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Division of Inheritance and Will: First Marital Children, Second Marital Wife (Literature Legal Review)

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Abstract: The purpose of this article is to make a positive contribution in promoting justice, understanding, and innovative solutions in the context of inheritance and testamentary divisions, particularly in situations involving children from first marriages and wives from second marriages. An in-depth article on the complexities of the division of inheritances and wills, in particular involving children from first marriages and wives from second marriages, qualitative research methods can be used. Qualitative research methods aim to understand phenomena in depth, exploring individual perspectives, values, and experiences related to the topic under study. Literature reviews of related scientific articles to provide reinforcement and ultimately the article offers a conceptual framework model of research results. The division of inheritances and wills is a complex topic, involving various aspects of law and social practice. In diverse societies, the process of inheritance sharing often reflects different cultural and religious values. However, in the context of globalization and modernization, there are challenges in harmonizing traditional practices with more inclusive modern laws. It is important to understand that the division of inheritances and wills is not only a legal issue, but also reflects complex social dynamics. Factors such as cultural norms, religious beliefs, and family structure can influence how inheritances are divided and wills are made.

Keyword: Division of inheritance, Will Share of inheritance, Children of First Marriage, Wife of Second Marriage.

INTRODUCTION

The division of inheritances and wills is not only a matter of law, but also reflects complex family values, beliefs, and dynamics. One phenomenon that often occurs is when an individual has a child from a first marriage and a wife from a second marriage (Imron, Habibah and Aziz, 2020). In many cases, children from the first marriage and wives from the second marriage compete for a share of the inherited inheritance (Marhija *et al.*, 2024). In different countries, legal systems provide different protections and rights for children from first marriages and wives from second marriages (i Trias, 2017). However, there are often gaps or vagueness in the legal regulations governing this situation. For example, in some jurisdictions, children from a first marriage may have stronger inheritance rights than

children from a second marriage, while in others, wives from a second marriage may have more guaranteed rights (Ma and Yao, 2022).

The division of inheritances and wills shows complexity that goes beyond the legal aspect alone. This phenomenon reflects the social, cultural, and emotional dynamics inherent in family structures (Rajashekarappa, 2023). When faced with a situation where an individual has children from a first marriage and a wife from a second marriage, the complexity further increases due to the various interests and relationships involved. In societies often dominated by patriarchal traditions, children from first marriages are often given greater inheritance rights than children from second marriages (Ajiboye and Yusuff, 2017). This could be because they are considered direct descendants closer to the deceased parents, or because of social norms that favor male offspring in terms of inheritance division. However, in this case, wives from second marriages are often neglected or not afforded adequate protection in terms of inheritance (Chicaiza and Fernando, 2014).

Still with the phenomenon of modernization has introduced new dynamics in the division of inheritances and wills. The values of gender equality and protection of children's rights have begun to change the traditional paradigm (Đurđić, 2021). However, challenges arise when existing legal regulations are not in line with these new values, creating gaps in legal protection for all parties involved. Gaps in the legal system often create uncertainty and conflict in the division of inheritance. Children from a first marriage may feel unfair if they are given a smaller share of the inheritance compared to children from a second marriage, especially if family relationships are not harmonious (Titmuss, 2018). On the other hand, wives of second marriages may face legal challenges in fighting for their inheritance rights if legal regulations do not adequately protect them (Asiedu and Ibáñez, 2014). Social and cultural conditions also play an important role in determining the division of inheritances and wills. In some societies, patriarchal norms may benefit sons from a first marriage, while in others, gender equality values may encourage giving equal protection to wives from a second marriage (Joshi, 2023).

Family conflicts are also a direct result of vagueness and injustice in the division of inheritance. As children from the first marriage and wives from the second marriage compete for a share of the inheritance, family relationships can be disrupted and even destroyed. Resentment and opposition can develop, tearing families apart and leaving deep emotional scars. One innovative approach to deal with this complexity is to adopt a mediation approach (Durojaye, 2017). Mediation programs can provide a safe and neutral platform for family members to discuss their differences peacefully and seek mutually beneficial solutions (Nam, 2017). It can also help reduce conflict and repair broken family relationships resulting from inheritance disputes.

In the face of this complexity, there is a need to formulate more equitable and inclusive legal solutions. This may involve revising existing laws to clarify the rights and obligations of children from first marriages and wives from second marriages (DiGrazia, 2015). In addition, mediation and dispute resolution approaches can help reduce conflicts in inheritance distribution (Masuku, 2020). The purpose of this article is to make a positive contribution in promoting justice, understanding, and innovative solutions in the context of inheritance and testamentary divisions, particularly in situations involving children from first marriages and wives from second marriages.

Inheritance Distribution

Inheritance distribution, or estate distribution, is the process of allocating the inheritance or entitlement to assets or wealth from someone who has passed away to their beneficiaries or recipients (Aksin, Waliyansyah and Saputro, 2020). The inheritance distribution process is typically governed by legislation or a valid will, depending on whether the deceased had a will at the time of death. Inheritance distribution can involve

various types of assets, such as real estate, personal belongings, financial accounts, and more. The process of inheritance distribution can be complex and may require legal procedures, such as probate, to ensure that the assets or wealth are distributed according to the wishes of the deceased or the applicable laws (Parinussa, Tjoanda and Latupono, 2021).

The division of inheritance is important because it is a way to transfer ownership of the assets or wealth of a deceased person to his beneficiary or heir. Without a clear division of inheritance, the assets left by the deceased may not be allocated fairly and according to his wishes. With a well-regulated division of inheritance, it can be ensured that the property is not only properly managed, but also treated in accordance with the will of the deceased and applicable regulations (Sawyer and Spero, 2015).

Wills

An inheritance is property or property passed from a deceased person to their beneficiaries or heirs. Inheritance can include a wide variety of assets, such as property, cash, investments, valuables, and other ownership rights (Manangin, Nurmala and Martam, 2020). Estate inheritance is the process or practice of transferring ownership of a deceased person's property or wealth to their beneficiaries or heirs. It involves determining, appraising, and distributing property, property, and financial assets to a designated beneficiary in a will or pursuant to applicable law (Sitkoff and Dukeminier, 2017).

Inheritance of property is important because it facilitates the transfer of ownership of property from someone who has died to their heirs. It protects families financially, prevents conflicts, fulfills legal obligations, and helps with the management of business assets (Haque *et al.*, 2020).

Legacy Station

The inheritance section refers to an in-depth explanation of the concept and implementation of the division of inheritance in accordance with applicable laws and social practices. This includes the process of division of inheritance after the death of a person, the rights and obligations of heirs, the legal regulations governing the division of inheritance, as well as the social and cultural factors that affect the division (Haniru, 2014). The inheritance share is necessary because it ensures fairness, protection, and financial continuity for heirs. It allows a fair division of the estate or wealth of the deceased, protects the interests of heirs, and ensures that the assets left behind contribute to the economy. In addition, the division of inheritance can include setting up pension funds and giving awards to individuals or institutions that the deceased considered important (Hakim, 2016).

Children of First Marriage

Children from a first marriage refer to offspring born from the bonds of an individual's first marriage. In many cultures and societies, first marriage is considered the foundation of a family. Therefore, children born from these marriages often have a special position in inheritance and inheritance. They are considered the main heirs of their parents' property and wealth (Narowi, Khairudin and Jaapar, 2022).

The concept of children from a first marriage reflects traditional values and social norms that regard first marriage as the most legitimate and important in forming a family. In many cultures, children from a first marriage are considered to have greater inheritance rights than children from later marriages. This can be reflected in the inheritance law which gives priority to children from the first marriage in the distribution of inheritance (Amany, Sultan and Sham, 2023).

However, in some societies, the concept of children from a first marriage can become complex due to polygamy, divorce, or subsequent marriages that result in children from different marriages. In this context, it is important to understand how inheritance law and

social norms interact to ensure fair treatment of all children, regardless of their parents' marital status.

Second Wife

Second wife is a term that refers to a woman who becomes the second wife of a previously married man. This second marriage can occur after divorce, the death of the previous spouse, or in the case of polygamy in some cultures or religions where a man is allowed to legally have more than one wife (Arthi and Fenske, 2018). Second wife refers to a woman who becomes the spouse of an individual after their first marriage. In many cultures and societies, polygamous relationships or remarriages are accepted practices, leading to the emergence of second wives. The role and status of a second wife can vary significantly depending on cultural norms, legal frameworks, and individual circumstances.

In some cultures, particularly where polygamy is legal or socially accepted, second wives may have legal recognition and rights similar to those of first wives. However, in other contexts where monogamy is the norm or polygamy is prohibited, the status of a second wife may be less recognized or even stigmatized. The treatment of second wives can also vary widely based on the dynamics of the family and the relationship between the spouses. In some cases, a second wife may be fully integrated into the family structure and enjoy equal rights and privileges. In contrast, in other situations, she may face discrimination, lack of legal protections, or social ostracization.

Understanding the role and status of second wives requires consideration of cultural, legal, and social factors specific to each context. It involves examining how laws, traditions, and attitudes toward marriage and family impact the rights and treatment of second wives within their communities.

Inheritance Division

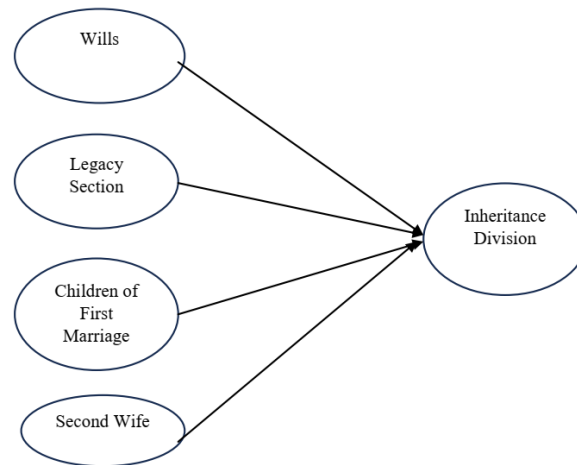
Inheritance division, also known as estate distribution or asset allocation, refers to the process of distributing the assets and wealth of a deceased individual among their heirs or beneficiaries according to legal guidelines or the terms of a valid will. This process typically involves identifying and valuing the assets of the deceased, settling any outstanding debts or liabilities, and then distributing the remaining estate to the designated heirs or beneficiaries (Hirsch, 2018).

The division of inheritance can be governed by various factors, including the deceased person's will, applicable laws and regulations, family relationships, and cultural or religious norms. In some cases, the division may be straightforward and uncontested, especially if there is a clear will outlining the distribution of assets. However, disputes over inheritance division can arise if there is ambiguity in the will, disagreement among heirs, or challenges to the validity of the will (Spieß, 2017).

The goal of inheritance division is to ensure that the assets of the deceased are distributed fairly and in accordance with their wishes or applicable legal requirements. It aims to provide financial support and security to the heirs while also respecting the wishes and intentions of the deceased individual (Hodkinson, 2014).

METHOD

An in-depth article on the complexities of the division of inheritances and wills, in particular involving children from first marriages and wives from second marriages, qualitative research methods can be used. Qualitative research methods aim to understand phenomena in depth, exploring individual perspectives, values, and experiences related to the topic under study. Literature review of related scientific articles to provide reinforcement and in the end the article offers a conceptual framework model of research results as illustrated below:



Gambar 1. Research Framework

In the research framework model above, the direction of contributions and offers from the results of this article can use a mix of methods, namely Qualitative and Quantitative. So the elaboration of related article literature will be presented in the results and discussion.

RESULTS AND DISCUSSION

Articles derived from selected literature and taking research results are used to support, explain and strengthen the results of this scientific article starting from the study (Milan, 2013) stated in the results of his research Contemporary inheritance laws, including those in Serbia, afford equal significance to marriage and marital bonds as they do to kinship in matters of inheritance. The spouse participates in the inheritance division alongside the deceased's relatives. According to the law, the spouse is present in two lines of inheritance, thereby rendering their position in inheritance law specific and distinctive.

Subsequent studies stated Ethical judgments and interpretations of sources are determined by the value system in which they were raised. It should be noted that the manuscript contains highly interesting sections related to the legal aspects of various types of marriages, financial conditions, or children's rights. In the manuscript, the author presents a slightly different categorization of marriages compared to the one proposed by Dr. Mahmoud Emami Namin (Maksymiuk, 2019). Studi selanjutnya dari (Hamam, 2021) menyatakan Firstly, according to the Shafi'i fuqaha and ad-Dzahiri, children born out of wedlock (illegitimate children) do not have a biological relationship with their father, but they do have a relationship with their biological mother and her family. Secondly, according to some groups of Hanafi and Shaykh of Islam Ibn Taymiyah supported by Ibn Qayyim al-Jauziyyah, children born out of wedlock (illegitimate children) are related to the man as their biological father and his family. Thirdly, the Constitutional Court regulation does not have legal implications regarding the civil relationship of children born out of wedlock (natural children) with their biological father. Moreover, the conduct of the biological father is classified as a criminal offense, entitling them to ta'zir punishment; this entails the obligation to provide maintenance to the children, the amount of which is determined based on their suitable income; while other civil rights include rights to lineage, inheritance, and guardianship. Ta'zir punishment for providing maintenance can be enforced after filing a lawsuit and obtaining an order from the Religious Court. The provision of maintenance solely aims to fulfill justice and legal protection for the interests of children's rights.

Studies from (Surya, Khisni and Chalim, 2021) state firstly, the inheritance rights construction for children born from Sirri marriages based on the Marriage Law and KHI, children born from Sirri marriages only receive inheritance rights in the form of compulsory

wills, as stated in Articles 862 to 866 of the Civil Code stating that if the deceased leaves legitimate descendants, then children born out of wedlock receive 1/3 of the share that should be received if they are legitimate children (Article 863 of the Civil Code). Inheritance only applies to children born out of wedlock who are recognized by the father and/or mother; if not recognized by the father/mother, children born out of wedlock do not have inheritance rights. Secondly, the legal consequence of Sirri marriage is that children born out of wedlock or illegitimate are not entitled to inherit from their father. Thirdly, the judge's consideration in deciding case Number 0177/Pdt.P/2014/PA.Jbg based on the Supreme Court decision Number 46/PUU-VIII/2012 article 43 paragraph 1, namely obtaining the right to demand education financing, while according to Article 1365 of the Civil Code, civil rights, lineage, inheritance, marriage guardianship, or other civil rights not included in Islamic law are not part of the relationship between father and child resulting from Sirri marriage but can receive compulsory wills. Before deciding to enter into a Sirri marriage, please consider the many negative impacts behind it.

The position of a wife who is not the first wife in a polygamous marriage has the same rights as the first wife. The division of joint property in polygamous marriages is fair, where when a husband who has been married more than once dies, the joint property in his marriage is divided into two parts, namely half of the joint property acquired with the first wife, and half of the joint property acquired with the second wife, each separately without any mixing of assets. Every wife in a polygamous marriage has the right to her husband's inheritance (Rohmanna, Adebayo and Alam, 2023).

The study results from (Saliu and Ismaili, 2022) stated the focus on the role and authority of notaries in the inheritance procedure, as well as why notaries are entrusted with carrying out this procedure. All of this is aimed to be achieved through theoretical analysis and examination of cases before and after notaries were given the authority to manage the inheritance procedure in our country. Besides having theoretical significance, this paper also holds practical implications. Efforts will be made to demonstrate the practical importance of this paper, especially the factors that have contributed to this innovation, namely the role of notaries in this procedure. Primarily, by shifting the responsibility from the courts to the inheritance procedure, there has been an increase in trust from the public as participants in the procedure. Additionally, this step allows for the acceleration of case resolutions and enhances the efficiency of our legal system, as cases will not remain pending in the courts for years, especially those that do not require disputes as there is nothing to contest.

Polygamous sirri marriages result in constitutional losses for spouses and children. When a polygamous marriage gains approval from the first wife, the sirri wife may be accepted well and may not face social sanctions, and similarly, children born from polygamous sirri marriages are accepted and treated equally in society. Sociologically, children from valid polygamous sirri marriages are deemed legitimate, establishing a legal relationship between the child and both parents, entailing inheritance and lineage rights. Constitutional concerns regarding children from polygamous sirri marriages pertain to identity rights issues, intertwined with local customs where children born within both sirri and registered marriages are recognized as legitimate offspring in the Banjar community (Habiburrahman *et al.*, 2023).

A subsequent study from (Cárdenas, 2020) states Blended families create new relationships that are absent in nuclear families, although succession laws worldwide still adhere to the nuclear family structure. However, even simple parent-child relationships, when placed in the unique context of blended families, operate differently and can lead to the redistribution of the deceased's inheritance. Through a thorough examination of the interaction between blended families and contemporary succession laws, as well as an understanding of their origins and purposes, I can evaluate the success of Canadian law in addressing blended families. I have found that inheritance laws often fail to accommodate the

uniqueness of blended families, and I suggest a reassessment of our approach to inheritance to enhance their inclusion.

In the unusual case of second-parent adoptions by the partner of a biological parent, many children will be cut off from being able to inherit from their biological parent, which is a truly unanticipated consequence of the "fresh start" provision of most probate codes delineating the rights of adopted children (Wright, 2015). Studi dari (Hipni, 2023) menyatakan Firstly, the Roma Toah inheritance endures based on the local wisdom of the Madurese community, grounded in two aspects that align with Islamic values: maintaining intact family ties and family economic resilience. Secondly, through the utilization of social construction analysis based on three phases: externalization, objectification, and internalization, the Roma Toah inheritance is constructed on a harmonious blend of culture, social, and religious elements through the endorsement of traditionalist Madurese Ulama, thus considered a system that is not in conflict with Islamic values in preserving family and economic integrity.

Studies from (Alim, 2021) state family life and personal law in India express together a complex blend of historical, philosophical, and political aspects. Family law provides a framework for understanding how personal life impacts the deepest aspects of our lives and communities. However, political issues present challenges as politicians are reluctant to support this due to fear of losing their voter base. Not only political issues, but legal ones as well. Once again, in matters concerning segments of personal law such as marriage, dowry, divorce, adoption, legitimacy, wills, and inheritance, individuals from different backgrounds must refer to their respective religious laws for guidance or rulings.

Discussion

From the presentation of the literature of the article above, the discussion that will be expressed that support for each variable in this study has not all been accommodated, it's just that slices related to the division of inheritance of children, first marriage, second wife (polygamy) are in the results of the study so that this article is supported by strengthening the results of existing research in literature originating from journals that can be trusted and are still active.

CONCLUSION

The division of inheritances and wills is a complex topic, involving various aspects of law and social practice. In diverse societies, the process of inheritance sharing often reflects different cultural and religious values. However, in the context of globalization and modernization, there are challenges in harmonizing traditional practices with more inclusive modern laws. It is important to understand that the division of inheritances and wills is not only a legal issue, but also reflects complex social dynamics. Factors such as cultural norms, religious beliefs, and family structure can influence how inheritances are divided and wills are made.

In such a diverse society, it is important to take an inclusive and sensitive approach to the needs and values of all members of society. This may involve attempts to integrate traditional values with more universal, modern legal principles. In addition, there is a need for a multidisciplinary approach and collaboration between jurists, sociologists, and other social stakeholders to develop a more holistic and equitable framework in terms of inheritance and testamentary distribution.

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