

The Right to Bequeath a Wife in a Polygamous Marriage According to The Compilation of Islamic Law

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ABSTRACT

Marriage in Islamic law adheres to an open monogamy system, where a man is allowed to have more than one wife. Marriage has an influence on inheritance. The legal consequences that arise due to death are the emergence of rights and obligations. One of the inheritance problems occurs because of polygamous marriages. So the formulation of the problem in this paper regarding the rights of a wife and child from polygamous marriages according to the Compilation of Islamic Law in the case of the decision of the Religious Court Number: XX /Pdt.G/2013/PA.Bks. This research was conducted using a normative juridical research method with secondary data collection sourced from books related to the distribution of inheritance in polygamous marriages, as well as looking at the normative aspects in Law Number 1 of 1974, Compilation of Islamic Law, Decision of the Bekasi Religious Court No. XX /Pdt.G/2013/PA.Bks. Data analysis in this study was carried out qualitatively with deductive conclusions. The conclusion of this study is that it is possible for wives from polygamous marriages to jointly obtain property and inheritance from their husbands as regulated in Article 190 of the Compilation of Islamic Law and children from polygamous marriages are entitled to inherit property.

ABSTRAK

Perkawinan dalam Hukum Islam menganut sistem monogami terbuka, dimana seorang laki-laki diperbolehkan untuk memiliki isteri lebih dari seorang. Perkawinan membawa pengaruh terhadap pewarisan. Akibat hukum yang timbul diakibatkan kematian yaitu timbulnya hak-hak dan kewajiban-kewajiban. Salah satu permasalahan pewarisan terjadi karena adanya perkawinan poligami. Sehingga rumusan masalah dalam penulisan ini mengenai hak-hak seorang isteri dan anak dari perkawinan poligami menurut Kompilasi Hukum Islam dalam kasus putusan Pengadilan Agama Nomor: XX /Pdt.G/2013/PA.Bks. Penelitian ini dilakukan dengan menggunakan metode penelitian yuridis normatif dengan pengumpulan data sekunder yang bersumber pada buku-buku terkait dengan pembagian waris dalam perkawinan poligami, serta melihat aspek-aspek normatif dalam Undang-Undang Nomor 1 Tahun 1974, Kompilasi Hukum Islam, Putusan Pengadilan Agama Bekasi No. XX /Pdt.G/2013/PA.Bks. Analisis data dalam penelitian ini dilakukan secara kualitatif dengan penarikan kesimpulan secara deduktif. Kesimpulan dari penelitian ini bahwa isteri-isteri dari perkawinan poligami dimungkinkan untuk mendapatkan harta gono gini dan harta waris dari suaminya secara bersama-sama sebagaimana diatur dalam Pasal 190 Kompilasi Hukum Islam dan bagi anak-anak dari perkawinan poligami berhak untuk mendapatkan harta waris.

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I. INTRODUCTION

Humans are social beings who need to live in society, because as living beings humans cannot live alone. Man needs the help of other individuals to achieve everything that is needed in his life. One of the things that proves humans are social beings is marriage. Marriage is the bond born between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty Godhead. (Law Number 1 of 1974 concerning Marriage, n.d.) The definition implies that marriage is an inner bond, which has the purpose of forming a happy and eternal family on the basis of belief in god. Meanwhile, marriage according to Islamic Law is marriage, that is, a very strong contract or *mitsaaqon gholidhan* to obey Allah's commands and carry them out is worship. (Presidential Instruction Number 1 of 1991 Concerning the Dissemination of the Compilation of Islamic Law, n.d.)

Marriage in the Compilation of Islamic Law has a special purpose to obey the commands of Allah and to carry out worship. *Mitsaaqa ghalidha* is a very strong covenant, because men and women have done *uqdah* marriage which is a very strong relationship like a knot that is difficult to break. (Retnowulandari; Wahyuni, 2016) Every marriage must be legalized by registering a marriage, to be recognized as valid according to religion and state. Marriage registration needs to be carried out to provide legal certainty for the status of the parties. Marriage in Indonesia has the principle of open monogamy, where in marriage a man can only have a wife and a woman can only have a husband.

However, article 3 paragraph (2) of Law No. 1 of 1974, allows a husband to have more than one wife, if desired by the parties concerned. Indonesia allows a husband to have more than one wife, if he obtains permission from his wife and meets the requirements in Law No. 1 of 1974. Based on Article 38 of Law No. 1 of 1974, a marriage can be broken up due to, death, divorce and by court decision. With death, there is also another legal consequence automatically, namely the existence of legal science that concerns the rights of families to their property. Even the people and the state, under certain circumstances, have the right to its elevation. (Moechtar, 2019) The legal consequences arising from the event of death give rise to the rights and obligations of the person to pass to his family and closest friends. Death also gives rise to obligations towards others for the management of needs for himself.

Inheritance law is a law that regulates the transfer of property left by a deceased person and its consequences for his heirs. (Effendi Perangin, 2011) The factors that result in a person being entitled to be an heir are due to marriage, fraternal cord relationships, and *wala*. (Kadir, 2016) pillars of a heritage property is any kind of object or ownership left by the heir, whether in the form of money, land, and so on. The property has been deducted from the cost of the testator's care (if sick or dead), debts, *zakat* property, and grants or wills of the testator (not exceeding one-third). (Kadir, 2016)

The law of inheritance has a connection with human life, because every human being will inevitably experience death. A person who passes away and leaves a property is referred to as an heir and the property left behind is referred to as an inheritance. In Islamic inheritance, the right of ownership of property has been established for every human being with the cause of death. In Islamic law, *wadh'I* law is known as *wadh'I* law, which contains causes, conditions, and obstacles to the occurrence of law and legal relations. *Wadh'i* law is the occurrence of law due to cause and effect, for example death being the cause of the law of inheritance. (Mohammad Daud, 2012)

The pillars of inheritance consist of the Heir who bequeaths the property, heirs and inherited property. (Ash-Shabuni, 2001) Islamic law stipulates that the transfer of one's property to another

person using the term inheritance only applies after the person who has the property has died. This principle holds that one's property cannot be transferred to another person under the name of the heir as long as the one who has the property has not died yet. (Syarifuddin, 2004) However, in the division of inheritance, it is possible that someone is not entitled to an inheritance which in general a person is his heir who is entitled to receive, this is because the person is included in the classification of a free person or slave, a person who kills the heir and a person of different religions. (Tim El-Madani, 2014) What distinguishes Islamic inheritance law from other inheritance laws is that there are different types of heir classifications. The inheritance section also varies depending on the conditions of the inheritance case. According to the Qur'an the heirs are also divided as follows:

a. *Dzul Faraa-idh*

Dzul faraa-idh is an heir who gets a certain share of the inheritance in certain circumstances.

b. *Dzul Qarabat*

Dzul qarabat is an heir who has an indefinite share of the inheritance or is also called getting a residual share. In this case *Dzul qarabat* has a relationship with the heir through the male line and can also be from the female line simultaneously which is not separated.

c. *Mawali*

Mawali is an heir who has an indefinite share of the inheritance or is also called getting a residual share. In this case *Dzul qarabat* has a relationship with the heir through the male line and can also be from the female line simultaneously which is not separated).

Indonesian society is predominantly Muslim, this has led to the enactment of Islamic law in Indonesia, including in the division of inheritance for those who are Muslims. Because in the division of inheritance there are often consequences that harm the heir's family. Human instinctively loves possessions (Qs. Ali-Imran ayat:14) which is not uncommon to get a person to do various ways to obtain the property, even if the person has no right to the property. This often happens which gives rise to cases of mutual suing between the heirs in the Religious Court and the District Court. (Rofiq, 1998) The division of inheritance when a husband has more than one wife is regulated in surah An-Nissa verse 12:

مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ ۗ وَاللَّهُنَّ الرَّبِيعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ

Wives get a quarter of the property you left behind if you have no children. If you have children, then the wives get one-eighth of the property you leave after fulfilling the will you made or (and) after paying your debts.

Article 190 of the Compilation of Islamic Law states that for an heir who has more than one wife, then each wife is entitled to a gono gini share of the household with her husband, while all parts of the heir are the right of the heirs. Islamic inheritance law is derived from verses of the Qur'an, hadith of the prophet and ijtihaad (Compilation of Islamic Law). But in reality, even though the issues of inheritance have been clearly regulated in the Qur'an and Hadith, there are still frequent conflicts between the heirs. One of the problems in the division of inheritance is if a husband has more than one wife. The problem that often occurs is if the property is controlled by one of the wives and the division of inheritance is not in accordance with the laws and regulations.

The division of heirs in Indonesia recognizes the term *Munasakhat*, which can be interpreted as if a person leaves a number of heirlooms and heirs, before the heirloom property is distributed to the heirs who are entitled according to faraidh science. One of the heirs who was supposed to get a share

of the heirloom property died. So because of this, there was a transfer of the heir's share to his heirs, because he died before the estate was distributed. Munasakhat is only known in *Islamic fiqh* obtained from the *ijtihad-ijtihad* of the scholars, one of which is Dr. Muhammad Thaha Abul Eka Caliph gave an opinion about munasakhat is the transfer of part of some of the heirs to his heirs because the person concerned died before the inheritance was distributed. (Khalifah; et. al, 2007) In other words Munasakhat must contain the following elements: (Nasution; H. Amin Husein, 2012)

- a. The heirloom property of the mayit has not been distributed to the heirs according to the provisions of the division of heirloom property;
- b. The occurrence of the death of a person or several heirs;
- c. Transfer of part of the heirloom property from the dead then to the other heirs or to the heirs who were not originally heirs to the previous dead;
- d. The transfer of the deceased heir's share to his heirs should be by way of indifference, because if the transfer is due to purchase, gift, or gift.

The case for the position of the Bekasi Religious Court Decision No. XX /PDT. G/2013/PA. BKS where, **The Heir** passed away on April XX XXXX, due to illness without any evidence of a Death Certificate from the local village. The heir left the wife of the legal marriage, namely **Plaintiff I** which took place on July XX XXXX, as referred to in the citation of marriage certificate Number XX/XX/VII/XXXX issued by the Koja District Religious Affairs Office. In the marriage was born one son, **Plaintiff II**. In year XXXX without the permission of **Plaintiff I / The legal wife** of the deceased HEIR performed another marriage with a woman named the second Wife, as referred to in the citation of marriage certificate Number XX/XX/II/XXXX issued by the Office of Religious Affairs of Koja District on February XX XXXX. On April XX XXXX The Second Wife of the Heir died. Leaving a daughter, who is **The Defendant**, which can be proven by Birth Certificate No. XX / JP / XXXX issued by the Central Jakarta Civil Registration Office dated July XX XXXX.

With the death **Heir**, then problems arise regarding inheritance, both regarding the legal status of the heir and the right of the heir to obtain the inheritor's estate. Article 174 paragraph (1) of the Compilation of Islamic Law explains that the one who is entitled to become an heir, because of the existence of blood relations and the existence of a marriage relationship. Thus in this case **Plaintiff II, Defendant, Plaintiff I and the deceased Second Wife** are entitled to be heirs. The heir besides leaving the heirs, also left a legacy property in the form of a piece of land and a permanent house building covering an area of ± 146 m² with land certificate number XX located on Jl. X No. X, RT.015/013 Kelurahan XX, XX District, Bekasi City with the following boundaries: North : XX; East: XXX; West : XXX; South: XX.

The inherited property **of the Heir** mentioned above is still controlled by **the Defendant**, not divided in accordance with the provisions of Islamic law, including the existence of joint property obtained throughout the marriage that has not been divided and is still controlled by each party. Islamic inheritance law or in the book of jurisprudence called Faraid is the law of inheritance for Muslims to complete the division of property left by their deceased family. Islamic inheritance law is derived from verses of the Qur'an, hadith of the prophet and ijtihad (Compilation of Islamic Law). But in reality, even though the issues of inheritance have been clearly regulated in the Qur'an and Hadith, there are still frequent conflicts between the heirs. One of the problems in the division of inheritance is if a husband has more than one wife. The problem that often occurs is if the property is controlled by one of the wives and the division of inheritance is not in accordance with the laws and regulations.

The issue of inheritance as mentioned above causes losses to one of its heirs. An example of a case is contained in the Decision of the Jambi Religious Court No. XX/Pdt.G/XX/PA.JB. (*Perkawinan*

Poligami, n.d.) Where in the judgment the heir has entered into marriage twice without the permission of the first wife. From the first marriage the heir had nine children and from the second marriage the heir had two children. In this case the second wife lived together with the first wife for 7 years before the heir died. After the heir dies, the property is controlled by the first wife and the children of the first wife. The second wife and her children are considered not to be heirs and are not entitled to bequeath, based on the P3HP determination letter. The results of the Decision of the Jambi Religious Court stated that those included in the heirs were the first wife and her children and the second wife and her children and divided the inheritance in accordance with the provisions of Islamic inheritance in Indonesia.”

Problems related to the acquisition of bequeathing rights for those who have more than one wife have been studied several times in several previous studies. For comparison, an analysis of scientific journals studied by Didi Sukardi has been carried out.(Sukardi, 2014) This paper concludes that the Law of inheritance in Islam regarding the acquisition of wives or wives is regulated in the Qur'an surah An-Nisa verse 12 (Qs. 4: 12), in the Compilation of Islamic Law (KHI) the acquisition of wives is regulated in article 180. The difference lies in the terms of the acquisition and inheritance rights of the second wife in the Qur'an QS. 4: 12 get 1/4 or 1/8 part, taking into account the number of wives, if the wife is more than 1 (one) person then 1/4 or 1/8 is divided by what number of his wives because they use the word *lahunna* or wives. In KHI, it is not explained that it only uses 1/4 or for the wife's part and does not mention an explanation if there is more than one wife, so a clearer and firmer explanation is needed.

As a basis for considering this study, an analysis of other scientific journals that examined similar things was carried out, namely scientific journals written by Efriany.S.(Efriany S, 2022) This paper concludes that the position of the second wife in marriage Article 79 and Article 82 of the Compilation of Islamic Law on stating the position of the second wife in marriage is balanced. The share of wives in the property of union in polygamous marriages according to Article 94 of the Compilation of Islamic Law is the property acquired by the husband during the marriage bond with the first wife, constituting the joint property belonging to the first husband and wife. While the property acquired by the husband during the marriage bond with the second wife and during that time the husband is still bound by marriage with the first wife, then the property is the joint property of the husband, the first wife and the second wife. Similarly, it is the same with a second marriage if the husband performs a marriage with the third and fourth wives.

To strengthen the basis of this study, further analysis was carried out on other scientific journals that researched the same thing, namely scientific journals written by Ranta Tri Wardani Putri.(Putri, 2022) This paper concludes that the validity of marriage for the second wife of a polygamous marriage before the existence of Law Number 1 of 1974 was determined based on the requirements of religious marriage. If the conditions and marriage rules are met, the marriage is legal. The validity of marriage from polygamous marriages carried out after the existence of Law Number 1 of 1974 is declared invalid if they do not meet the legal requirements for polygamy, one of the conditions is to obtain permission from his wives. The share of inheritance for wives who have children gets 1/8 part of the estate. Article 190 of the Compilation of Islamic Law which states that for an heir who has more than one wife, then each wife is entitled to a share of the *gono-gini* of the household, and the entire share of the heir is the right of his heirs.

II. RESEARCH METHODS

The research method carried out in this study is a normative juridical literature study. Normative juridical is research that specifically examines library materials or secondary data. (Soerjono Soekanto; Sri Mamudji, 2009) The data used by this study is a type of secondary data. Secondary data is data obtained based on the results of literature studies, related to the research material that will be discussed in this study, namely Civil Law related to the division of inheritance. (Soerjono Soekanto; Sri Mamudji, 2009) The secondary data in this study is sourced from legal materials, as a result of:

1. The primary legal materials, that is, the binding legal materials, used in this study are as follows:
 - a. Hadith;
 - b. Compilation of Islamic Law Inpres Number 1 of 1991;
 - c. Law Number 1 of 1974;
 - d. Bekasi Religious Court Decision No. XX /Rev.G/ 2013/PA. Bks.
2. Secondary legal materials provide an explanation of primary legal materials. (Soerjono Soekanto; Sri Mamudji, 2009) For example, the draft law is the result of research, the work of legal circles, and so on. In this case, books, papers and search results through the internet regarding the object in question are used, as well as other sources related to the object under study. In this case the book reference is used as follows:
 - a. Islamic Law in Indonesia, Akhmad Rofiq
 - b. Inheritance Law, Effendi Warin
 - c. Introduction to Legal Research, Soerjono Soekanto Analytic Family Punishment in Indonesia: a study of sharia, marriage laws and compilation of Islamic law, Wahyuni Retnowulandari, SH., MH.
 - d. Islamic Inheritance Law, Amir Syarifuddin

The data obtained were analyzed using qualitative methods. Qualitative approach is a presentation method that describes the prevailing laws and regulations related to legal theories and the practice of implementing positive law concerning the problems analyzed. The data from this study were compiled using a deductive mindset, namely the submission of general to special conclusions. (Soerjono Soekanto; Sri Mamudji, 2009) With this method, research can be carried out by analyzing the notions and general concepts with statements of a special nature. In this case, the legal problem in this study regarding the possibility of wives from polygamous marriages being entitled to obtain inheritance is in accordance or not with the Compilation of Islamic Law.

III. RESULT AND DISCUSSION

1. Division of Inheritance for Wives of Polygamous Marriages According to Islamic Family Law in Indonesia

Marriage is an engagement carried out by a man and a woman. The implementation of a marriage has resulted in a change in the legal status of the parties. Islamic marriage in Indonesia is declared valid if it is in accordance with Article 4 of the Compilation of Islamic Law which states that marriage is valid, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974. Article 2 paragraphs (1) and (2) of Law No. 1 of 1974 states that marriage is legal if it is carried out based on the laws of religion and belief, besides that marriage also needs to be recorded to provide legal certainty and ensure order in marriage for the community. Marriage registration is carried out by the Marriage Registration Employee. (Undang-Undang Nomor

22 Tahun 1946 Tentang Pencatatan Nikah, Talak, Rujuk, n.d.) Polygamous marriage is a marriage performed by a man with more than Presidential Instruction No. 1 of 1991 limiting if a man wants to have more than one wife in a group, it is only allowed up to four wives.

In relation to the case, the marriage carried out by the Heir with his first wife, namely **Plaintiff I**, which was held on July XX XXXX, according to the author, the marriage was valid as per Article 4 jo Article 5 paragraphs (1) and (2) of the Compilation of Islamic Law. The marriage carried out by the Heir is recorded with the authorized Marriage Registration Employee as evidenced by the citation of the marriage certificate Number: XX / X / KL. BJ/V/XXXX issued by the Religious Affairs Office of Koja District. In that marriage had been born a son of **Plaintiff II**.

After entering into a marriage with **Plaintiff I**, the Heir entered into a second marriage with his **Second Wife** as referred to in the citation of marriage certificate Number XX/X/II/XXXX issued by the Koja District Religious Affairs Office on X February XXXX. The marriage carried out is not in accordance with the regulations of the Compilation of Islamic Law, where a second marriage is carried out requires the permission of his first wife, namely **Plaintiff I**, as stipulated in Article 58 paragraph (1) of the Compilation of Islamic Law. However, because the marriage was carried out before the existence of Law No. 1 of 1974 concerning marriage and Presidential Instruction No. 1 of 1991, there are no provisions that expressly regulate the implementation of polygamous marriages.

So according to the author the marriage is valid, because the marriage was held in 1966, where in that year there was no law regulating the need for **permission from the first** wife if they want to have another marriage with another woman. The two marriages performed by **the Heir** have been registered before the Marriage Registration Officer where the marriage was carried out, then the marriage is in accordance with Article 5 paragraph (1) jo Article 6 paragraph (1) of Presidential Instruction No. 1 of 1991. Marriages that are carried out before the Marriage Registration Officer have legal force, so both marriages are considered valid and recognized for their marital status by the state. In this case there is a principle of inheritance caused by death, that is, when **the Heir** dies on XX April XXXX due to illness, then the inheritance caused by death to the inheritor's estate to his heirs is open. As stipulated in Article 171 letter c of Presidential Instruction No. 1 of 1991 that, the heir is a person who has a blood relationship, marital relationship and is a Muslim religion who has the right to receive **the inheritor's estate**.

Article 190 of the Compilation of Islamic Law explains that if a man has more than **one wife**, then each wife gets a gono-gini share of the household with her husband, and a share of the inheritance together. Related to the case, the Heir has two wives namely **Plaintiff I** and **The Second Wife**. From the two marriages there were two children, a boy named **Plaintiff II** and a daughter, Namely **Defendant I**. Since both marriages the Heir is valid as evidenced by the existence of a marriage book, the children are biological children or legal children of the two marriages, as explained in Article 99 of the Compilation of Islamic Law. Based on Article 4 jo Article 5 paragraphs (1) and (2) jo Article 6 paragraphs (1) and (2) jo Article 190 letter c compilation of Islamic Law, the wives of the heirs are entitled to receive inheritance in a coded manner. In this case, the dispute is the inheritor's estate. So in this case who is entitled to get the inheritance of the heir's two wives and their children.

2. The Rights of Wives And Children From Polygamous Marriages According to the Compilation of Islamic Law

Decision of the Religious Court Bekasi Number XX/Pdt.G/2013/PA. Bks is an inheritance dispute between **Plaintiff I**, **Plaintiff II** and **Defendant**. **Plaintiff I** was the first wife of the heir to

the recognized legal marriage **and Plaintiff II** was the child by the first wife of the legally recognized marriage between **the heir and Plaintiff I**. Where as **the Defendant** is the child of the wife of the two recognized legal heirs of the marriage. **Plaintiff I** who was the wife of the legal marriage of the testator filed a suit regarding the division of the inheritance of **the deceased Heir** who died on April XX XXXX due to illness. In this case the heirs left the heirs namely Plaintiff I (first wife), **Plaintiff II** (son of legal marriage), **Second Wife and Defendant** (daughter of legal marriage).

In addition to the heir leaving the heir, the heir also left a legacy property in the form of a piece of land and buildings controlled by the Defendant. Where until now the estate has not been divided into its heirs. In this case, the plaintiffs had tried to resolve the matter in a familial manner, but found no result so the Plaintiffs filed a suit with the Religious Court to divide it according to islamic inheritance rules. The religious court designated the Heirs of the Heirs who died on April 27, 2002 as follows:

- a) **Plaintiff I** (First wife)
- b) **Plaintiff II** (son of a legal marriage),
- c) **Defendant** (biological daughter)

According to the author, the above decision issued by the Bekasi Religious Court is not in accordance with the Qur'an Surah An-Nissa paragraph 12 and Article 174 paragraph (1) of Presidential Instruction No. 1 of 1991. In relation to the consideration of the judge who recognizes the validity of the two marriages, then from the marriage relationship can give birth to rights as islamic law causes a person to be entitled to receive inheritance. At the time the heir died on XX April XXXX the wife of the two heirs was still alive then she was entitled to be the heir of the heir. Islamic Inheritance Law explains the existence of a *munasakhat* condition where the state of the heir leaves a number of heirs at the time of the inheritance and heirs, but before the inheritance property is distributed to the heirs. (Nasution; H. Amin Husein, 2012)

In this case the second wife had died before the division of the estate, hence the transfer of that share of the estate to her heirs, which was due to the heirs dying before the estate was distributed. In the said judgment establishes the share of the heirs of the Heir as per dictum 2.1 to 2.3 as follows:

1. Plaintiff I earned a share of 3/24 or 12.5%
2. Plaintiff II obtained a share of 14/24 or 58.3%
3. The defendants obtained a share of 7/24 or 29.2%

In the above judgment issued by the Bekasi Religious Court, it is not conforming in accordance with the Qur'an Surah An-Nissa paragraph 12 and Article 190 of the Compilation of Islamic Law. Judging from the marriage of the heir, where **the heir** has more than one wife and their marriage is recorded by their register, then the marriage is valid and binding for the parties. Reviewed from the judgment of the religious court No. XX/Rev.G/2013/PA. Bks regarding the division of the newly distributed inheritance in year XXXX, after the wife II of the heir died on April XX XXXX, then there arose a *munasakhat* situation where the Second Wife died before the heir's estate was distributed. Because the second marriage was recognized as valid, **the Second Wife** was still entitled to the heir's share of the heir's inheritance even though **the Second Wife had died**. The correct calculation according to the Compilation of Islamic Law is as follows:

First, issued half of marriage I to **Plaintiff (B)** and half part of marriage II to **Second Wife (C)**, as gono-gini property of each of their marriages. As stipulated in Article 96 of the Compilation of Islamic Law states "In the event of a dead divorce, then half of the common property becomes the right of the spouse who lives longer". Article 190 of the Compilation of Islamic Law which states "For an heir who

has more than one wife, each wife is entitled to a share of the gono-gini of the household with her husband, while the entire share of the heir is the right of her heirs". So in this case there is *a dzul faraa-idh* (DF), wherein the heir's share of wives gets an inheritance share of 1/8 together because they have children and gono gini property from each marriage.

Second, counting the *dzawul qarabat* (DQ), who get this share in this case are children where the son gets 2:1 from the daughter, i.e. the son of the first wife of Plaintiff II (D) and the daughter of the second wife of the Defendant (E) Based on surah An-Nissa paragraph 11, hence the division of inheritance as follows:

HPP = 1 for B, C, D and E

$$\begin{aligned} DF &= 1 - (B C) \\ &= 1 - (1/8) \\ &= 7/8 \end{aligned}$$

$$\begin{aligned} DQ &= D : E \\ &2 : 1 \end{aligned}$$

$$D = 2/3 \times 7/8 = 14/24$$

$$E = 1/3 \times 7/8 = 7/24$$

The total property of the deceased Heir is as follows:

$$\begin{array}{r} B C = 1/8 = 3/24 \\ D = 14/24 \\ E = 7/24 \\ \hline 24/24 \end{array} +$$

In this case **the Second Wife** of the deceased Heir before the estate was distributed hence the position of *munasakhat* arose. **The Second Wife** of the deceased had an heir and her biological son who namely **the Defendant**, who in this case was entitled to the property acquired by her mother as a **the Second Wife**. Then **the Defendant** is entitled to receive the estate of his mother, namely the **Second Wife**, which was obtained at the time of the division of the estate of his father, who is **the Heir**.

IV. CONCLUSION

Based on Article 4 jo Article 5 paragraphs (1) and (2) jo Article 6 paragraphs (1) and (2) jo Article 171 letter c compilation of Islamic Law that is entitled to obtain inherited property The heir is the party who has blood ties or marriage ties. Article 190 of the Compilation of Islamic Law regulates the division of inherited property so that each wife is entitled to a share of the inheritance jointly and a gono gini share if the marriage is recognized as valid.

Based on the case there was a *munasakhat* situation where the second wife had died at the time of the division of the estate. So the Second Wife was counted into being the heir. So in this case the First Wife and the Second Wife are entitled to the heir's share of the heir's inheritance of 3/24 share together and the gono gini property of their respective marriages, while Plaintiff II is 14/24 part and Defendant gets 7/24 share. However, due to the circumstances in which the Second Wife died before the estate was distributed, part of the Second Wife was given to her heirs, namely the Defendant.

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