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The Position of Muslim Inheritors in Incestuous Marriages from the Perspective of Islamic Family Law Philosophy*

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Abstract

Islamic law that is of particular concern in positive law is the law of marriage. A marriage carried out by a person will give rise to inheritance laws for their children if the marriage is carried out with a valid contract and is justified by Islamic law. Inheritance law itself is a law that regulates the transfer of wealth from a deceased person to a living person because the existence of these rules is justified by Islamic law, although in practice this inheritance can be seen from several angles, because of marriage, because of kinship and so on, the question is how is the position of children in an incestuous marriage, and whether the status of the child's inheritance incest is the same as the position of the Muslim inheritance in an incestuous marriage. That the position of children in an incestuous marriage is the same as the position of children in a legal marriage, because an incestuous marriage itself is a legal marriage as long as there is no annulment, and when an annulment occurs against a marriage, it does not apply retroactively to the status of the child's position, because the annulment of a marriage does not immediately result in the annulment of a child who has been born, an incestuous marriage has been in accordance with the provisions at the beginning. It can be understood that the distribution of inheritance to children of incestuous marriages is the same as the distribution of inheritance to legitimate children, because incestuous children are legitimate children and not children born from adultery or interfaith marriages, so that the position of incestuous children is the same as the position of legitimate children in receiving inheritance and can inherit from both parents, both from the mother and father.

Keywords: Marriage; Heirs; Philosophy

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A. INTRODUCTION

Islamic law frequently discussed by legal scholars—particularly those specializing in Islamic family law—concerns the law of marriage. This is because marriage gives rise to new legal consequences that bind both parties. These consequences involve the rights and obligations of husband and wife, the legal relationship between spouses, the legal relationship between parents and children (parental authority), the legal status of children born within a valid marriage, as well as the status of children born from an invalid marriage. It also includes the issue of alimentary rights or maintenance obligations of children toward their parents and vice versa. Therefore, these matters require serious attention within Islamic family law, which regulates such legal relationships and familial bonds.

Legal issues arising in society, in addition to those governed by positive law, are highly complex, and this complexity is also reflected in Islamic family law. Islamic family law is broad in scope because it regulates various legal aspects from multiple perspectives. It encompasses not only laws governing the relationship between human beings and God—commonly referred to as the law of worship (*fiqh al-ibadah*), such as prayer, fasting, pilgrimage, and other acts of worship—but also laws regulating relationships among human beings (*muamalat*). Furthermore, it includes criminal law (*jinayat*) related to unlawful acts (*jarimah*) and political-legal matters (*siyasah*).

Islamic law that receives particular attention within the framework of positive law is the law of marriage. In Islamic law, marriage is defined as a contract that renders lawful the union between a man and a woman who are not mahram to each other, while regulating and limiting their respective rights and obligations in a spirit of mutual support. Islamic marriage law identifies several essential elements, one of which is that the parties entering into the marriage are a man and a woman who must comply with the rules prescribed in the Qur'anic texts. Following the conclusion of the marriage contract, their status is elevated to that of husband and wife, each bearing rights and obligations stipulated by Islamic teachings. The primary purpose of the marriage contract is to establish a loving and caring household characterized by mutual compassion, ultimately achieving a harmonious *sakinah* family. (Soedasono, 1991)

A marriage concluded validly according to Islamic law gives rise to inheritance rights for the children born from that marriage. Islamic inheritance law determines who qualifies as heirs, who is entitled to receive a share of the estate, the causes that give rise to inheritance, the respective portions of each heir, the rules governing distribution, as well as various matters related to the origin and allocation of inherited property.

These circumstances may generate new legal issues, particularly regarding the determination of heirs of different religions and heirs originating from invalid marriages (children born out of wedlock). Therefore, within the realm of Islamic family law, the discussion does not only concern marriage, gifts (*hibah*), guardianship, and endowment (*waqf*), but also requires an in-depth examination of inheritance law. In situations of *recht vacuum* (legal vacuum), legal breakthroughs oriented toward public benefit are needed.

Islamic inheritance law recognizes specific pillars and conditions of inheritance. For inheritance to take place, three fundamental elements must be fulfilled, as stated by Sayyid Sabiq (1972):

- 1) The heir, namely a person connected to the deceased through one of the legally recognized causes of inheritance;
- 2) The deceased (the estate-leaver), whether death occurs factually or legally, such as in the case of a missing person (*mafqud*) who has been judicially declared dead;
- 3) The estate (*tirkah/mirath*), which consists of the property or rights transferred from the deceased to the heirs.

These three pillars are interrelated and must be present in every inheritance case; inheritance cannot occur if any one of these elements is absent.

Inheritance law is a body of rules governing the transfer of property from a deceased person to living individuals, based on provisions recognized as valid under Islamic law. In practice, inheritance may be viewed from various perspectives, including those arising from marriage, kinship relations, and other factors. A key question that arises concerns the legal status of a child born from an incestuous marriage and whether the child's inheritance rights are equivalent to those of other Muslim heirs in cases involving incestuous unions.

Incestuous marriage refers to a marriage between two individuals who are closely related by blood—such as siblings, or a parent and child—and is regarded as a violation of customary norms, legal provisions, and religious teachings. Such a marriage involves a man and a woman who share a close blood relationship, whether in a direct line of descent (for example, grandparent and grandchild) or in a collateral line (such as between siblings). The term “incestuous marriage” also encompasses marital or sexual relationships between individuals who are bound by very close consanguinity or kinship.

Several disclosed cases of incestuous relationships in Indonesia illustrate this issue. In 2019, a highly publicized case occurred in Bulukumba, South Sulawesi, involving a marriage between a brother and his biological sister (Kompas.com, 2019; Tribun-Timur, 2019). In 2023, a case in Banyumas involved a father engaging in incest with his biological daughter (detikJateng, 2023; Kompas.com, 2023). Similar incidents were also reported in Bengkulu and Aceh, involving marriages between stepfathers and stepdaughters (CNN Indonesia, 2021; Serambi Indonesia, 2020), among others.

Such relationships often result in the legal status of children born out of wedlock (ALK), which subsequently raises new legal issues, particularly concerning the status and legal standing of the child, guardianship, inheritance rights, and other civil entitlements (Law No. 1 of 1974 as amended by Law No. 16 of 2019; Constitutional Court decision, 2012). Comparable legal disputes regarding the origin of children born out of wedlock have also attracted public attention, such as the M. Machica Mochtar–Moerdiono case (Constitutional Court, 2012), the Ario Kiswinar Teguh–Mario Teguh

case (Tempo, 2016; detikcom, 2016), and the Excel Reivan Agachie–Taufik Hidayat case (which still requires verification through primary sources).

Indonesian marriage law expressly prohibits incestuous marriages, as stipulated in Article 8 of Law No. 1 of 1974. The provision states that marriage is prohibited between two individuals who:

- 1) are related by blood in a direct line of descent, either upward or downward;
- 2) are related by blood in a collateral line, such as between siblings, between a person and the siblings of his or her parents, or between a person and his or her grandparent;
- 3) are related by affinity, including relationships between in-laws, stepparents and stepchildren;
- 4) are related through milk kinship, namely foster parents, foster children, foster siblings, and foster uncles or aunts;
- 5) are related as siblings to the wife, or as the wife's aunt or niece, in cases where a husband has more than one wife;
- 6) are bound by a relationship that is prohibited by their religion or by other applicable regulations.

Incestuous marriages may therefore be declared null and void. Article 28(1) of Law No. 1 of 1974 provides that a marriage may be annulled once a court decision has obtained permanent legal force, and such annulment is deemed to take effect from the time the marriage was contracted. Furthermore, Article 37 of Government Regulation No. 9 of 1975 on the Implementation of the Marriage Law stipulates that the annulment of a marriage may only be decided by a court.

In principle, the validity of a marriage is determined by the religious law adhered to by the parties at the time the marriage contract is concluded. This is based on Article 2 of Law No. 1 of 1974 on Marriage, which stipulates that “a marriage is valid when it is performed according to the laws of the respective parties' religion and belief” (Soedarsono, 1991). Furthermore, Article 2 of the Compilation of Islamic Law (KHI) states that marriage in Islam is a solemn contract (*mitsaqan ghalidhan*) undertaken in obedience to God's commands, and its performance constitutes an act of worship.

For adherents of Islam, the prohibition of incestuous marriage is also regulated in Article 70 of the Compilation of Islamic Law (KHI). The provision stipulates that a marriage is void if it is contracted between two persons who are related by consanguinity, affinity, or milk kinship up to certain degrees, namely: those related by blood in a direct line of descent, either ascending or descending; those related by blood in a collateral line, such as between siblings, between a person and the siblings of his or her parents, or the siblings of his or her grandparents; those related by affinity, including relationships between parents-in-law and children-in-law, or between stepparents and stepchildren; those related through milk kinship, such as foster parents, foster children, and foster uncles or aunts.

The prohibition of incestuous marriage in Islam is expressly stated in the Qur'an, particularly in Surah An-Nisa (4:23), which enumerates the categories of persons who are forbidden to marry due to specific degrees of kinship.

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهُتِ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُم مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِنْ لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ ۖ وَخَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۚ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا -

It is forbidden for you to marry your mothers, your daughters, your father's sisters, the daughters of your brothers; the daughters of your brothers, the daughters of your sisters, your mothers who breastfeed you, your sisters who are half-brothers; your mothers (in-laws), your wife's children who are in your care and the wife with whom you have interfered, but if you have not mixed with your wife, (and you have divorced) then it is not a sin for you to marry her; And it is forbidden for you, the wife of your biological son (daughter-in-law) to bring together (in marriage) two women who are sisters, except what has happened in the past. Indeed, Allah is most forgiving and most merciful.

A hadith states that the Prophet Muhammad (peace be upon him) said: "Whatever is prohibited due to lineage is also prohibited due to breastfeeding relations." (Reported by al-Bukhari and Muslim). In Indonesian positive law, this principle is affirmed in Article 8 of Law Number 1 of 1974 on Marriage, which explicitly stipulates that: "Marriage is prohibited between two persons who are related by blood in a direct ascending or descending line, in a collateral line, by affinity, or through breastfeeding." Furthermore, Article 30 of the Indonesian Civil Code provides that: "Marriage is prohibited between persons who are related to one another by blood in the ascending or descending line, whether from legitimate or illegitimate birth, or through marriage; and likewise in the collateral line between brothers and sisters, whether legitimate or illegitimate."

B. METHODS

The research method employed in this study is a descriptive-analytical method using a normative juridical approach combined with an empirical juridical approach. It is termed descriptive-analytical because the study describes and analyzes events occurring within society. It is called normative juridical because the focus of the research is law as norms, encompassing legal principles and legal rules as value-laden norms used to identify, process, and analyze legal materials in order to understand their meaning, significance, and relevance. The concrete legal sources referred to in this study are the Qur'an and Hadith.

The empirical juridical approach is applied to view law as a social reality (das sein) by observing how law operates in practice, not merely as written texts. In this

research, the author employs a middle-range theory of lineage and child protection, an applied theory of Maqasid al-Sharia, and a grand theory of critical legal studies and legal reconstruction.

C. RESULTS AND DISCUSSION

1. Status of Children from Incestuous Marriages

If a child is born from a marriage that is later annulled, the child remains legally recognized as legitimate. The annulment of the marriage does not retroactively affect the legal status of the child, since the invalidation does not apply to children born from that marriage. This principle is in accordance with Article 28 paragraph (2) of the Indonesian Marriage Law, which stipulates that annulment does not have retroactive effect on certain parties: first, children born from the concerned marriage; second, the husband or wife who acted in good faith, except with regard to joint property when the annulment is based on the existence of a prior marriage; and third, any third parties who have acquired rights in good faith before the annulment decision obtained permanent legal force. Therefore, the protection of children and parties acting in good faith remains a fundamental principle in determining the legal consequences of marriage annulment.

2. Guardianship of children from incestuous marriages

With regard to the child's guardianship rights, the child continues to have a genealogical (*nasab*) relationship with his or her biological father. Consequently, when the child is to enter into marriage, the biological father retains the right to act as the child's marriage guardian (*wali nikah*). This is in accordance with Article 21 paragraph (1) of the Compilation of Islamic Law (KHI), which states that the biological father belongs to the first category of guardians by lineage, namely male relatives in the direct ascending line from the child.

An impediment to serving as a marriage guardian (*wali nikah*) arises when the closest guardian who has the primary right does not meet the legal requirements to act as a guardian, for instance due to legal incapacity, deafness, muteness, or other valid excuses. In such cases, the right of guardianship is transferred to the next guardian in the hierarchical order. Thus, it is clear that the biological father still holds the right as a guardian by lineage (*wali nasab*) if a child born from an incestuous marriage intends to marry. This arrangement aims to provide legal protection for children born within such a marriage. Child protection is understood as all efforts to ensure and safeguard children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and be protected from violence and discrimination.

In Indonesia, incestuous marriage—namely a marriage between persons related by close blood ties in direct or collateral lines—is strictly prohibited and therefore invalid under national law. Article 8 of the Marriage Law forbids marriages between parents and children, grandparents and grandchildren, full or half siblings, as well as those related by affinity and by breastfeeding (milk kinship). Violation of these prohibitions

prevents registration of the marriage and allows for judicial annulment. For Muslims, the Compilation of Islamic Law specifies the degrees of prohibited kinship (*mahram*), reinforcing both administrative and religious consequences. In civil law terms, a valid joint marital property regime cannot arise; however, the child remains legally protected, maintains civil relations with the mother and her family, and may be legally linked to the biological father through evidence and court proceedings. Beyond civil aspects, the 2023 Criminal Code criminalizes incestuous sexual relations in certain degrees, particularly when involving minors or coercion, thereby creating criminal liability. Accordingly, incestuous marriages fail to meet the material requirements for marriage and are deemed legally invalid.

The protection of the rights of children born from incestuous relationships is a legal obligation of the state, parents, and society. The Child Protection Law requires parents to nurture, care for, educate, and protect their children, as stipulated, among others, in Article 30 and reinforced by provisions on special protection for victims of sexual violence. Children born from incest remain entitled to identity, healthcare, education, care, and protection from stigma and discrimination, including the right to integrated recovery services. From a civil-law perspective, the Constitutional Court has affirmed that children born out of wedlock have civil relations with their mother and may be legally connected to their biological father through evidentiary procedures, thereby allowing claims for maintenance and support. The state also guarantees birth registration without discrimination based on the parents' marital status so that access to basic services is not hindered. Furthermore, incestuous sexual acts involving coercion or exploitation constitute criminal offenses that provide avenues for restitution, compensation, and victim assistance. All decisions concerning such children must be guided by the best interests of the child.

Under Indonesian law, a child born from an incestuous relationship is generally classified as a child born out of wedlock, since such a marriage is prohibited and invalid pursuant to Article 8 of the Marriage Law. Consequently, it does not produce the civil effects associated with a valid marriage. In the context of Islamic inheritance law, the Compilation of Islamic Law (KHI) stipulates that a child born out of wedlock has a genealogical link (*nasab*) only with the mother and her family (Article 100). Therefore, the child's inheritance rights are confined to the mother and her maternal relatives, and do not extend to the biological father. Accordingly, the inheritance status of a child born from incest is not equivalent to that of a legitimate child who is subject to the allocation scheme under Article 176 of the KHI—regulating the shares of sons and daughters within the same lineage—because the requirement of paternal lineage is not fulfilled. Nevertheless, Constitutional Court Decision No. 46/PUU-VIII/2010 allows the establishment of a civil relationship between an out-of-wedlock child and the biological father through evidentiary procedures, which in practice may ground certain civil entitlements. However, recognition of inheritance rights remains contingent upon the rules of *nasab* in Islamic law and the determinations of the competent court.

3. Implementation of Islamic Legal Theory in Lineage and Child Protection

The theory of nasab refers to a set of principles and systems that regulate blood relations, lineage, and kinship among individuals within society. It explains how a person is connected to their ancestors and descendants, and how family ties are formed through biological and legal relationships. As an academic discipline, the theory of nasab studies genealogy and kinship structures in a systematic manner. In Islamic law, nasab occupies a central position because it forms the basis for determining various rights and obligations within the family, including a child's legal status, guardianship, care, and inheritance. Through the concept of nasab, the validity of family relationships and lineage is established, together with their civil legal consequences in Islamic jurisprudence. Moreover, nasab is closely related to social identity and family honor, and therefore carries moral, social, and juridical implications. Accordingly, the theory of nasab is not merely genealogical, but also serves as a normative foundation for regulating family life in Islamic law.

The Child Protection Theory is grounded in the principle of the best interest of the child. This principle constitutes a core pillar of the Convention on the Rights of the Child (CRC), which has been ratified by Indonesia and incorporated into various national regulations, including the Child Protection Law. It positions the child as a rights-bearing subject whose fundamental rights are inherent, regardless of legal status, parental background, or social circumstances. Within this framework, every policy, decision, and action concerning children must prioritize their survival, development, protection, and participation to the fullest extent possible. The theory is particularly relevant in bridging tensions between normative Islamic law and national positive law, especially regarding the protection of children born out of wedlock in matters of lineage, inheritance, maintenance, education, and health. Anchored in justice and human dignity, the best-interest principle obliges the state, parents, and society to ensure that children's rights are fully respected, protected, and fulfilled.

The theory of Maqasid al-Sharia explains that the primary purpose of Islamic law is to promote human welfare and prevent harm. This objective is expressed through five fundamental aims: the protection of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and property and honor (hifz al-mal wa al-'ird). These five goals serve as a normative framework ensuring that legal rulings correspond to human needs and ethical values. Meanwhile, the theory of Maslahah Mursalah refers to a method of deriving Islamic legal rulings based on public interest or welfare that is not explicitly endorsed or rejected by specific textual evidence in the Qur'an or Hadith. This approach allows for juristic reasoning in addressing contemporary issues, provided that the resulting rulings uphold the overarching objectives of Sharia and contribute to the protection, dignity, and well-being of society.

4. Implementation of Positive Legal Theory

The Theory of Justice and Legal Certainty proposed by Gustav Radbruch emphasizes that positive law must maintain a balance between justice, certainty, and

utility. This framework is relevant in evaluating the determination of a child's legal status in Indonesia so that legal decisions are not only predictable but also fair and beneficial. Lawrence Friedman's Legal System Theory is applied to analyze the interaction between legal structures, such as the Religious Courts, legal substance, including the Marriage Law, and the legal culture of Indonesian society that influences the implementation of legal norms. Meanwhile, Critical Legal Studies (CLS) views law as neither neutral nor objective, but closely intertwined with politics and power relations. Law is considered a tool that may preserve the status quo and the interests of dominant groups. CLS seeks to uncover hidden biases within the law, reveal its ambiguities, and examine the historical, social, and economic impacts of legal decisions. Through this approach, the law is expected to better promote social justice, particularly for marginalized groups.

The Theory of Legal Reconstruction is an approach aimed at rebuilding the legal system through new methods so that it becomes more relevant to contemporary conditions and societal needs. This process involves re-examining existing laws, analyzing various sources of law—such as the Qur'an and Hadith in Islamic law or social and political values in national law—and applying more modern and contextual methods of interpretation. Its primary goal is to create a legal system that is adaptive and humanistic, and that realizes substantive justice rather than merely procedural justice.

Based on the background description above, the problem in this research can be formulated as follows: What is the position or status of illegitimate children in incestuous marriages from the perspective of IPR Philosophy? What is the position of Muslim heirs in incestuous marriages from the perspective of IPR?

4. The position or status of children in incestuous marriages from the perspective of IPR philosophy

One of the legal consequences of marriage is the existence of children's rights that must be fulfilled and protected. In Islamic family law, the legal status of a child is generally divided into two categories. First, a legitimate child is a child born from a valid marriage that complies with religious law and the parents' beliefs, and is proven by an official marriage certificate issued by the competent authority. Second, an illegitimate child is a child born from a relationship or marriage that is not legally valid, and therefore holds a different legal status from that of a legitimate child.

As a comparison to the concept of legitimate children in Islamic law, civil law also provides classifications regarding legitimate status. First, a legitimate child is one born within a valid marriage and proven by an official marriage certificate. Second, a child born outside of marriage may become legitimate if, at the time the parents subsequently marry, the child is acknowledged or legitimized and recorded in the marriage certificate (*erkenning*). Third, an out-of-wedlock child may be legitimized through a court decision upon the parents' application (*wettiging*). Fourth, a recognized child is an out-of-wedlock child acknowledged by both parents, or only by the mother

or father, and such recognition creates legal consequences, including the parents' obligation to support the child and the child's right to inherit. Fifth, an adulterous child is an out-of-wedlock child where one of the parents is bound by a marital relationship with another person. Sixth, a prohibited-relation child is one born out of wedlock from parents who are legally forbidden to marry one another.

Article 76 of the Compilation of Islamic Law (KHI) stipulates that a child born from an incestuous relationship still has a lineage (*nasab*) relationship with both the mother and the father. This provision reflects legal protection for children born as a result of incest. Under Article 76, there is no basis for denying the attribution of lineage to the father, whether the relationship occurred within a valid marriage, a void marriage, or through sexual intercourse resulting from mistake or uncertainty (*wathi' syubhat*) or a doubtful marriage. Therefore, a child's lineage status is not negated merely because the parents' relationship arose from a prohibited act.

Within a marital relationship, the status of a child born from that union is crucial in determining the child's legal position. To assess whether a child born from incest—where the parents' marriage is annulled due to blood relations—is considered a legitimate child or an out-of-wedlock child, it is first necessary to understand both concepts. Pursuant to Article 28 of the Indonesian Marriage Law No. 1 of 1974, a child born from a marriage that is subsequently annulled is still deemed a legitimate child. The annulment of the marriage does not affect the legal status of children already born from that marriage. Article 28 paragraph (2) expressly provides that annulment does not have retroactive effect on: (1) children born of the marriage; (2) a husband or wife acting in good faith, except regarding marital property when annulment is based on a prior existing marriage; and (3) third parties who obtained rights in good faith before the annulment decision became final and binding.

Based on Article 28 paragraph (2) of the Indonesian Marriage Law, the annulment of a marriage does not have retroactive effect on children born within that marriage. This means that such children continue to be regarded as legitimate, as they were born from a marriage that was initially valid under the law. Furthermore, Article 76 of the Compilation of Islamic Law stipulates that the annulment of a marriage does not sever the legal relationship between parents and their children. Consequently, even if the parents' marriage is annulled, both parents remain obliged to care for the child and to fulfill the child's rights. Thus, a child born from an incestuous marriage may still be considered a legitimate child.

In classical Islamic jurisprudence, a marriage is regarded as valid when it is conducted in accordance with the rules of Islamic law and all of its essential pillars and conditions are fulfilled. These requirements include the presence of both spouses, a lawful guardian for the bride, two witnesses, and the formal declaration of the marriage contract through *ijab* and *qabul*. Once these elements are properly completed, the marriage attains full legal validity under Islamic law. As a direct consequence, any child born from such a valid marriage is considered legitimate and enjoys full legal recognition. The child's status is equal to that of any other legitimate child, both within Islamic law and within state (positive) law. This legitimacy guarantees recognition of

lineage, civil rights, and legal protection. Thus, the validity of a marriage under Islamic law determines the legitimate status of the children born from it, ensuring their equal legal standing and rights.

5. The position of Muslim heirs in incestuous marriages from the perspective of IPR Philosophy

As is commonly understood, the causes of inheritance in Islamic law arise from marriage, kinship, and *wala'*. These three causes can be grouped into two main categories: *nasabiyah* causes (blood or lineage relationships) and *sababiyah* causes (legal or contractual relationships). A kinship system essentially constitutes an inheritance system based on blood relations or lineage derived from one's ancestors.

Meanwhile, marriage and *wala'* are regarded as causes of inheritance because they originate from a legal act (*rechtshandeling*) established through a valid contract or agreement recognized by the law, particularly Islamic law. A marriage that can serve as the basis for inheritance rights must fulfill all the pillars and conditions required by Islamic legal principles. Once these requirements are met, mutual rights and obligations arise between husband and wife, including the right to inherit from one another upon the death of either spouse.

Regarding the inheritance status of children born from incestuous marriages, Article 28 paragraph (2) of the Marriage Law stipulates that the annulment of a marriage does not have retroactive effect on children born from that marriage. Consequently, a child born from a marriage that is later annulled remains legally recognized as a legitimate child. This legal status preserves the child's juridical relationship with both parents and, therefore, entitles the child to civil rights, including inheritance rights, in the same manner as other legitimate children.

The rights of out-of-wedlock children born from incestuous relationships must still be fulfilled by both parents, particularly by the biological father. This position is strengthened by the Constitutional Court Decision No. 46/PUU-VIII/2010 concerning Article 43 of Law No. 1 of 1974 on Marriage. Prior to this decision, out-of-wedlock children were legally linked only to their mother and her family. Following the ruling, it is affirmed that such children, in addition to having a civil relationship with their mother and her family, also have a civil relationship with the man who is their biological father, provided that this can be proven scientifically through technology (such as DNA testing) or by other legally recognized evidence demonstrating a blood relationship, including with the father's family.

Based on Article 76 of the Compilation of Islamic Law (KHI), which states that the annulment of a marriage does not terminate the legal relationship between a child and his or her parents, it follows that the legal status of the child remains attached to both the mother and the father as lawful parents. This provision indicates that a child born from an incestuous marriage is still regarded as a legitimate child. Consequently, there is no legal impediment (*man'u*) preventing the child from inheriting from both

parents, since the filial and legal relationship between the child and the parents continues to be recognized even though the marriage has been annulled.

As previously explained, the legal status of a child born from an incestuous marriage is essentially equivalent to that of a legitimate child born within a valid marriage. This status applies whether the child is born from a valid marriage, from a defective (*fasid*) marriage, or from a union that occurred due to a presumption of marriage (*shubhat al-nikah*). Such a child is entitled to inherit and to be an heir to both parents without limitation of lineage degree. This position is based, among other things, on the Qur'anic provision in Surah An-Nisa, verse 11, which regulates the inheritance shares of children from their parents.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ
وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ
أَبَوَاهُ فَلِلْأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ لِأَبَائِهِمُ وَآبَائِهِمْ لَا تَدْرُونَ أَيُّهُمْ
أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

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

A hadith states: "Indeed, Allah has granted every person entitled to a right their due right; therefore, there is no bequest for an heir." (Narrated by Ahmad and the four compilers of the Sunan). This hadith affirms that inheritance rights have been definitively determined by God. On this basis, the inheritance status of a child in an incestuous marriage — when legally regarded as a legitimate child — does not differ from that of any other legitimate child. The child has the same legal standing as an heir to the estate of both parents, inheriting from the mother as well as from the father, without limitation of degree.

D. CONCLUSION

The legal status of a child born from an incestuous marriage is essentially the same as that of a child born from a valid marriage. A marriage is considered legally valid as long as it has not been annulled by a competent authority. If an annulment is subsequently issued, such annulment does not have retroactive effect on the status of a child who has already been born. Therefore, the child remains legally recognized and is not affected by the later invalidation of the parents' marriage. The annulment of the marriage does not automatically nullify the child's legitimacy, because at the time the marriage was contracted, it was presumed to comply with the applicable legal requirements. Consequently, a child from an incestuous marriage continues to have a

legal relationship with both parents, is acknowledged as a legitimate child, and retains inherent civil rights, including inheritance rights, comparable to any other legitimate child. This principle affirms legal protection for the child regardless of the parents' marital circumstances.

The distribution of inheritance to a child born from an incestuous marriage is essentially the same as the inheritance distribution granted to a legitimate child. This is because a child of incest is legally recognized as a legitimate child and is not categorized as a child born from adultery or from an unlawful or interfaith marriage. Accordingly, the legal status of a child from an incestuous marriage carries full legitimacy as an heir. Such a child is entitled to receive an inheritance share equal to that of any other legitimate child, without reduction of status or limitation of rights. Moreover, the child has the right to inherit from both parents, through the maternal as well as the paternal line. Thus, the law of inheritance places children of incestuous marriages in the same position as legitimate children, ensuring that their civil rights remain fully acknowledged and protected despite issues related to their parents' marital status.

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