

Legal Status and Inheritance Rights of Wives and Children from Unregistered Polygamous Marriages: A Socio-Legal Study at the Religious Court

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Marriage registration is a legal requirement in Indonesia to ensure legal certainty and the protection of civil rights, including inheritance rights. However, unregistered polygamous marriages continue to occur, resulting in legal uncertainty, particularly for wives and children. This study aims to examine the legal status and inheritance rights of wives and children from unregistered polygamous marriages and to analyze judicial considerations in resolving such cases at the Religious Court. This research employs an empirical legal (socio-legal) approach with a conceptual and juridical-empirical perspective. Data were obtained from secondary legal materials and semi-structured interviews with a Senior Judge at the Religious Court of Bukittinggi conducted on January 26, 2026. The data were analyzed qualitatively through data editing, thematic classification, and interpretative analysis. The findings indicate that marriage registration is the primary factor determining inheritance rights. Wives from unregistered marriages have weaker legal standing due to the absence of formal legal recognition. In contrast, children receive stronger legal protection through lineage recognition and legal mechanisms such as wasiat wajibah. Judges play an important role in ensuring justice by applying both formal legal provisions and substantive justice principles based on Islamic law and child protection. This reflects the Religious Court's function in balancing legal certainty and justice.

Keywords: unregistered marriage, polygamy, inheritance rights, Religious Court, Islamic law.

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1. Introduction

Marriage is a fundamental human event that encompasses significant social, cultural, and legal dimensions. In the Indonesian legal system, marriage is strictly regulated under Law Number 1 of 1974, which has been amended by Law Number 16 of 2019. One of the most crucial aspects of this regulation is the mandatory registration of marriages as a form of state recognition of a legally valid marital bond. According to Article 2 paragraph (2) of Law Number 1 of 1974, every marriage must be recorded according to the applicable laws and regulations. This provision emphasizes that while a marriage may be valid according to the religious beliefs of the respective parties, administrative registration is indispensable to ensure the marriage holds legal strength and is recognized by the state [1], [2]. Consequently, marriage registration is not merely a procedural formality but a determining factor for legal certainty that guarantees protection for the husband, wife, and their subsequent children.

Despite these clear regulations, societal practices often deviate from positive law, particularly concerning polygamy. While Indonesian law permits polygamy under strict conditions requiring formal permission from the Religious Court, a significant phenomenon involves the widespread practice of unregistered polygamy, commonly known as siri marriage. These marriages fulfill religious requirements but lack state registration. A critical urgency arises when the husband passes away, turning the determination of heirs and the distribution of inheritance into a highly complex issue. The absence of legal evidence, such as a

Marriage Book, places the second wife and the children born from this unregistered union in a highly vulnerable and uncertain position. Without formal legal standing, they face immense challenges in claiming their civil rights, including inheritance and joint property rights, leaving them legally unprotected and socially marginalized [3], [4].

This situation creates a profound legal dilemma for the Religious Court, which must navigate between enforcing positive law and providing substantive justice. On one hand, Article 2 of the Marriage Law affirms that a marriage is valid if conducted according to religious law, providing a normative basis for the unregistered wife and children to demand their rights as legitimate heirs under Islamic law. On the other hand, Article 49 of the Compilation of Islamic Law (KHI) explicitly imposes administrative sanctions, stating that a husband who practices polygamy without court permission loses his right to joint property. This regulatory intersection causes ambiguous interpretations regarding whether the lack of administrative permission simultaneously nullifies the inheritance rights of the wife and children. Consequently, judges are forced to balance the rigid enforcement of administrative legal certainty with the moral imperative of delivering substantive justice to innocent parties who genuinely hold religious inheritance rights [5].

Given the lack of uniformity and the complexities surrounding court decisions on this matter, there is a pressing need for a comprehensive academic inquiry. Therefore, the objective of this research is to deeply analyze the judicial mechanisms and considerations employed by judges in determining heirs in cases of unregistered polygamous marriages. Furthermore, this study aims to evaluate how judges interpret and apply conflicting legal articles, and to understand the broader implications of these judicial decisions on the civil and inheritance rights of women and children. By examining these aspects, the research seeks to provide clarity on how the legal system protects vulnerable family members amidst the dualism of religious validity and state administrative requirements [6].

2. Literature Review and Problem Statement

The theoretical foundation of marriage and inheritance in Indonesia is deeply rooted in the pluralistic intersection of religious, customary, and positive state laws. According to Law Number 1 of 1974 and the Compilation of Islamic Law (KHI), a valid marriage must fulfill both substantive religious requirements and formal administrative registration. Previous studies emphasize that while polygamy is legally permissible under strict conditions outlined in Articles 3 to 5 of the Marriage Law, the failure to register such marriages creates severe legal incapacities for the parties involved [7]. Scholars argue that unregistered wives fundamentally lack the legal standing required to claim inheritance rights under state law, despite their normative recognition within Islamic jurisprudence [8]. Furthermore, theories surrounding the protection of children in such unions often invoke Article 53 of the KHI to secure lineage (*nasab*) and utilize mechanisms like *wasiat wajibah* (obligatory bequests) to grant inheritance portions to children who are otherwise considered born outside of a legally recognized marriage [9]. However, literature also highlights a theoretical dichotomy: some models strictly uphold the administrative sanctions of Article 49 of the KHI which penalizes unauthorized polygamy while others advocate for substantive justice through peaceful inheritance settlements facilitated by Article 183 of the KHI [10].

Despite the extensive theoretical discourse on the normative status of unregistered polygamous marriages, a significant research gap persists regarding empirical judicial behavior when adjudicating these complex inheritance disputes. Most existing literature focuses heavily on the textual interpretation of the law, yet there is a notable inconsistency in understanding how judges practically navigate the ambiguous intersection between Article 2 of the Marriage Law (which validates religiously solemnized marriages) and Article 49 of the KHI (which penalizes administrative violations). Previous research has not adequately

addressed the varied, and sometimes conflicting, considerations judges employ when forced to choose between rigid procedural certainty and the moral obligation to protect vulnerable women and children. Based on this academic void, the core problem statement of this research is: How do Religious Court judges formulate their legal considerations to determine the status of heirs in unregistered polygamous marriages, and how do they practically reconcile the conflicting demands of positive legal procedures with the principles of substantive justice?.

3. Method

This study employs an empirical legal research approach (socio-legal research), which examines law not only as a normative system but also as a social phenomenon implemented in judicial practice. This approach was selected because the primary objective of this research is to analyze how Religious Court judges formulate legal considerations in determining heirs in cases of unregistered polygamous marriages. Empirical legal research allows for the examination of law in action by observing judicial reasoning, legal interpretation, and practical implementation of inheritance law in real dispute resolution contexts. Furthermore, this research applies a conceptual approach combined with a juridical-empirical perspective to understand legal doctrines, principles, and statutory provisions related to marriage validity and inheritance rights, particularly under Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) [10], [11].

The data sources used in this study consist of secondary data and primary empirical data obtained through interviews. Secondary data include legal materials categorized into primary, secondary, and tertiary legal sources. Primary legal materials consist of statutory regulations, including Law Number 1 of 1974 on Marriage, Law Number 16 of 2019, the Compilation of Islamic Law, and relevant judicial regulations governing polygamy and inheritance. Secondary legal materials include scholarly books, legal journals, and prior research discussing inheritance law, polygamy, and legal protection of spouses and children in unregistered marriages. Tertiary legal materials include legal dictionaries, legal encyclopedias, and supporting reference materials that assist in clarifying legal concepts and terminology [11], [12].

Primary empirical data were obtained through semi-structured interviews conducted with a senior judge (Hakim Utama Muda) at the Religious Court of Bukittinggi on January 26, 2026. The interview method was selected to obtain direct insights into judicial reasoning, decision-making considerations, and practical challenges faced by judges when determining inheritance rights in cases involving unregistered polygamous marriages. Semi-structured interviews allow flexibility in exploring relevant legal issues while maintaining a structured framework aligned with the research objectives. This method enables researchers to gather in-depth qualitative information regarding legal standing, evidentiary requirements, and judicial balancing between legal certainty and substantive justice [13].

The research location was the Religious Court of Bukittinggi, selected due to its relevance and experience in adjudicating inheritance disputes involving unregistered marriages. This location provides access to empirical legal practices and judicial perspectives essential to understanding the real application of inheritance law within the Indonesian legal system. The selected sample, consisting of an experienced Religious Court judge, provides authoritative legal insight into judicial reasoning and procedural considerations in inheritance determination cases [14]. The data analysis technique used in this research is qualitative descriptive analysis. The analysis process consists of three main stages: data editing, classification, and interpretation. First, the editing stage involves reviewing and verifying collected data to ensure completeness, accuracy, and relevance. Second, the classification stage involves organizing data into thematic categories, such as marriage validity, legal standing, evidentiary strength, and judicial

considerations. Finally, the interpretation stage involves analyzing legal reasoning patterns and drawing conclusions based on legal principles, statutory provisions, and empirical findings obtained from interviews and legal literature. This qualitative analysis approach enables the researcher to comprehensively understand judicial considerations and identify the interaction between legal norms and judicial practice in determining inheritance rights [10], [15].

4. Results and Discussion

This section presents the empirical findings obtained from interviews with a senior judge at the Religious Court of Bukittinggi, combined with doctrinal analysis of statutory provisions and relevant legal literature. The findings reveal several determining factors influencing judicial considerations in establishing heirs in cases of unregistered polygamous marriages. These factors include legal validity of the marriage, the existence of marriage legalization (*isbat nikah*), evidentiary strength presented in court, and the application of legal mechanisms to protect the rights of children and other vulnerable parties.

Table 1. Key Findings Analysis of Judicial Considerations in Determining Heirs

Aspect	Description
Legal Validity of Marriage	The legal status of marriage is the primary determinant in establishing inheritance rights. Unregistered marriages lack formal legal recognition, making it difficult for wives to obtain legal standing as heirs under state law. Judges rely heavily on official documentation such as marriage certificates as primary legal proof.
Isbat Nikah (Marriage Legalization)	Isbat nikah plays a crucial role in converting religiously valid but administratively unregistered marriages into legally recognized unions. Once legalized, the wife gains formal legal standing and inheritance rights under Indonesian inheritance law.
Strength of Evidence in Court	Judges assess various forms of evidence, including witness testimony, family acknowledgment, and supporting documents. Strong and credible evidence may influence judicial discretion, particularly in protecting children's rights and ensuring fairness.
Protection of Children's Rights	Children born from unregistered marriages receive stronger legal protection, as judges may apply Article 53 of the Compilation of Islamic Law (KHI) and mechanisms such as <i>wasiat wajibah</i> to secure their inheritance rights.
Judicial Considerations and Legal Interpretation	Judges balance formal legal certainty with substantive justice by considering Islamic legal principles, statutory provisions, and the protection of vulnerable parties, especially children.

Based on the data presented in Table 1, it can be analytically argued that the Religious Court operates on a strict hierarchy of legal evidence, where formal administrative legality absolutely supersedes substantive religious validity in the initial determination of heirs. The table illustrates a critical legal dichotomy: while the wife's legal standing is rigidly bound to the existence of formal state recognition (such as a marriage certificate or an *Isbat Nikah* decree), the children's rights are approached with more judicial flexibility. This demonstrates that the Court does not merely apply the law mechanically; rather, it strategically utilizes mechanisms like *Isbat Nikah* and *wasiat wajibah* as pragmatic legal bridges to resolve the profound tension between rigid state administrative requirements and the moral imperative of Islamic justice.

Main Determining Factors in Judicial Considerations

The findings indicate that the legal validity of marriage constitutes the most significant factor in determining inheritance rights. Indonesian law requires marriage registration to establish legal certainty and protect civil rights arising from marital relationships. Without formal registration, wives in unregistered polygamous marriages face serious legal obstacles in claiming inheritance rights due to lack of formal legal standing [16]. Judges therefore prioritize administrative legality as the primary foundation for recognizing inheritance claims.

To explicitly reinforce this stance, a direct quote from the interview with Drs. Abdul Aziz, M.H.I., a Senior Judge at the Religious Court of Bukittinggi, highlights the rigid boundary between moral conscience and positive law: *'In this case, we cannot merely rely on conscience because our country is a State of Law. No matter what, a child or wife from an unregistered marriage cannot obtain inheritance rights because they do not have valid proof of marriage recognized by the Religious Court... The wife will not get any rights at all, but the child can get it through wasiat wajibah, not standard inheritance, because the marriage is legally unclear'* [13]. This statement decisively confirms that formal evidentiary requirements absolutely dictate the legal standing of the parties, forcing judges to utilize alternative mechanisms rather than granting standard inheritance rights [14]. The existence of isbat nikah significantly strengthens the legal position of wives in inheritance disputes. This judicial mechanism allows previously unregistered marriages to obtain legal recognition retroactively, thereby granting inheritance rights under formal legal provisions. Isbat nikah serves as a legal bridge between religious validity and state administrative requirements, ensuring legal protection for spouses and children [17].

In addition, evidentiary strength presented during trial proceedings plays an essential role in judicial decision-making. Judges carefully evaluate testimonial evidence, documentary proof, and factual acknowledgment from family members or other witnesses. Strong evidence can support legal arguments and influence judicial reasoning, particularly in cases involving legal ambiguity or incomplete administrative records [10].

Phenomenon and Legal Interpretation: Implementation of Articles 53 and 183 of the Compilation of Islamic Law

A significant phenomenon identified in this study is the differential legal protection afforded to children and wives in unregistered polygamous marriages. Children receive relatively stronger legal protection compared to wives. Article 53 of the Compilation of Islamic Law ensures the recognition of lineage (nasab), enabling children to maintain legal relationships with their biological fathers even in cases of unregistered marriages. Furthermore, judges may apply the concept of wasiat wajibah (mandatory bequest) to guarantee inheritance rights for children who might otherwise face legal exclusion due to administrative irregularities [18]. Conversely, the legal position of wives is highly dependent on formal legal recognition. Without marriage registration or isbat nikah, wives lack formal legal standing as heirs under Indonesian law. This reflects the state's emphasis on administrative legality as the basis for legal protection, while Islamic legal principles emphasize substantive justice and fairness.

Article 183 of the Compilation of Islamic Law provides an alternative mechanism by encouraging peaceful settlement and equitable inheritance distribution among heirs. Judges may facilitate compromise solutions to ensure fairness, particularly when strict legal application may produce unjust outcomes. This provision allows judges to integrate legal certainty with principles of justice, equity, and social harmony [19]. These findings demonstrate that judges actively interpret and apply legal provisions not merely through rigid textual interpretation but through contextual legal reasoning that considers broader social and moral implications.

Comparison with Previous Studies

The findings of this research are consistent with prior studies indicating that marriage registration is essential in determining legal standing and inheritance rights under Indonesian law. Previous research confirms that unregistered marriages create legal vulnerabilities, particularly for wives who lack formal administrative recognition [4], [8]. However, this study provides additional empirical insight into how judges actively utilize legal mechanisms such as *isbat nikah* and *wasiat wajibah* to address legal gaps and ensure justice. Furthermore, this study supports theoretical arguments that Indonesian inheritance law reflects a hybrid legal system combining formal statutory requirements and Islamic legal principles. While administrative legality remains essential, judicial discretion plays a significant role in protecting vulnerable parties, especially children [5], [9].

Preliminary Conclusion of Findings

Based on the empirical findings and legal analysis, it can be concluded that Religious Court judges do not function merely as passive interpreters or "mouthpieces of the law," but as active agents of justice who integrate statutory law, Islamic legal principles, and substantive justice considerations in determining inheritance rights. Judges exercise legal reasoning that balances administrative legal certainty with the moral obligation to protect vulnerable parties, particularly children born from unregistered marriages. The findings also demonstrate that while wives' inheritance rights remain highly dependent on formal legal recognition, children benefit from broader legal protection through mechanisms such as lineage recognition and mandatory bequests. This reflects the judiciary's commitment to ensuring justice, protecting family integrity, and upholding the fundamental principles of Islamic inheritance law within the framework of Indonesia's legal system [20].

5. Conclusion

This study concludes that the legal validity of marriage is the primary determinant in establishing the inheritance rights of wives and children within the jurisdiction of the Religious Courts. Marriage registration serves as the formal legal basis for recognizing civil rights arising from marital relationships. In cases where marriages are not officially registered, the legal position of the wife becomes significantly weaker due to the lack of formal legal recognition. Conversely, children tend to receive stronger legal protection through mechanisms such as lineage recognition and the application of *wasiat wajibah*, which ensures their rights are substantively protected despite administrative deficiencies. Furthermore, the role of *isbat nikah* is essential in providing legal certainty and restoring the legal status of unregistered marriages. This mechanism strengthens the legal standing of both wives and children and enables judges to establish clearer legal relationships between the parties involved. The strength and sufficiency of evidence presented during court proceedings also play a crucial role in shaping judicial decisions.

The findings also demonstrate that judges in the Religious Courts do not function merely as passive interpreters of statutory law but actively exercise their judicial authority to uphold justice based on Islamic legal principles, legal certainty, and the protection of vulnerable parties, particularly children. Judges apply a substantive justice approach by balancing formal legal requirements with broader considerations of fairness, social reality, and public interest. In conclusion, while the legal system places significant emphasis on formal marriage registration, Religious Court judges play a critical role in ensuring that justice is achieved through flexible and contextual legal interpretation. This reflects the dual function of Religious Courts as institutions that uphold both legal certainty and substantive justice, especially in protecting children's rights in inheritance disputes arising from unregistered marriages.

A primary limitation of this study is its empirical scope, which is specifically confined to the jurisdictional practices and judicial interpretations of a single court, the Religious Court of Bukittinggi. Consequently, the findings may not fully capture the diverse jurisprudential dynamics present across other regions in Indonesia. Therefore, it is highly recommended that future research conducts a broader comparative study across multiple Religious Courts in different provinces. Furthermore, exploring the long-term sociological and economic impacts of these judicial decisions on the welfare of marginalized wives and children would provide a more holistic socio-legal evaluation of Indonesia's inheritance laws.

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