# Measuring the Justice of Children's Inheritance Rights in Polygamy: A Comparison between Legal and Siri Marriages from the Perspective of Islamic Law

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***Article Info***

*Received: 2025-01-20*
*Revised: 2025-03-19*
*Accepted: 2025-04-29*

***Keywords:***
*Inheritance Rights, Polygamy, Legal Justice.*

***Abstract***

*The phenomenon of polygamy in Indonesia is still part of the complex socio-religious reality, mainly when polygamy is carried out without official registration, or known as nikah siri. In practice, the unrecorded marriage has a profound impact on the legal protection of children, particularly in terms of inheritance rights. Children born from serial marriages often do not receive legal recognition, so their position as heirs becomes weak or is not recognized at all. This study aims to measure the justice of children's inheritance rights in the context of polygamy through a comparison between children from formal and serial marriages in the perspective of Islamic law. With a normative qualitative approach, this study employs an in-depth literature review method, drawing on Islamic legal sources (the Qur'an, hadith, and fiqh books), national laws and regulations (Law No. 1 of 1974, Compilation of Islamic Law), as well as jurisprudence documents and other relevant scientific literature. The results of the study show that in Islamic fiqh, the principle of justice entitles all children from a valid marriage, whether recorded or not, according to shari'a, to inheritance as long as their fate is clear. However, in Indonesian national law, marriage registration is a mandatory administrative requirement to recognize the validity of the legal relationship between spouses, including in terms of inheritance. Children from a nikah siri do not automatically obtain inheritance rights unless the isbat nikah is determined and the determination of nasab is carried out through the court. This inequality highlights the disparity between the principles of Islamic law and the positivism of national law. This study recommends updating the regulations and approach of maqāṣid al-syarī'ah in family law policy to ensure justice and non-discrimination of children's rights in all forms of marriage.*

## I. Introduction

Polygamy is a form of marriage that is allowed in Islam with many strict conditions, one of which is the ability to act reasonably with their wives and children. In the legal context in Indonesia, polygamy is also legally recognized with certain administrative conditions as stipulated in Law Number 1 of 1974 concerning Marriage. However, the practice of polygamy is often carried out unrecorded or known as nikah siri, which raises various legal problems, especially related to the status of children and their rights (Fuadi et al., 2024).

The legal basis of marriage, including the legal basis of polygamy in Indonesia, is regulated in the Marriage Law. Furthermore, according to the Marriage Law, marriage is an innate bond between a man and a woman, forming a happy and eternal family (household) based on the One Godhead (Shihab, 2013).

One of the problems that often arises in the practice of nikah siri in polygamy is the inheritance rights of children. Children born of serial marriages do not automatically get formal legal recognition of their fate to their biological father. This has an impact on the non-recognition of the child's inheritance rights under national law. However, from the perspective of fiqh, as long as the nasab relationship can be proven in Sharia, the child is entitled to receive a share of the inheritance as a child from a valid marriage. This inconsistency leads to inequality in legal protection, which has the potential to violate the principles of justice and non-discrimination against children (Permatasari, 2023).

In the Indonesian legal system, polygamy is recognized on a limited basis and can only be practiced by meeting the requirements that are strictly regulated in laws and regulations. The primary legal basis that regulates polygamy is contained in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). The condition for Polygamy that must be met is that the husband submits an application to the court in the area where he lives. As for the consent of the wife/wives, except in certain circumstances such as: the wife cannot be asked for consent due to certain conditions; the wife was unknown for two years; other reasons deemed appropriate by the judge; There is a guarantee from the husband to be able to: meet the living needs of his wives and children; and be fair to their wives and children (Surjanti, 2014).

The court will only grant permission for polygamy if the first wife experiences one of the conditions: unable to carry out her obligations as a wife, suffering from a bodily disability or

incurable disease, or can to bear offspring. The judge will only grant a polygamy application if there is a firm and legally fair reason that a second marriage is necessary and does not cause injustice to the parties involved.

The law of polygamy according to Islam does not contradict the positive law in Indonesia, especially in Law Number 1 of 1974 concerning Marriage. However, for Muslims, the technical and administrative provisions regarding polygamy are further regulated in the Compilation of Islamic Law (KHI). In the KHI, it is emphasized that a husband is only allowed to have a maximum of four wives at the same time, with an absolute note that he can act fairly with all his wives and children. This justice is not only in the material aspect, but also in the treatment, attention, and division of time. If the husband is considered incapable of meeting these conditions of justice, then he is prohibited from practicing polygamy (Rahmi, 2015).

Several administrative requirements must be met, including the consent of the wife or wives who have been previously married. This consent may be given in writing or orally. In addition, the husband must also prove that he can ensure the living needs of all his wives and children appropriately. Last but not least, polygamy can only be done after the husband obtains permission from the Religious Court. Without such permission, a second or subsequent marriage has no administrative legal force. If the wife refuses to give consent, but the husband applies for permission based on valid reasons according to the law. The Religious Court can grant the request after examining and hearing the statements of both parties (Fathurahman, 2024).

The valid reasons referred to in the KHI include if the wife is unable to carry out her obligations as a wife, has a physical disability or disease that cannot be cured, or is unable to bear offspring. Upon the court's determination of a polygamy license, both the husband and wife have the legal right to submit a follow-up legal remedy in the form of an appeal or cassation. Thus, the rules on polygamy in the KHI and in the KUA emphasize the principle of protecting the rights of women and children, as well as preventing arbitrary polygamy practices without a strong legal basis (Hawan, 2024).

Islamic law, through the science of faraidh, has regulated the distribution of inheritance fairly and proportionately, regardless of the administrative status of a marriage. However, in Indonesia's positive legal practice, marriage registration is a crucial element in determining the legal relationship between a father and child. When a marriage is not registered, the child of the marriage must go through the process of isbat nikah and determination of nasab through the court to be

recognized as a legal heir (Hasan, 2025).

This study aims to measure legal justice for children in the practice of polygamy, focusing on the comparison between children from formal marriage and children from serial marriage, especially in terms of inheritance rights. The research was conducted through a normative juridical approach by examining the sources of Islamic law and national laws and regulations. This study is expected to contribute to the formulation of a just, balanced, and non-discriminatory legal solution for children of all forms of marriage.

## 2. Research Method

This study employs a normative qualitative approach, a type of library *research*. The primary focus of the research is on the analysis of the legal norms contained in Islamic fiqh and positive Indonesian law related to the inheritance rights of children in the practice of polygamy, especially those that compare the status of children from official marriage and serial marriage.

The normative approach is used to examine legal *doctrines*, both in mawarits fiqh and national laws and regulations. This approach also involves a juridical examination of the principles of legal justice and the principle of non-discrimination in the context of the child's inheritance rights. Primary sources: the Qur'an, hadith, classical and contemporary fiqh books, as well as laws and regulations such as Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), and Supreme Court decisions regarding the inheritance rights of children. Secondary sources: Scientific articles in accredited journals, academic books, previous research results, and other relevant documents.

Data is collected through documentation techniques, specifically by browsing and collecting legal materials from relevant literature, including libraries, online journals, and official websites of laws, regulations, and jurisprudence. The data were analyzed using a descriptive-qualitative analysis method, which involves systematically describing and interpreting the content of the data to gain an in-depth understanding of the differences in the legal treatment of children from formal and serial marriages in the context of inheritance rights. This analysis is also aimed at finding a synthesis and offering applicable and fair legal solutions.

## 3. Results and Discussion

### Implementation of inheritance law in polygamy for children born from legal marriage and children born from serial marriage, from the perspective of Islamic law

In Islamic law, the concept of inheritance for a child is based on the legitimate nasab (descendants) of a father, which is recognized by religion and the state. Therefore, both children born from an official marriage (registered in the state) and children born from a serial marriage have the right to inherit property from their parents, as long as their fate can be proven to be valid (Latif, 2022).

*First*, Children from a Legal Marriage. Children born of a legal marriage registered in the state and recognized by Islamic law have clear and legitimate inheritance rights. In the context of polygamy, the children of the first, second, and so on, have the same right to inherit from their fathers, under the provisions of Islamic inheritance law. Islamic law provides a clear division of who is entitled to inheritance, as well as the share received based on the gender and status of the child (male or female). In the case of polygamy, even if a husband has more than one wife, the inheritance rights of children from a formal marriage are not affected by the status of polygamy, as long as the child is legally married. In this case, a child born from a legal marriage is entitled to his father's inheritance under the applicable inheritance law, both from property acquired during the father's lifetime and after his death. The distribution of his inheritance is carried out by the provisions of Islamic law, which stipulate a specific proportion between boys and girls.

*Second*, the child of Siri's marriage. Nikah siri is a marriage that is performed religiously but not officially registered with the state. In this case, the child's inheritance is a significant issue because, under Islamic law, a child is only entitled to inherit property from their parent if the relationship between the child and the father is legally recognized. Although according to Islamic law, the child of a serial marriage is entitled to inherit from his father if his identity can be proven, the problem lies in the recognition of marital status. If the nikah siri is not declared in the religious court, then the child is not recognized as a legitimate child of the marriage by Indonesian positive law. Therefore, children of a series marriage often face obstacles to obtaining the same inheritance rights as children from formal marriages. The recognition of the birth of a child from a series of marriages in the context of Indonesian law requires an isbat nikah (determination of marital status) process in the Religious Court, where the court will determine whether the marriage is valid according to Islamic law and can recognize the child as a legitimate child entitled to inheritance.

*Third*, the Problem of Confession of Nasab in Polygamy. When polygamy is carried out in the context of serial marriage, the children of wives who are not officially registered (serial wives) are more vulnerable to the unclear legal status. The children of the first (legal) wife do not face the

same problems in the recognition of their inheritance, as the state and religion recognize it. However, children of the second or later wives in serial polygamy can experience difficulties, as Indonesian law does not automatically recognize the status of the serial marriage, unless there is a decision from the Religious Court that legalizes the marriage. This leads to injustice in the division of inheritance, where children who are legitimate according to Islamic law, but born from serial marriage, may not get the same inheritance rights as children from a formal marriage. In the case of polygamy, Islamic inheritance law requires justice for all children. However, in practice, children of serial marriages often do not get the same rights, both in terms of inheritance distribution and legal recognition.

From the perspective of Islamic law, both children from formal marriages and those from nikah siri are entitled to inherit from their parents, as long as their inheritance is valid. However, Indonesia's positive law presents challenges in recognizing children from nikah siri, particularly in terms of inheritance rights, as children from nikah siri will only receive inheritance rights if their status is recognized through isbat nikah. Polygamy involving serial marriage has the potential to add to the injustice in the division of inheritance, as the children of the serial wives often do not receive equal recognition as children from formal marriages. Therefore, harmonization between Islamic law and positive Indonesian law is necessary to ensure that the inheritance rights of children from all types of marriage are fairly protected (Purnamasari, 2012).

**Differences in the Protection of Inheritance Rights for Children from Legal Marriage and Siri Marriage According to Indonesian Positive Law**

Indonesia's positive law, which comprises Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), as well as its implementing rules, provides a clear legal basis for the status of children and inheritance rights. In the context of children born from polygamous relationships, there is a fundamental difference between children from formal marriages (registered at the Office of Religious Affairs/KUA) and children from nikah siri (not registered by the state), especially in the protection of their inheritance rights (Djubaedah, 2022).

*First*, Children from Legal Marriage. Children born of a legal marriage have a legal status that is fully recognized by the state. Based on Article 42 of Law No. 1 of 1974, a legitimate child is a child born in or as a result of a valid marriage. With this status, children obtain legal protection, including in terms of inheritance rights. Based on the inheritance law in the KHI, biological children

(dzurriyah) are included in the group of heirs who are entitled to the inheritance of their parents, both father and mother. In practice, children from a formal marriage do not face administrative or legal obstacles in the process of distributing inheritance because all legal documents such as birth certificates, parents' marriage certificates, and identity documents are legally registered. As a result, legal protection of children's inheritance rights from formal marriage is very strong and can be enforced both through family inheritance institutions, religious courts, and notaries.

*Second*, the child of Siri's marriage. Children born from serial marriages face more complex situations. Although from a religious point of view, the child can be considered valid if the identity is apparent, according to state law (positive law), children from serial marriage are not automatically recognized as legal children, because the marriage of their parents is not officially recorded. Article 43, paragraph (1) of Law No. 1 of 1974 originally stated that "Children born out of wedlock only have a civil relationship with their mother and her mother's family." However, after the Constitutional Court Decision No. 46/PUU-VIII/2010, children resulting from extramarital relationships who have a biological relationship with their father can be legally recognized, as long as there is proof of a blood relationship. However, this process of determining the fate requires a DNA test and a confession from the father, which can cause family conflicts and lead to lengthy legal processes. In the case of inheritance, children from a new series marriage are entitled to inheritance rights if the marriage of their parents has been declared (ratified) by the religious court through the isbat nikah process. In the absence of a marriage, the marital status is considered invalid by state law, and as a result, the child is not included in the legally recognized list of heirs. This is detrimental to the child, despite his religious entitlement to inheritance from his father (Wahyuni, 2022).

*Third*, the consequences of legal protection. This difference creates an inequality in the protection of inheritance rights between children of a formal marriage and a child of a serial marriage, in that the child of a formal marriage receives intact legal protection: legal status is recognized, inheritance rights are guaranteed, and the administrative process is easy. Meanwhile, children from nikah siri require additional steps, such as isbat nikah and/or biological proof, and still face the risk of not receiving inheritance rights if the extended family refuses or if the court does not determine their status of nasab.

*Fourth*, Criticism and Challenges. The current positive legal provisions are still considered discriminatory for children from serial marriages. Although the state intends to bring order to the

administration of marriage, its impact on children should not be a social or legal punishment. Islamic law provides a mechanism for children from a nikah siri to obtain inheritance rights if the circumstances are clear. Therefore, national law should be more accommodating to child protection, per the principle of "the best interest of the child" as guaranteed in the Convention on the Rights of the Child, which is also ratified by Indonesia.

The protection of inheritance rights for children in the practice of polygamy is highly dependent on the marital status of their parents. Children of a formal marriage get full inheritance rights and are recognized by law, while children of serial marriage face significant administrative and legal barriers to obtaining equal rights. To ensure justice, the state needs to establish a fairer and more accessible mechanism to legalize serial marriages and recognize the child's fate, thereby eliminating discrimination against children in obtaining inheritance rights from their parents (Zahro'ul et al., 2024).

**Actionable Legal Solutions to Ensure Justice in the Distribution of Inheritance between Children of Legal and Siri Marriages**

The inequality in the legal protection of inheritance rights for children from formal marriage and those from nikah siri reflects the existence of gaps in the national legal system that need to be addressed progressively. To ensure the principles of justice and the protection of children, as mandated in the Constitution and the principles of Islamic law, a comprehensive and implementable legal solution is needed. The following are legal solutions that can be pursued by:

*First,* isbat nikah as a formal legality. One of the first steps that must be taken by couples who perform a series of marriages is to submit an application for isbat nikah to the Religious Court. Isbat nikah is a legal mechanism that allows serial marriages to be legalized by state law. With this determination, the marital status becomes legal under state law. Children born from marriage have a strong legal basis as legal children, both religiously and statutorily. Children have legitimacy as heirs recognized in positive law. This step is crucial in protecting children's rights in the context of inheritance, particularly in the event of a dispute with other heirs or extended family members.

*Second*, the Recognition of Nasab through the Determination of the Court. If the marriage is invalid cannot be carried out, for example, because one of the parties has died, then another solution that can be taken is to submit a determination of the origin of the child to the Religious Court. This is strengthened by the Constitutional Court Decision No. 46/PUU-VIII/2010, which states that

children born out of wedlock still have a civil relationship with their biological father if it can be proven scientifically and/or other evidence. With the recognition of nasab through the court, the child gets recognition as an heir. Justice in the distribution of inheritance can be further upheld even if the marriage of the parents is not officially recorded.

*Third*, Revitalization and Harmonization of Family Law Regulations. The government, together with the House of Representatives and the Supreme Court, need to revise family law regulations, especially the Compilation of Islamic Law (KHI) to be more explicit in providing protection for children's inheritance rights from serial marriage. The Marriage Law to include a simpler mechanism in the legalization of marriage and the recognition of children, without violating the principles of sharia. It is also necessary to issue technical guidelines or fatwas of the MUI that support the protection of children's rights based on nasab, without discrimination in marital status.

*Fourth*, Settlement of Inheritance through Deliberation and Family. If a court determination has not been made, the family can take the path of deliberation to allocate inheritance rights to children from the second marriage fairly. Although this does not have formal legal force, it can help prevent conflicts and uphold the values of social justice and kinship in accordance with the spirit of Islamic law.

To ensure justice in the distribution of inheritance, the status of children must not be the basis of legal discrimination. Islam, in principle, upholds the justice of inheritance based on legal nasab, and the state is obliged to present a legal mechanism that is not difficult, especially for children from unregistered marriages. The combination of the juridical-formal approach (isbat nikah and child recognition) and the socio-cultural approach will provide a more just and humane legal solution (Donata et al., 2024).

## 4. Conclusion

From the perspective of Islamic law, both children born from a formal marriage and those born from a nikah siri have the same rights in terms of inheritance, provided that the nasab, or blood relationship with the father, can be legally proven. According to Islamic law, a child whose legal birth is entitled to inheritance rights from his parents, both in an official marriage and a serial marriage, as long as there are no obstacles such as the problem of an invalid nasab relationship. However, in practice, the issue of recognizing the birth of children from nikah siri is often an obstacle, because in the Indonesian legal system, children from nikah siri are not automatically recognized for their rights without a process of recognition through religious courts. Therefore,

although Islamic law provides equal inheritance, in reality, children of a nikah siri often have difficulties in accessing their inheritance rights.

According to Indonesia's positive law, the recognition of children in official marriages is clearly regulated in the Marriage Law and Compilation of Islamic Law (KHI). The state automatically recognizes children of a legal marriage and has legal inheritance rights from both parents, as stipulated in Islamic inheritance law. In contrast, children of serial marriage, although recognized in Islamic law if their fate is proven to be valid, often face difficulties in obtaining inheritance rights due to a lack of administrative recognition from the state. In the Indonesian legal system, the recognition of children from nikah siri requires the process of isbat nikah (determination of marital status) in a religious court to validate the child's nasab. Without a marriage, the child of a serial marriage may not be able to obtain the same inheritance rights as the child of a formal marriage. Therefore, the main difference between these two types of marriage lies in the administrative recognition and legal protection that children receive in the context of inheritance.

To ensure justice in the distribution of inheritance between children of formal marriages and those of serial marriages, there needs to be harmonization between Islamic law and positive Indonesian law. One solution is to strengthen the recognition of children's nasab from nikah siri through the isbat nikah mechanism that is more accessible to the public, without requiring complicated or expensive procedures. In addition, religious courts should be given greater authority in determining marital status and recognizing the inheritance rights of children from serial marriages, so that they can obtain inheritance rights equal to those of children from formal marriages. From a legal perspective, it is essential to revise the administrative provisions that differentiate between children from serial marriage and formal marriage in terms of inheritance rights, thereby eliminating discrimination based on the marital status of parents. With these measures, it is hoped that fairer justice can be created for all children born from polygamy, regardless of their parents' marital status.

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