is the same as the position of children in a legitimate marriage, because an incestuous marriage itself is a legitimate marriage as long as there is no annulment, the distribution of inheritance to children of an incestuous marriage is the same as the distribution of inheritance to legitimate children, because incestuous children are legitimate children and not children born from adultery or interfaith marriages, so that the position of incestuous children is the same as the position of legitimate children in receiving inheritance and can inherit from both parents, both

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from the mother and father.

Key words: inheritance, incestuous children, family, perspective, maqashid, Sharia and positive law.

INTRODUCTION

BACKGROUND

Inheritance law is a central component of Islamic family law and plays a crucial role in family regulation. It plays a crucial role in preventing inheritance conflicts and fostering harmony within families, as it provides a clear framework and system for the distribution of inheritance. Marriage creates inheritance laws for children, provided the marriage is conducted under a valid contract and is permitted by Islamic law [1].

In Article 2 of the Compilation of Islamic Law (KHI) it is stated that what is meant by marriage is marriage according to Islam, namely marriage, namely a very strong contract or mitsaqan Ghalidhon to obey Allah's commands and carrying it out is an act of worship.

From the marriage carried out by a person will give rise to new legal consequences and relationships, namely inheritance law, the law regarding the status of the child born from the marriage whether as a legitimate child or not, the legal relationship between children and parents, child guardianship, child alimony rights, the most crucial problem is the law regarding the status of the child of incest (discordant) and the inheritance system if the child is the result of an incestuous marriage, and what is the status of an incest child if the marriage is annulled by the court, illegitimate children (alk) who are carried out because of different religions, as well as legal protection for incest children and so on, of course the above matters require in-depth study and research by Islamic family law experts, especially in the field of Islamic inheritance law, by making legal breakthroughs, legal interpretations, new legal discoveries in the field of Islamic law, especially in the field of inheritance due to the existence of a vacuum (recht vacuum) in inheritance law.

The problematic status of children in Islamic law, especially children born from illicit relationships such as incest, whether committed due to incestuous ignorance or intentionally, is a complex and sensitive issue, both from a normative, social and humanitarian aspect, especially in relation to the legal interests of children born from incestuous marriages.

Incest marriage is a marriage between two people who have a very close blood relationship

[1] Soedarsono, National Marriage Law, Published by Rineka Cipta, Jakarta, p. 34

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(such as siblings, parents and children) which is considered to violate customs, laws, and religion. Incest marriage or consanguineous marriage is a marriage carried out between a man and a woman who have a close blood relationship, including blood relations in a straight line (grandfather-grandchild) or sideways. Incest marriage is a marriage or sexual relationship between two individuals who still have a very close blood relationship or kinship (such as parents with children, or between siblings). From the above definition, there is something more interesting to study further, namely incest marriage which occurs due to the ignorance of the two brides who have blood relations, namely because they are separated by a long distance where they do not know each other that they are one family, or because of breastfeeding, namely one of them has been breastfed to the person's parents where the marriage is called a subhat marriage (Wathi Subhat).

Some cases that occurred and were revealed regarding incestuous marriages in Indonesia were in 2019 in South Sulawesi, specifically in Bulukumba, a marriage that shocked the public, namely a blood marriage between an older brother and a younger sibling, in Perwokerto Regency, Banyumas, Central Java in 2023 a father named Rudi had an incestuous relationship with his biological child, in Bengkulu and Aceh there was an incestuous marriage between a stepfather and a stepdaughter. The legal problem of incestuous marriages in Indonesia occurs due to the lack of strict criminal sanctions for someone who commits an incestuous marriage.

Marriage law in Indonesia prohibits incestuous marriages as regulated in Article 8 of Law No. 1 of 1974, which states that marriage is prohibited between two people who:

1. Blood related in a straight downward or upward lineage;
2. Being related by blood in the bloodline to the side ie between parents' relatives and between a person and a grandmother;
3. In a close relationship, i.e. parents-in-law, step-son, son-in-law and step-mother/father;
4. Related to nursing, namely nursing parents, nursing children, nursing siblings and nursing aunts/uncles;
5. Being related to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
6. Having a blood relationship that is prohibited by religion or other rules.

   In the case of an incestuous marriage, the marriage can be declared null and void and in Article 28 Paragraph (1) of Law No. 1 of 1974, a marriage is declared null and void after the court decision has permanent legal force and is valid from the time

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the marriage takes place. And in Article 37 of PP No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage, it is emphasized that the nullity of a marriage can only be decided by the Court.

Basically, what regulates whether a marriage is valid or not is the religious law that they adhere to when they carry out a marriage contract. This is based on Article 2 of Law No. 1 of 1974 concerning marriage, namely:[2]

"Marriage is valid if it is carried out according to their respective religions and beliefs."

For followers of Islam, the prohibition of consanguineous marriage or incest is also regulated in Article 70 of the KHI, which states that a marriage is void if it is performed between two people who are related by blood, consanguinity and consanguinity to a certain degree, namely:

1. Related by blood in a direct line of descent downwards or upwards;
2. Being related by blood in a deviant lineage, that is between brothers, between a person and a parent's brother and between a person and his grandmother's brother;
3. Having a close relationship, that is, parents-in-law, stepchildren, sons-in-law and mother or stepfather.
4. Related by breastfeeding, namely breastfeeding parents, breastfeeding children, and breastfeeding aunts or uncles.

The prohibition of incestuous marriage in the Quran, Surah An-Nisa verse 23 states:

Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughter, your sister's daughter, your foster mothers, your foster sisters, your wives' mothers, and your stepdaughters who are under your guardianship from among your wives with whom you have consummated marriage. But if you do not... If you have consummated the marriage with them, there is no blame upon you. And the wives of your sons who are from your own loins. And if you combine two sisters in marriage, except for what has .already passed. Indeed, Allah is Forgiving and Merciful

Which means:

Forbidden to you in marriage are your mothers, your daughters, your paternal sisters, your male brothers' daughters, your male brothers' daughters , your female sisters' daughters, your nursing mothers, your nursing sisters, your mothers-in-law, your adopted children, and women with whom

[2] Soedarsono, National Marriage Law, Rineka Cipta Publisher Jakarta, 1991

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you have gone in to marriage, but if you have not gone in to marriage with them, then there is no sin on you in marrying them. And forbidden to you is the wife of your son's son, that you should marry two sisters, except what has already happened. Indeed, Allah is Oft-Forgiving, Most Merciful.

Hadith

The Messenger of Allah (peace and blessings of Allah be upon him) said:
"What is forbidden because of lineage (heredity), is also forbidden because of sexual intercourse." (HR Bukhari and Muslim).

In Indonesian Positive Law

Article 8 of the Marriage Law No. 1 of 1974 explicitly states:
"Marriage is prohibited between two people who are related by blood in a straight line downwards or upwards, sideways, by in-laws or by milk."
Article 30 of the Criminal Code (BW) states:
"It is prohibited for people to have blood relations in the upward or downward lines, whether by legitimate birth or illegitimate birth, or by marriage: in the downward line, between brothers and sisters, legitimate or illegitimate."

Problems with incestuous marriages:

1. Status of Children from Incestuous Marriages:

If a child is born from the annulled marriage, then the child is declared a legitimate child, because the termination of the marriage due to annulment does not apply to children born from the marriage as stated in Article 28 Paragraph (2) of the Marriage Law which states that annulment does not apply retroactively to:

1) Children born from the marriage;
2) A husband or wife who acts in good faith, except with respect to joint assets, if the annulment of the marriage is based on the existence of another previous marriage;
3) Other third parties as long as they obtained the rights in good faith before the decision on cancellation has permanent legal force.

2. Guardianship of children from incestuous marriages

Regarding child guardianship, the child has a blood relationship with his biological father, as explained in Article 21 of the Compilation of Islamic Law (KHI), the group that is prioritized to become a guardian is the group of male relatives in the direct ascending line, namely, the father, the paternal grandfather, and so on. Thus, it is clear that the biological father has the right to be a blood guardian if the child born from an incestuous marriage will marry. This is intended to

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provide legal protection to children who have been born in a marriage.

3. The Legality of Incest Marriages in Indonesia

   Incestuous marriage is a marriage of blood as regulated in Article 8 of Law No. 1 of 1974.

4. Protection of the Rights of Children with Incest in Indonesia

   Child protection is something that parents must do as regulated in Article 30 of Law No. 35 of 2014.

5. Inheritance rights of incest children in Indonesia.

   What is the position of children of incest, whether they have the same position in inheritance law as regulated in Article 176 KHI.

In law inheritance the determined anyone become expert inheritance, who is entitled get part treasure inheritance mentioned, the reason for the inheritance, how many part each of them, how provision its distribution, as well as various regulations are also regulated related matters with origin distribution treasure inheritance. For inheritance to occur, three elements must be fulfilled, namely, as written by Sayid Sabiq, there must be [3]:

1. Heirs are people who are connected to the deceased by one of the causes of inheritance;
2. The heir is the deceased, whether deceased legally or legally, such as a person who is mafqud (missing) and has been declared deceased by a judge;
3. Inheritance, also called tirkah and Mirast, is property or rights that are transferred from the heir to the heirs.

The three pillars above are related to each other, all three must be present in every inheritance. In other words, inheritance is not possible when one of the three elements above is not present.

The dynamics of contemporary inheritance law in Indonesia do not stop at the application of the norms contained in Article 172 of the Compilation of Islamic Law (KHI) alone, but continue to evolve in line with social dynamics and contemporary legal developments. In this context, new issues arise, such as the regulation of interfaith inheritance, inheritance for illegitimate children, the application of mandatory wills, inheritance for adopted children, inheritance for stepchildren, inheritance for incestuous children, and others.

IDENTIFICATION OF PROBLEMS

To limit this research so that it is not too broad, the author limits this research only to the

[3] Sayid, Sabiq, Fiqh Al Sunnah, Toha Putera, Semarang. 1972.

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inheritance of incestuous children resulting from Wathi Subhat from the perspective of Islamic family law and inheritance philosophy.

FORMULATION OF THE PROBLEM

1. What is the legal status of incestuous child marriage from the perspective of Islamic law and positive law?
2. What is the concept of inheritance of children resulting from incest according to Islamic jurisprudence from the perspective of maqashidu Syari'ah?

RESEARCH PURPOSES

1. Analyzing what is the legal status of child marriage resulting from incest from the perspective of Islamic jurisprudence?
2. Studying and analyzing the concept of inheritance of children resulting from incest according to Islamic jurisprudence from the perspective of Maqashi Syari'ah?

RESEARCH METHODS

The research method used in this research is a descriptive method of normative juridical analysis with an empirical approach, it is said to be descriptive analysis because this research describes an event that occurs in society, and it is said to be normative juridical because the target of this research is law or rules, the definition of rules here includes legal principles, legal rules in the sense of values to find, identify, process and analyze legal materials to understand their meaning, significance, and relevance, whose concrete legal regulations are in (the Qur'an and Hadith). With an empirical juridical approach, namely seeing law as a reality (das sein) by observing how law works in practice in society, not only in legal texts.

THEORITICAL REVIEW

1. Destiny Theory and Child Protection
   Lineage Theory is the principles and system that govern blood relations, lineage, and kinship between one individual and another, especially in legal, social, and religious contexts, or the science that studies genealogy or lineage. Lineage Theory is a concept of lineage that has important meaning in Islamic law, especially regarding rights and obligations within the family, guardianship, and inheritance.
2. Theory of Maqashid Syari'ah

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The theory of maqashid Syari'ah is an Islamic concept that explains the main objective of Islamic law, which is to realize maslahah (goodness) and reject madarat (badness) for mankind, with five main objectives, namely Hifdul din, hifdun nasal, hifdun nafs, hifdul mal wal I'rdli and hifdul aqli.

3. Theory of Maslahah Mursalah

   The theory of maslahah Mursalah is a concept or method of establishing Islamic law which is based on the principle of seeking maslahah (welfare or general benefit) which is not specifically supported or rejected by certain sharia evidence (the Koran and Hadith).

DISCUSSION AND RESULTS

1. **What is the legal status of children resulting from incestuous marriages from the perspective of Islamic law and positive law?**

   Analysis according to Islamic law (Islamic Fiqh)

   That a child resulting from a consanguineous or incestuous marriage or Subhat marriage (wathi subhat) can be traced to his father, this is because the child was born from a prohibited marriage accidentally so that due to the factor of ignorance, this is categorized as a syubhat marriage, meaning a marriage that is not valid but is carried out with the assumption that it is valid.

   In the Syafi'i school of thought, it is emphasized that lineage can only be determined through three events, namely:

   1. Legal marriage
   2. Syubhat intercourse (relationship that occurs due to suspicion of being legitimate)
   3. The father's uncontested confession of the child.

   According to the Shafi'i school of thought, a child born from an unintentional consanguineous relationship can still be traced to his father, just as in a legitimate marriage. The book At-Ta'liq A'la Tafsir Jalalain also explains that a child born from a wathi subhat can still be traced to his father [4].

   As said by Imam Nawawi in the book Raudah at-Tolibin [5].

   Idza tajawaja rojulun biimroatin mimaharimi jahlan kana yajhalu annaha uhtuhu

[4] Jalaludin Al mahali, Ta'liq Tafsir Aljalalaini, p. 156
[5] An Nawawi, Ar-Raudhah At-Tahlibin, (Bairut darus Salam, 1989), p. 115

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fawako'a bainahuma watu fahua watun bisubhatin.

This means *: if a man marries a mahram woman but he does not know that the woman is actually his mahram and then sexual intercourse occurs between them, then the sexual intercourse is considered wati subhat.*

Imam Nawawi's statement clearly explains that consanguineous marriages that occur accidentally are classified as wati subhat. As he said:

yalhakul waladdu bil waati fil watil subhati wayatsbutu bihin nasabu wayatawarotsani .

Meaning: a child is inherited from his father in wati subhat and inherits from both of them.

This sentence explains that a child born from a wati subhat can be related to the person who passed away (his father) in the case of a wati subhat having a kinship relationship with his father and also receiving inheritance from his father.

Hanafi school of thought

According to the Hanafi school, if a consanguineous marriage occurs due to ignorance and the parties believe it is valid, then the marriage is considered wati subhat, so that the child born remains related to the father. The argument used by the Hanafi school is alwaladdu lilfirosi walil ahiril hajaru. This means that a child belongs to his father and for someone who commits adultery, the child resulting from adultery cannot be related to the person who committed adultery. This principle explains that in the context of wati subhat, the position of the man is considered like a socially legitimate husband. According to the Hanafi school, consanguineous marriages that occur due to ignorance of the relationship between the two parties are categorized as fasid marriages that contain elements of wathi subhat, therefore children born from such marriages are related to their father.

The opinions of these two well-known schools of thought show that the status of children resulting from incestuous marriages is that they are legitimate children and can inherit.

Analysis According to Indonesian Positive Law

One of the legal consequences of marriage is that children's rights must be fulfilled and protected. The status of children in Islamic family law is as follows:

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a. Legitimate children are children born through a legitimate marriage, namely a marriage that is in accordance with the teachings of the religious law and beliefs that they adhere to, as evidenced by a marriage certificate issued by an agency that has the right to issue them.
b. An illegitimate child is a child born from an illegal marriage.

Meanwhile, as a comparison regarding legitimate children outside of Islamic law, namely civil law states that legitimate children are as follows:

1. A legitimate child is a child born in a legal marriage and is proven by a marriage certificate.
2. An illegitimate child is a child born outside of marriage, when both parents marry the child is recognized or legalized and then recorded in the marriage certificate *(erkenning).*
3. Children who are legalized by decree are children born out of wedlock, then there are parents who submit an application to the Court *(wetting).*
4. An acknowledged child is a child born out of wedlock who is acknowledged by both parents, or by the mother, or by the father, and has legal consequences. The acknowledging parent must provide for the child's needs, and the child has the right to inherit.
5. A child of adultery is an illegitimate child whose parents are bound in an extramarital marriage (affair).
6. A discordant child is an illegitimate child whose parents are prohibited from marrying by law.

Article 76 of the KHI states that children resulting from incest still have a blood relationship with their mother and father, where Article 76 provides protection for children resulting from incest [6]. Based on Article 76, it can be seen that there is no reason for a child born from an act of incest to be included in the blood relationship of his father, whether through a legal marriage or a passive marriage, or through sexual intercourse due to a subhat or subhat marriage *(wathi subhat).*

In a marriage bond, the position of a child born becomes an important part in determining the status of the child. To determine whether an incestuous child whose parents' marriage was annulled due to blood relations is a legitimate child or an illegitimate child, the author discusses starting from the meaning of a legitimate child

[6] KHI, Latest Edition, Publisher, Fokusindo Mandiri, Bandung, 2016

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and an illegitimate child itself. After being reviewed by the author, it was found that a child from a consanguineous marriage is in accordance with the meaning of a legitimate child according to the Marriage Law Article 28 Law No. 1 of 1974, if a child is born from the annulled marriage, then the child is declared a legitimate child, because the dissolution of the marriage due to the annulment does not apply to children born from the marriage as stated in Article 28 Paragraph (2) of the Marriage Law which states that annulment does not apply retroactively to:

1. Children born from the marriage;
2. A husband or wife who acts in good faith, except with respect to joint assets, if the annulment of the marriage is based on the existence of another previous marriage;
3. Other third parties as long as they obtained the rights in good faith before the decision on cancellation has permanent legal force.

Based on the text of Article 28 paragraph 2 of the Marriage Law which states that the decision to annul a marriage does not apply retroactively to children born in the marriage, meaning that the child's status remains as a legitimate child because he was born from a legal marriage. Article 37 of PP No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage emphasizes that the annulment of a marriage can only be decided by the Court.

Meanwhile, Article 76 of the Compilation of Islamic Law states that the annulment of a marriage will not sever the legal relationship between the child and his parents. Thus, even though the marriage of both parents has been annulled, the child is still obliged to be cared for by both parents. [7]The rights and obligations of the child remain so that the child still gets his rights as a child whose obligations must be fulfilled. So, the position of a child in an incestuous marriage can be said to be a legitimate child. Meanwhile, in classical fiqh law, it states that a marriage carried out according to sharia and correct religious law by fulfilling the provisions and conditions for a marriage to take place, such as the presence of both bride and groom, the presence of witnesses, the presence of a marriage guardian and the ijab and qabul uttered by the bride and groom, then it can be ascertained that the marriage is valid, thus if the marriage is declared valid, then the child born from the marriage is a legitimate child and has the same status in Islamic law and positive law.

[7] KHI, Latest Edition, 2016, Publisher Fokusindo Mandiri, Bandung.

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The analysis of the problem above is in accordance with the theory of maslahah Mursalah, namely the concept or method of establishing Islamic law which is based on the principle of seeking maslahah (welfare or general benefit) which is not specifically supported or rejected by certain sharia arguments (the Koran and Hadith).

2. **What is the concept of inheritance of children resulting from incest according to Islamic jurisprudence from the perspective of maqashid Syari'ah?**

Analysis According to Islamic Fiqh Law

According to the Imam Shafi'i school of thought

A child born of an unintentional consanguineous marriage inherits from his father. This is because the marriage occurred due to ignorance on both sides, and because the relationship was conducted under conditions of legitimate suspicion. Therefore, the child is entitled to inherit from his father, just like any other legitimate child, as stated by Imam Nawawi in his book, Raudhlatul Tholibin.

Idza tajawaja rojulun bi imroatin mimaharimi jahlan kana yajhalu annaha uhtuhu fawako'a bainahuma watu fahua watun bisubhatin.

This means *: if a man marries a mahram woman but he does not know that the woman is actually his mahram and then sexual intercourse occurs between them, then the sexual intercourse is considered wati subhat.*

Imam Nawawi's statement clearly explains that consanguineous marriages that occur accidentally are classified as wati subhat. As he said:

yalhakul waladdu bil waati fil watil subhati wayatsbutu bihin nasabu wayatawarotsani.

Meaning: a child is inherited from his father in wati subhat and inherits from both of them.

This sentence explains that a child born from a wati subhat can be related to the person who passed away (his father) in the case of a wati subhat having a kinship relationship with his father and also receiving inheritance from his father.

Imam Hanafi's school of thought

A child born from a null and void marriage remains related to his father if the marriage occurred due to doubt, not adultery. Suybhat here means there is a presumption that the marriage is valid, when in fact it is void.

Imam Al Maeghinani, a follower of the Hanafiyah Madzhab, in the book Al Hidayah explains:

Idza waqo'al wath'u bi aqdin fasidin au bi syubhatin tsabata nasabu lanahu laisa

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bizaniyin mahdin pa idza tsabata nasabu tsabatal irstu.

It means:

If sexual intercourse occurs through an invalid contract or due to doubtful circumstances, the child's lineage is determined. This is because the relationship is not pure adultery. Therefore, if lineage is determined, inheritance is automatically determined.

As we know that the cause of inheritance is due to marriage, kinship and because of wala ' of the three causes can then be grouped into two parts, namely because of nasabiyah (the existence of a lineage relationship) and because of sababiyah (the existence of a cause) [8]. The kinship system can also be said to be an inheritance system that occurs due to the lineage factor or descent from their ancestors. While marriage and wala' can be said to be the cause of the inheritance system due to the existence of a legal act (recht handeling) carried out by a person with another person through a valid contract or agreement that is justified by law, of course in this case Islamic religious law. Marriage that is the cause of inheritance is a marriage that fulfills the pillars and conditions of a marriage that is subject to and the arrangement of the contract is based on Islamic law, because by fulfilling the pillars and conditions of marriage, it will give rise to rights for both of them, of course the right of inheritance inherits between the two when one of them dies.

For inheritance to occur, three requirements (elements) must be met, namely, as written by Sayid Sabiq (1972:426), there must be:

1. Heirs are people who are connected to the deceased by one of the causes of inheritance.
2. The heir is the deceased, whether legally or legally dead, such as a mafqud (missing) person who has been declared dead by the judge;
3. Inheritance, also called tirkah and Mirast, is property or rights that are transferred from the heir to the heirs.

The three pillars above are interrelated and must be present in every inheritance. In other words, inheritance is impossible if any one of the three elements is missing.

Apart from the pillars of inheritance, Islamic law also recognizes the conditions for inheritance to occur, namely:

[8]. Somawinata Yusuf, 2002, Fiqh Mawaris, Jakarta: Gaya Media Pratama

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1. The death of an heir, either actual or legal, such as a judge's decision on a death that is mafqud (missing).
2. The life of the heir after the death of the testator, even though legally it is like a child in the womb.
3. Absence of one of the barriers to inheritance.

The first condition above shows that all of a person's property and rights cannot be distributed, unless the person has actually passed away or the Judge has ruled on their death based on strong evidence, then the estate can be distributed to their heirs.

The second condition, showing that a person's qualifications as an heir can be guaranteed, because the heir is the one who will receive the transfer of the property left by the deceased, and this is not possible when the heir has died first and or died together with his heir.

The third condition (the absence of obstacles to inheritance) which can refuse to accept the inheritance of the heir. Regarding the third condition above, among the Faraidh scholars, there are those who state that it is not included in the inheritance conditions. According to them, the third condition of inheritance is knowledge of the situation about the heir [9]. The transfer of the heir's inheritance (tirkah) and its distribution to the heirs is not only seen from who the recipient is, but also seen the reasons for the inheritance and hindered or obstructed to get the inheritance.

Regarding the status of inheritance rights from incestuous marriages, if we look at Article 28 paragraph (2) it states that the decision to annul a marriage does not apply retroactively to children born from the marriage, so incest is classified as a legitimate child, and has the right to inherit like legitimate children in general, because they still have a legal relationship with both parents.

As has been explained, the status of a child in an incestuous marriage is the same as that of a legitimate child in a normal marriage, whether from a legitimate marriage or through a non-legal marriage through sexual intercourse, due to the existence of a marriage contract. He inherits and at the same time becomes the heir of the unlimited jihat of both parents, this is based on the Qur'an, Surah An-Nisa 11:

He advises you God in Your children For the male like luck The two females . Be women above Two For them two-thirds what He left . And if She was one So it is her Half , and for his parents. per one From them One-sixth From what to leave

[9] Ahmad Rifai Arief, Tafsir Al Ma'sur Fil Ilmi Faraidh, Islamic Boarding School Daar El Qolam, Tangerang. tt

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that He was for him A child . If did not It will be for him child And he inherited from him. paternity For his mother The third . He was for him Brothers For his mother One-sixth from after commandment He recommends With it or Debt of , your fathers And your sons no Do you know? Which one? closer your A benefit an obligation from Allah , indeed God He was All-Knowing Wise

It means:

And for two parents, each of them shall have one-sixth of the estate left behind. If the deceased has children and his parents (only) inherit, then his mother shall have one-third. If the deceased has several brothers, then his mother shall have one-sixth. (The above divisions) after the fulfillment of his will or (and) after the payment of his debts. As for your parents and your children, you do not know which of them is nearer (in benefit) to you. This is a decree from Allah. Indeed, Allah is All-Knowing, All-Wise.

Al hadith: Innallaha qad A'tha kulla dzi haqin haqahu Pala washiyata li waarisin

Meaning: *verily, Allah has given everyone who has the right, that right, so there is no washiyat for the heir (HR. Ahmad wa Arba'ah)* [10].

The above analysis aligns with the theory of Islamic jurisprudence (fiqh), namely the principles and systems that govern blood relations, lineage, and kinship between one individual and another, particularly in legal, social, and religious contexts, or the science that studies genealogy or lineage. Lineage theory is the concept of lineage that holds significant significance in Islamic law, particularly regarding rights and obligations within the family, guardianship, and inheritance.

Thus, the concept of inheritance of children resulting from incestuous marriages is no different from that of legitimate children because they have the same status as legitimate children in inheriting the inheritance of their parents, whether from their biological mother or their biological father, without limits.

CONCLUSION

Firstly, the position of children in an incestuous marriage is the same as the position of children in a legal marriage, because an incestuous marriage itself is a legal marriage as long as there is no annulment, and when an annulment occurs against the marriage, it does not have a retroactive effect on the status of the child, because the annulment of the marriage does not immediately result in the annulment of the child who has been born, because the incestuous

[10] Suparman Usman, Fiqh Mawaris, Islamic inheritance law, Gaya Media Publisher Jakarta, p. 15

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marriage is in accordance with the provisions of the original law.

Secondly, from the description above, it can be understood that the distribution of inheritance to children of incestuous marriages is the same as the distribution of inheritance to legitimate children, because incestuous children are legitimate children and not children born from adultery or interfaith marriages, so that the position of incestuous children is the same as the position of legitimate children in receiving inheritance and can inherit from both parents, both from the mother and father.

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