

## Legal Analysis of Provision of Assets to Stepsons Reviewing From Article 171 of The Compilation of Islamic Law



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**ABSTRACT:** This study aims to analyze whether stepchildren can inherit from their parents' marriage, as well as examine the legal consequences for stepchildren who get inheritance from their parents' marriage. The research method used is empirical juridical which is an approach model in the form of an action to see a legal reality in society which is chosen as the type of research the author uses. Factually, the implementation of positive legal provisions in legal events is also studied in this empirical legal research which aims to ensure the suitability of the results of its application with the provisions of the Act. **Research result** shows that stepchildren are basically children born to husband or wife from previous marriages who are legally related to a new legal marriage by their father or mother, where the husband's or wife's congenital child is a stepchild in the family or a new marriage by the father or her mother. Status as a stepchild does not eliminate the inheritance rights of a stepchild as a biological child from his biological father or mother who brings a stepchild into a new marriage, and the position of a stepchild in inheritance rights is also recognized by Islamic inheritance law as Hijab Nuqshan (Barrier which results in reduced inheritance rights). heir share). That stepchildren in Islamic inheritance law are not directly classified as heirs because there is no reason to inherit (asbabul mirats). But by using other alternatives in Islamic inheritance law, stepchildren will not lose their right to get protection from their parents, as inborn children of their biological father and mother. Where in Islamic inheritance law, stepchildren can get inheritance from the marriage of their new biological father or mother (his new family) by means of Qiyas and Wasiat obligatory by 1/3.

**KEYWORD:** Inheritance, Stepdaughter.

### PRELIMINARY

#### A. Background

Children are a gift from God Almighty that must be protected, educated as a provision of resources, children are a priceless wealth. A child is present as a mandate from God to be cared for, guarded and educated so that later every parent will be held accountable for the nature and behavior of the child during the world. Literally, the child is a forerunner who will carry on for generations of family, nation and state. Children are also an asset of human resources that later can help build the nation and state.<sup>1</sup> A child is also a person who is born from a marriage between a woman and a man without considering that someone who is born by a woman even though she has never married is still called a child. nation and human resources for national development.

The future of the nation and state in the future is in the hands of today's children, the better the child's personality now, the better the future life of the nation. And vice versa, if the child's personality is bad then the life of the nation will also be dilapidated. In general, people think that childhood is a long period in the life span.<sup>2</sup> Heirs In Article 171 point c of the Compilation of Islamic Law it is explained that heirs are people who at the time of death have blood relations or marital relations with the heirs, are Muslim and are not hindered by law from becoming heirs. Inheritance The Compilation of Islamic Law distinguishes between inheritance and inheritance. In Article 171 point d of the Compilation of Islamic Law, namely "Inheritance is property left by the heir, both in the form of objects that are his property and his rights". And in Article 171 point of the Compilation of Islamic Law: "Inheritance is inherited property plus a part of joint property after being used for the purposes of the testator during illness until death, costs for managing the corpse (tajhiz), debt payments, and gifts for relatives".

<sup>1</sup> [www.idjoel.com/pengertian-anak-menurut-para-ahli](http://www.idjoel.com/pengertian-anak-menurut-para-ahli).

<sup>2</sup> D.Y. Witanto, Hak dan Kedudukan Anak Luar Kawin, Kencana, Jakarta: 2012, hlm. 59.

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The Inheritance Right of Stepchildren According to Islamic Law is the child of one husband or wife as a result of his marriage with his previous wife or husband, who legally has a relationship with a new legal marriage by his father or mother, where the husband's or wife's congenital child is a stepchild. in the new family or marriage of the father or mother. Basically stepchildren only have inheritance and civil relations with their parents by blood. Based on the above description, an interesting issue that can be raised in this research is the legal analysis of inheritance to stepchildren in terms of Article 171 of the Compilation of Islamic Law.

### **B. Formulation of the problem**

Starting from the background and identification of the problems described above, several problems are formulated as follows :

- 1) Can stepchildren get inheritance from their parents' marriage?
- 2) What are the legal consequences for stepchildren who get inheritance from their parents' marriage??

### **C. General Objectives and Specific Research Objectives**

#### **a. General purpose**

To analyze whether stepchildren can inherit from their parents' marriage and what are the legal consequences for stepchildren who get inheritance from their parents' marriage.

#### **b. Special purpose**

The special benefit of this research is to increase knowledge about the legal system in the field of inheritance rights, whether stepchildren can inherit from their parents' marriage and become recommendations for the community.

### **D. Achievement Target**

The target to be achieved in this research is scientific publication in journals with ISSN.

## **LITERATURE REVIEW**

### **A. Theoretical Foundations About the Inheritance Process**

The process of inheritance is the process of how to transfer (deliver) and distribute inheritance from the heir to the heirs, or how the process of transitioning from heir to heir, according to customary inheritance law, the inheritance process can be carried out when the heir is still alive or has died, namely grant. Grants in the sense of customary law are gifts in whole or in part from assets while the owner is still alive. This grant has long been practiced by indigenous peoples until now, because they want the property to be given in accordance with the wishes of the owner of the property and determine directly to whom the property is to be given.

The characteristic of the gift is that the delivery of the goods is instantaneous. Grants in customary law are also known as testamental grants, which means that parents divide up their assets in a proper manner according to their opinion, while they are still alive. According to customary law, parents are bound by rules, namely that all children must receive a proper share of the inheritance. Apart from that, he is free in how to divide and determine the size of each part. This grant is made to prevent disputes, commotion and quarrels in dividing their inheritance in the future. Then will, in customary law, will is a gift that is carried out by someone to his heirs or certain people whose implementation is carried out after the person who declares the will dies. The existence of a will for various reasons which usually is to avoid a dispute, a manifestation of the affection of the person who declares the will.

The person who declares a will can revoke the will that has been declared or has been pledged. The implementation of wills in customary law does not need to be done before a notary, but it is enough to say it orally in front of the family or heirs who are present at the time the will statement is executed. As for customary law, namely regarding wills, where wills are also a way for the owner of wealth who during his lifetime wishes for the last time about the distribution of his inheritance to his heirs and this will will only take effect after he dies.

The purpose of this will is that the heirs have the obligation to distribute the inheritance of their parents in the manner stipulated in the will. The second purpose is to prevent disputes, commotion and/or bickering among the heirs in dividing the inheritance of their parents later in life. In addition, the heirs will states bindingly the properties of the items that will become inherited assets such as heirlooms, goods for rent, goods held with liens, and so on.

### **B. Inheritance According to the Compilation of Islamic Law**

The existence of legal reform efforts carried out by giving a will to an illegitimate child is a limited renewal, namely by continuing to occupy the position of the heir of an illegitimate child as a person who is prevented from getting an inheritance

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because they are not legitimate children, but they still get a share of your inheritance. His Muslim origin is by way of a will. There are 3 (three) elements of inheritance in the ILC (Islamic Law Compilation), namely :

- a. **Heir**; is a person who at the time of death, leaves heirs and inheritance. Article 171 point b of the Compilation of Islamic Law explains that: "Heirs are people who at the time of death or who are declared dead based on a court decision are Muslim, leave the heirs and inheritance". Thus, a new heir is said to exist if the person concerned dies and has inheritance and heirs.
- b. **Heir**; In Article 171 point c of the Compilation of Islamic Law it is explained that an heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is Muslim and is not hindered by law from becoming an heir..
- c. **The Inheritance of the Compilation of Islamic Law** distinguish between inheritance and inheritance. In Article 171 point d of the Compilation of Islamic Law: Heirs An heir is a person who at the time of death, leaves heirs and inheritance. Article 171 point b of the Compilation of Islamic Law explains that: "Heirs are people who at the time of death or who are declared dead based on a court decision are Muslim, leave the heirs and inheritance". Thus, a new heir is said to exist if the person concerned dies and has inheritance and heirs. b. Heirs In Article 171 point c of the Compilation of Islamic Law it is explained that heirs are people who at the time of death have blood relations or marital relations with the heirs, are Muslim and are not hindered by law from becoming heirs. c. Inheritance The Compilation of Islamic Law distinguishes between inheritance and inheritance. In Article 171 point d of the Compilation of Islamic Law: "Inheritance is inherited property plus part of the joint property after being used for the needs of the testator during illness until death, costs for managing the corpse (tajhiz), debt payments, and gifts for relatives". The three elements of inheritance in the Compilation of Islamic Law above will be explained further in the next chapter.

### C. Pillars and Inheritance Conditions

The issue of inheritance-inheritance is always identical with the transfer of ownership of an object, rights and responsibilities from the heir to his heirs. In Islamic inheritance law, acceptance of inheritance is based on the principle of *ijbari*, namely the inheritance transfers automatically according to the provisions of Allah SWT without being dependent on the will of the heir or heir.<sup>3</sup> This understanding will be fulfilled if the conditions and pillars of inheritance have been fulfilled and are not hindered from inheriting. There are several conditions that are met in the distribution of inheritance. These conditions always follow the pillars, but there are some that stand alone. In this case the author finds 3 conditions of inheritance that have been agreed upon by scholars, the 3 conditions are:<sup>4</sup> 1. The death of a person (the heir) either legally (eg considered dead) or by destiny. 2. The existence of heirs who live essentially at the time the testator dies. 3. All the heirs are known with certainty both their respective parts. The pillars of inheritance must be fulfilled at the time of distribution of inheritance. In his book Fachtur Rahman, The Science of Inheritance, it is stated that the pillars of inheritance in Islamic inheritance law are known to be of 3 types, namely :<sup>5</sup>

1. **Heir** namely the person who inherits his inheritance or the person who inherits his property. The condition is that the inheritor must really have died. According to the scholars, the death of the *muwaris* can be divided into 3 types, namely:
  - a. **Haqiqy death (true death)** Haqiqy death (true death) is the death of the *muwaris* who is believed to be without the need for a judge's decision because the death is witnessed by many people with the five senses and can be proven by clear and tangible evidence. **Hukmy death (death according to the judge or juridical)** Hukmy death (death according to the judge or juridical) is a death which is declared on the basis of a judge's decision due to several considerations. So with the judge's decision, the *muwaris* is legally declared dead even though there is a possibility that the *muwaris* are still alive. According to *Malikiyyah* and *Hambaliyyah*, if you leave the place for 4 years, you will be declared dead. In the opinion of other scholars, it is up to the judge's *ijtihad* to consider various possibilities. **Taqdiry death (predicted death)** Taqdiry death (predicted death) is a death (*muwaris*) based on strong suspicion, for example the suspicion of a pregnant woman who was beaten in the stomach or forced to drink poison. When the baby is born dead, then it is strongly suspected that the death was caused by the beating of the mother.
2. **Inheritance (heir)** namely people who are declared to have kinship relations, either blood relations (*nasab*), relationships because of marriage or marriage relations, or because they free slaves. The condition is that at the time of the death of the *muwaris*, the heirs are truly alive. Included in this is a baby who is still in the womb (*al-haml*) there are also other conditions that must be met, namely between the *muwaris* and heirs there are no obstacles to inheriting each other.
3. **Maurus or al-Miras**, namely the estate of the deceased after deducting the cost of treating the corpse, paying off debts and carrying out a will. Inheritance is distributed if the dead person leaves property that is useful to others. However,

<sup>3</sup> Muhammad Daud Ali, *Asas Hukum Islam*, (Jakarta: Rajawali Press, 1990), hlm.129.

<sup>4</sup> Abdul Ghofur Anshori, *Hukum Kewarisan Islam di Indonesia*, (Yogyakarta: Ekonisia, 2005), hlm. 24-25.

<sup>5</sup> Muhammad Ali As-Sahbuni, *Hukum Waris Dalam Syariat Islam*, (Bandung: CV Diponegoro, 1995), hlm. 49.

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before the inheritance is given to the heirs, there are three things that must first be issued, namely: 1. All costs related to the funeral process, 2. The will of the deceased, 3. The debts of the deceased. When the three things above have been fulfilled, then the distribution of inheritance is given to the family and also the entitled relatives. The criteria for heirs are stated in the Compilation of Islamic Law (ILC) article 171 letter c, which reads "Heirs are people who at the time of death have blood relations or marital relations with the heirs, are Muslim and are not hindered by law from becoming heirs". If observed, Islamic inheritance law divides heirs into two types, namely: 1. Nasabiyah heirs, namely heirs whose family relationships arise because of blood relations. So because lineage shows the family relationship between the heir and heirs.

### D. Children in the Perspective of Indonesian Civil Law

a) Understanding children seen from aspects of life, namely :

#### 1. Understanding of the Sociological Aspect

In the sociological aspect, children are defined as creatures created by Allah SWT who always interact in the community, nation and state. In this case, the child is positioned as a social group that has a lower social status than the community in which they interact. The meaning of the child in this social aspect is more directed at the protection of the child's own nature. This is due to the limitations possessed by the child as a form of expression as adults, for example, the limited progress of the child because the child is in the process of growth, learning and socialization due to immature age.

#### 2. Definition of children based on the 1945 Constitution

The definition of children in the 1945 Constitution is contained in article 34 which reads: "The poor and neglected children are cared for by the state"<sup>14</sup> This implies that children are legal subjects of national law that must be protected, nurtured and fostered to achieve children's welfare. In other words, the child is the responsibility of the government and society. Regarding the definition of a child according to the 1945 Constitution, Irma Setyowati Soemitri, SH, explained as follows: 4 of 1979 concerning child welfare, which means the meaning of a child (the notion of a child) is someone who must obtain rights which then these rights can guarantee growth and development properly both in secret, physically, and socially. Children also have the right to services to develop their abilities and social life as well as care and protection both during the womb and after they are born".

#### b) Kinds of Children

##### a. Biological children

In Islam, a child is a child who is born, a child is created through Allah's creation by the marriage of a man and a woman, resulting in his birth<sup>6</sup>.

##### b. Step child

Stepchildren are other people's children, such as a husband who marries a widow who has children. The son of the widow who has now become his wife is clearly not the son of the husband. So if the husband dies, even though people call the widow's child as his son, but according to sharia law, after all the child is still not his child. The child was the son of the widow's previous husband. So if the widow's husband previously died, the child will inherit from him.<sup>7</sup>

##### c. adopted son

There are women who throw away their children, out of shame, because of their own actions to have sex outside of marriage. For those who find it, must pick up (bring) the child. Will the child be cared for by himself or by someone else? If no one can afford it, because they don't have one, then the cost is borne by the State. There are people who use the term "Child of the State".

##### d. Adopted child (adoption)

Adoption has two meanings, namely: Taking other people's children to be cared for and educated with care and affection, and treated by adoptive parents like their own children, without giving them the status of biological children; Taking other people's children to be given the status of biological children so that he has the right to use the lineage of his adoptive parents and inherit his inheritance, and other rights as a relationship between the child and his parents.

## RESEARCH METHOD

### A. Research Type

This research is a normative juridical law research (legal research), where the concept of normative legal research or library

<sup>6</sup>[Http://duniapsikologi.dagdigdug.com/2008/11/19/pengertian-anak-tinjauan-secara-kronologis-dan-psikologis](http://duniapsikologi.dagdigdug.com/2008/11/19/pengertian-anak-tinjauan-secara-kronologis-dan-psikologis).

<sup>7</sup> Damrah Khair, *Hukum Kewarisan Islam Menurut Ajaran Sunni*, Fak. Syari'ah, IAIN Raden Intan Lampung, 2011, hlm, 139.

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research is research that examines document studies, which uses various secondary data such as legislation, court decisions, legal theory, and can be in the form of opinions. law scholars.

### B. Research Approach

The approach used in this research is the statutory approach and the conceptual approach. The statute approach is an approach taken by examining laws and regulations relating to the legal issues being handled. This conceptual approach is also carried out when the relevant laws and regulations do not or do not regulate the problem at hand. contained in books (treatises) and court decisions. For this reason, the statutory and conceptual approach is used to answer legal issues and build a strong legal argumentation in this study.<sup>8</sup>

### C. Types and Sources of Data

The types and sources of data used as material for analysis consist of :

- 1) Secondary data, namely data obtained from documents relating to the problem under study.
- 2) Tertiary data, namely data obtained from compilation of primary and secondary data.

### D. Data collection technique

The legal material collection techniques used by researchers are as follows :

- a. **Literature Study**, namely a method of collecting legal materials by conducting a search on library materials, namely collecting and reviewing laws and regulations, legal books, opinions of legal scholars. As well as the results of previous research related to the research problem under study, namely in the form of journals, articles, the legal basis of the engagement originating from an agreement where the act is contrary to the law and other materials that support this research.
- b. **Documentary Studies**, namely a method of collecting materials by reviewing the documents that support the above title relating to the Granting of Inheritance to Stepchildren in Review of Article 171 of the Compilation of Islamic Law.

### E. Data analysis technique

The analysis of legal materials in this study will use deductive logic analysis methods with qualitative normative analysis methods.<sup>9</sup> Deductive logic analysis method is to draw conclusions from a general problem to the concrete problem under study. While the qualitative normative analysis method, namely the discussion and explanation that is arranged logically on the results of research on norms, rules, and legal theoretical foundations that are relevant to the subject matter.

## RESEARCH RESULTS AND DISCUSSION

### A. The Position of Stepsons in Obtaining Wealth From Parents' Marriages

In general, a child is someone who is not yet 18 years old, including children who are still in the womb. In general, in society, the terms legal children and children outside of legal marriage are known. Law Number 1 of 1974 concerning marriage, a legitimate child is a child born in or as a result of a legal marriage and a child born outside of marriage only has a civil relationship with his mother and his mother's family.<sup>10</sup> The provisions mentioned above can be analyzed that the provisions of inheritance law can be classified based on :

- 1) Marital relationship, namely if a person can obtain inheritance as an heir due to a marital relationship between the deceased and the person, which includes the husband or wife of the deceased;
- 2) Because of blood relations. A person can obtain inheritance (become an heir) due to a kinship relationship or blood/family relationship with the deceased, which are included in this classification such as: mother, father, grandfather, grandmother, children, grandchildren, great-grandchildren, siblings, siblings and others. -other;
- 3) For liberating the corpse; A person can obtain inheritance (become an inheritance) from the deceased because that person frees the deceased from slavery, in this case it can be a man or a woman; and
- 4) Because fellow Muslims. A Muslim who dies, and he leaves no heir at all (extinct), then his inheritance is handed over to Baitul Mal, and will further be used for the benefit of the Muslims.

The second point regarding the reason a person gets an inheritance is because he has blood relations with the deceased or heir. This explains that if the stepchild is the inborn child of the mother and the one who dies is the mother, then the stepchild has the right to receive an inheritance as an heir from his biological mother, even though his status in the new family of his

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<sup>8</sup> Johan Nasution dan Bahder, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung.

<sup>9</sup>Ronny Hanitijo Soemitro, 1988, *Metode Penelitian Hukum dan Jurimetri*, Jakarta, Alumni, hlm. 98

<sup>10</sup> Lihat Ketentuan Pasal 42 dan 43 Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan

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biological mother is a stepchild. On the other hand, if the stepdaughter is the inborn child of the father and the deceased is the biological father, then the stepchild has the right to receive an inheritance as the heir of his biological father, even though his status in marriage or the new family his biological father is step child. In addition to some of the reasons a person gets the inheritance above.

There are 25 heirs regulated in Islamic inheritance law, who can inherit the estate of an heir consisting of 15 men and 10 women. Stepchildren are not directly included in the group of heirs according to Islamic law. But that doesn't mean stepchildren can't get inheritance. Stepchildren are not directly connected to their father or stepmother. However, stepchildren (born children of their mother or biological father from a previous marriage) in a new marital status or new family are entitled to inherit as biological children from their mother or biological father. Stepchildren or congenital children are not directly related to their stepparents. However, when a legal marriage has occurred, legally the stepchild or inborn child has a legal relationship with his new family. The existence of a legal relationship creates legal consequences for the presence of stepchildren for the mother and stepfather in receiving inheritance.

In Islam, children are the result of a marriage which is an important part of their position in the family. The child is a mandate from Allah SWT and the parents of the child are obliged to care for, raise and educate the child. Mentioned in articles 45 and 46 of the Marriage Law Number 1 of 1974, marriage brings laws between parents and children that give rise to rights and obligations between the two, and it is stated that it is an obligation for parents to educate and care for their children.

### a) Stepchildren's Inheritance Rights

Stepchildren or children obtained from spouses and from previous marriages, are not mentioned as part of the heirs based on the Qur'an and Hadith. This happens because the stepdaughter does not have a relationship or cause that allows her to inherit her stepparent's property. Because getting an inheritance or what is called *asbabul mirats* only consists of three things, namely :

1. Kinship or *qarabah*, this concerns biological children or people related to the lineage with the owner of the property or also known as the cause of lineage or better known as lineage
2. Marital relationship; namely the existence of a relationship between the person who inherits it with someone due to a marriage relationship. In this case, the marriage must be officially not an unregistered marriage, incest marriage, or other marriages whose laws are not legally valid. If they are divorced, the ex-spouse is not entitled to inherit property.
3. Due to freeing slaves or what is called *wala* rights. The person who frees a slave and then one day the slave has property and dies, then the person who frees the slave is entitled to inherit the property of the slave he has freed.

The three causes of inheritance above, we can conclude that stepchildren are not entitled or cannot inherit the property of their stepparents, he can only get inheritance from parents who are blood related to him, both mother and father. 'an. As children are the result of a marriage which is an important part of their position in the family. The child is a mandate from Allah SWT and the parents of the child are obliged to care for, raise and educate the child. It is stated in Articles 45 and 46 of the Marriage Law Number 1 of 1974 that marriage brings laws between parents and children that give rise to rights and obligations between the two, and it is stated that it is an obligation for parents to educate and care for their children.

**Muhammad Ali Ash Shabuny** explained that stepchildren do not get any share of the inheritance of their mother or stepfather, but on the other hand he stated that stepchildren can also become *Hijab Nuqshan* (Barrier which results in reduced share of heirs) to their mother or stepfather, as the Word of Allah SWT. In QS. An-Nisaa` verse 12, with the explanation that the husband gets a share of 1/4 if the wife has children or children from sons (grandchildren) and so on down, both children from the husband, or from others (previous husbands). The wife gets a 1/4 share if the husband does not have children or children from sons (grandchildren) and so on down, both children from that wife and from other wives.<sup>11</sup>

Stepchildren are basically children of the husband or wife from a previous marriage. Which legally has a relationship with a new legal marriage by the father or mother, where the husband's or wife's congenital child has the status as a stepchild in the family or the new marriage of the father or mother. Status as a stepchild does not eliminate the inheritance rights of a stepchild as a biological child from his biological father or mother who brings a stepchild into a new marriage, and the position of a stepchild in inheritance rights is also recognized by Islamic inheritance law as *Hijab Nuqshan*.

### b) Inheritance rights by grant

Grant arrangements and conditions in the ILC are regulated in Chapter VI Article 210-214<sup>12</sup> that's it :

- 1) The person who gives the gift must be at least 21 years old, of sound mind and without coercion;

<sup>11</sup> Muhammad Ali Ash Shabuniy, *Al Mawarits Fisy Syariah Al Islamiyah*, Syirkah Iqamah ad Din, Makkah, hlm. 205.

<sup>12</sup> *Mardani, 2014, Hukum Kewarisan Islam di Indonesia, Cetakan Pertama, Raja Grafindo Persada, Jakarta, hlm. 131.*

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- 2) Assets that are donated as much as 1/3 of their property to other people or institutions in the presence of two witnesses to be owned
- 3) The property that is donated must be the right of the donor
- 4) Grants from parents to their children can be counted as inheritance
- 5) Grants are irrevocable, except for parental grants to their children
- 6) A grant that is given when the grantor is sick and close to death must obtain approval from his heirs
- 7) Indonesian citizens residing in foreign countries can make a letter of grant before the local Consulate or Embassy of the Republic of Indonesia as long as the contents do not conflict with the provisions of the ILC articles.

Grants will not occur without the grantor. The grantor may not give other people's property without permission because the grantor does not have ownership rights in goods that do not belong to him. The person who gives his property as a grant must fulfill these conditions. From the discussion of the above formulation, it can be concluded that the distribution of inheritance to stepchildren is not legally regulated in law because the distribution of property is only intended for biological children on the line straight lineage, but stepchildren can get property with the distribution made by grant by the parent or stepfather of the child who is given in accordance with the terms of the grant that has been legally determined.

### B. B. Legal Consequences for Stepchildren Who Get Inheritance From Their Parents' Marriage

The position of the stepdaughter when compared to the adopted child, the stepchild's position is sometimes not better than the adopted child. If the presence of an adopted child is fully accepted by his parents, because his presence is desired, then this is not the case with stepchildren. The presence of stepchildren is sometimes not fully accepted by the mother or stepfather. It could happen that a person can only accept his mother or father (from stepchildren). Because indeed the one who is married is the mother or father (only), and not the children (stepchildren). This view is certainly born from those who think that marriage is only binding for the two of them (husband and wife), nothing more and nothing less.

Stepchildren as mentioned above, then for stepchildren whose biological parents, having sufficient wealth may not be a significant problem. However, if the biological parents (of stepchildren) are not well off, then the problem of property becomes very meaningful to him, in order to support his welfare in the present and in the future, both for education, treatment, and other coaching. Solutions and problem solving as well as at the same time prospering the lives of stepchildren in the future, there are 2 paths that can be taken, both alternatively and cumulatively, as follows :

- 1) Path of Qiyas to Adopted Children Qiyas means to combine or equate means to establish a new law of a case that has not existed in the past but has similarities in causes, benefits, dangers and various aspects with previous cases so that they are punished the same. In Islam, Ijma and Qiyas are emergency, if there are things that have not been determined in previous times.<sup>13</sup> Based on the considerations that have been mentioned above, it is hoped that the case of stepchildren can be confirmed their position and rights with adopted children, because adopted children and stepchildren have the same fact of reason (illat) that they are other people's children who are deliberately included become part of a family. Which means they are the responsibility of both parents. For stepchildren who are not heirs, only get 1/3 of the inheritance from their mother or stepfather. Allah SWT. has also advocated countermeasures such as this, as the Word of Allah SWT. in the Quran Q.S. Al Ahzaab verse 6 The prophet is more important to the believers than themselves, and his wives are the mothers of the believers. And those who are related by blood, some of them with others are more entitled (to inherit) in the Book of Allah than the believers and the emigrants, unless you do good to your brothers (even if the inheritance rights are does not apply to people who are not related by blood, but it is recommended to give only, among others through a will of no more than one third). Thus it is written in the Book of Allah.<sup>14</sup>
- 2) Stepchildren Get Inheritance Assets With Wills and/or Grants. Such is the importance of testamental grants in Islamic law so that the Qur'an explicitly and clearly provides guidance on will grants or wills. The verses related to this will grant.

Islamic law explicitly allows a person to give or give part or all of his wealth while still alive to another person called *intervivos*.<sup>15</sup> The giving of fellow life is commonly known as a grant. In Islamic law, the amount of a person's property that can be donated is unlimited, in contrast to the gift of someone through a will which is limited to one third of the net inheritance. Basically all kinds of property that can be used as property rights can be donated, both inheritance and personal property, fixed and movable objects and all kinds of receivables and intangible rights that can also be granted by the owner. The provisions relating to testamentary grants, among others, consist of :

<sup>13</sup>[https://id.m.wikipedia.org/wiki/kias\\_\(fikh\).pada\\_tanggal\\_7Juli\\_2021](https://id.m.wikipedia.org/wiki/kias_(fikh).pada_tanggal_7Juli_2021).

<sup>14</sup> Tim Disbintalad H.A Nazri Adlany, H. Hanafie Tamam, H.A Faruq Nasution, hlm. 822.

<sup>15</sup> Asaf A.A.Fyzee, 1996, Pokok-pokok Hukum Islam II, Tintamas, Jakarta, hml.1.

## Legal Analysis of Provision of Assets to Stepsons Reviewing From Article 171 of The Compilation of Islamic Law

- 1) **Al Muushii**, i.e. the person who makes the will must be capable and act voluntarily without coercion and he must really be entitled to the property to be willed;
- 2) **Al Musha bihi** i.e. the object to be donated in a will must be transferable. The testamentary grant may not exceed 1/3 (one third) of the assets after deducting all debts because it exceeds one third of the assets after deducting all debts because more than one third means reducing the rights of the heirs. This is based on the hadith narrated by Buchari who narrated the advice of the Messenger of Allah to Sa'ad bin Abi Waqqas when he felt he was going to die.
- 3) **Asj Sighat** namely the contents of the testamentary grant must be clear and clear, do not cause errors, do not conflict with the established regulations, and be carried out in the presence of at least two witnesses.

A will grant that exceeds one-third of the inheritance, then it is resolved in one of the ways, namely :

- a. Reduced to the limit of one third of the inheritance
- b. All the heirs who at that time received the inheritance were asked whether they classified the excess of one third, if the heirs expressed sincerity, then the granting of wills that exceeded one third was lawful.

According to Article 201 of the Compilation of Islamic Law which reads that if the will exceeds one third of the inheritance, while there are heirs who do not agree, the will is only carried out up to one third of the inheritance. From the discussion of the two problems mentioned above, it can be juxtaposed with the example of the case of inheritance distribution that occurred in the City of Ternate which has been legally tested through the Ternate Religious Court as court decision number: 540/Pdt.G/2017/PA.Tte which was decided in dated October 4, 2018 with the type of case Malwaris with the Petitioner / Plaintiff Nurdin Oncong with the Respondent / Defendant Saribuddin M Rupai. Sitting in this case is Plaintiff Nurdin Oncong (married to Saoda Abdul Rahman in 1981, previously Saodah Abdul Rahman had 2 children from a previous marriage who were under the care of his latest marriage. As time goes by, the marriage between the two does not have children.

In the marriage the Plaintiff and his wife bought a plot of land in the village of Makassar, Central Ternate City which was certified on behalf of the Plaintiff's wife Saodah Abdul Rahman, then the land was built a house building which was then shared by the Plaintiff, his wife and the Plaintiff's two stepchildren and their grandchildren. -The grandson of the Plaintiff's continued son who later the wife of the Plaintiff (Saodah Abdul Rahaman) died, after his death the land and house became the object of dispute. In the settlement of the dispute, the judge tried to divide it between the Plaintiff and the Plaintiff's wife to each get part of the plot of land as inheritance between the Plaintiff and the Plaintiff's wife. The determination of the heirs in the dispute which was handed down by the Court because the Plaintiff's wife had died, the Court could determine as the heirs of the deceased, namely: Nurdin Oncong (husband) and the deceased's children and grandchildren who legally punished the Defendant who controlled the land assets. the inheritance is to be distributed and handed over to the rightful heirs according to their respective divisions and if it cannot be divided in kind, then it is divided by auction in public.<sup>16</sup>

From the data and information obtained in the research that the author examines, which is related to the distribution of inheritance to stepchildren and juxtaposed with the case that was decided by the Ternate Religious Court Judge in court number: 540/Pdt.G/2017/PA.Tte which was decided on October 4, 2018 with the type of case Malwaris with the Petitioner / Plaintiff Nurdin Oncong which in its stipulation is very clear that the distribution of assets for stepchildren is only given through a grant from his stepparents and gets

In the provisions of Article 171 of the Compilation of Islamic Law, stepchildren are not heirs, basically they cannot inherit each other between themselves and their stepparents. Because, inheriting is limited to 3 (three) reasons, namely :

1. Because of kinship (*qarabah*), or also called because of nasab (lineage);
2. Because of marriage (*musharah*), namely between the deceased and the heirs there is a marital relationship. The point is, a legal marriage according to Islam, not an illegal marriage, and a marriage that is still intact (not divorced);
3. For freeing slaves (*wala*).

According to the author, it is permissible for stepchildren to be given a will by their stepparents. On the condition that the property given as a will does not exceed 1/3 (one third) of the assets of the deceased stepparent. If the will exceeds 1/3 (one third), then its implementation depends on the approval of the heirs.<sup>17</sup> (see **Pasal 195 Kompilasi Hukum Islam**). Another thing that can happen, if the father dies, then the heir will be a wife, and biological children from both the previous marriage and the children from the new marriage. Meanwhile, stepchildren who are brought by the wife, are not heirs but can be given a testament grant on condition that it is not more than 1/3 of the inheritance. Another thing that can happen is that the father dies, then his heir is a wife, and his biological children from both the previous marriage and the children from the new marriage.

<sup>16</sup> Putusan pengadilan Agama Ternate Nomor:540/Pdt.G/2017/PA.Tte.

<sup>17</sup> Pasal 195 Kompilasi Hukum Islam.



### CLOSING

#### A. Conclusion

1. The position of the stepchild does not get property from his parents' marriage. Stepchildren are basically children born to husband or wife from previous marriages who are legally related to a new legal marriage by their father or mother, where the husband's or wife's congenital child is a stepchild in the family or in a new marriage of father or mother- his. Status as a stepchild does not eliminate the inheritance rights of a stepchild as a biological child from his biological father or mother who brings a stepchild into a new marriage, and the position of a stepchild in inheritance rights is also recognized by Islamic inheritance law as Hijab Nuqshan (Barrier which results in reduced inheritance rights). heir share).
2. Legal consequences for stepchildren who get inheritance from their parents' marriage. In Islamic inheritance law, it is not directly classified as an heir because there is no reason to inherit (asbabul miirats). But by using other alternatives in Islamic inheritance law, stepchildren will not lose their right to get protection from their parents, as inborn children of their biological father and mother. And in Islamic inheritance law, stepchildren can get inheritance from the marriage of their new biological father or mother (his new family) by means of Qiyas and Wasiat obligatory by 1/3.

#### B. Recommendation

1. It is necessary to make regulations or laws that regulate the inheritance rights of stepchildren. Although it has been formulated in Article 171 letter (c), but regarding the position of inheritance rights of stepchildren, it should be stated explicitly in the ILC, so that the position and proportion of distribution for stepchildren is clearer;
2. Regardless of status or position, stepchildren can still get a share in terms of inheritance. Stepchildren are the same as children born in a legal marriage, stepchildren are entitled to protection to ensure their future. Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, the government, and local governments. Thus, stepchildren will not lose their future when they lose one of their parents.

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