



# Negotiating Islamic Law: The Practice of Inheritance Distribution in Polygamous Marriages in Indonesian Islamic Courts

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Submitted	: 17-04-2024	Accepted	: 30-05-2024
Revision	: 22-05-2024	Published	: 12-06-2024

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**Abstract:** This research attempts to look at the allocation of inheritance in polygamous marriages, as adjudicated by the Indonesian Islamic courts, commonly known as the Religious Courts. In a polygamous marriage, the inheritance distribution often faces more complex challenges. This research is grounded in an analysis of decisions from the Religious Courts, including both first-instance and appellate court rulings. The findings indicate that inheritance distribution in polygamous marriages relies not just on the Islamic Law Compilation, but also on the Indonesian Civil Code. Moreover, the judges employed two approaches to resolve disputes: Islamic jurisprudence (*fiqh*) and the Islamic Law Compilation, which is the codified Islamic law in Indonesia. When the judges referred to the classical texts of Islamic jurisprudence, they allocated the entirety of the inherited properties among the heirs. Negotiation occurred when judges opted for the Islamic Law Compilation instead of classical *fiqh*, leading them to consider the concept of joint property and distinguish it from the estates. Ultimately, the Appellate Court judges appeared more progressive, taking into account the Indonesian context and ensuring justice for wives in polygamous marriages.

**Keywords:** *Inheritance dispute; Polygamy; Religious Court of Indonesia*

**Abstrak:** Kajian ini bertujuan untuk mengulas isu tentang penyelesaian sengketa waris dalam perkawinan poligami, sebagaimana yang dipraktikkan di Pengadilan Islam di Indonesia atau yang disebut Pengadilan Agama. Dalam perkawinan poligami, pembagian warisan sering kali menghadapi tantangan yang lebih kompleks. Penelitian ini didasarkan pada telaah terhadap Putusan Pengadilan Agama. Ditemukan bahwa pembagian harta warisan dalam perkawinan poligami tidak hanya merujuk kepada Kompilasi Hukum Islam, tetapi juga pada Kitab Undang-Undang Hukum Perdata. Selain itu, para hakim menggunakan dua pendekatan untuk menyelesaikan sengketa tersebut: Yurisprudensi Islam atau fikih dan Kompilasi Hukum Islam atau hukum Islam yang terkodifikasi di Indonesia. Ketika para hakim menggunakan referensi klasik yurisprudensi Islam, mereka membagi seluruh harta peninggalan pewaris kepada para ahli waris. Negosiasi terjadi ketika para hakim memilih Kompilasi Hukum Islam, mereka memisahkan harta Bersama dari harta peninggalan sebelum membagikannya kepada para ahli waris. Pada akhirnya, putusan banding tampak lebih progresif dengan memperhatikan konteks Indonesia dan perwujudan keadilan bagi perempuan dalam perkawinan poligami.

**Kata kunci:** Sengketa waris, Poligami, Pengadilan Agama Indonesia

## Introduction

Most Muslim countries impose restrictions on polygamy practice, with some, such as Turkiye and Tunisia, outright prohibiting it.<sup>1</sup> In contrast, Pakistan, Bangladesh, Malaysia, and Singapore permit polygamy under stringent conditions specified in their family laws.<sup>2</sup> Indonesia is among the countries that allow polygamy, provided permission is obtained from the Court.<sup>3</sup> Several studies have examined various aspects of polygamy,<sup>4</sup> including registered polygamy,<sup>5</sup> unregistered polygamy,<sup>6</sup> the legal ramifications of polygamous marriages that are not registered,<sup>7</sup> the protection of women and children in polygamous marriages,<sup>8</sup> discrimination against women in polygamous marriages,<sup>9</sup> comparative practices of polygamous marriages in Muslim countries,<sup>10</sup> and the validation (*ithbat nikah*) of polygamous marriages.<sup>11</sup> However, research specifically addressing inheritance disputes in polygamous marriages remains relatively scarce.

This paper aims to contribute to the literature by examining how judges in Religious Courts resolve inheritance disputes in polygamous marriages. It analyzes two specific Religious Court

- <sup>1</sup> Khoiruddin Nasution, "Polygamy in Indonesian Islamic Family Law," *Jurnal Syariah* 16, no. 2 (2008): 25–40.
- <sup>2</sup> Raihanah Abdullah and Soraya Khairuddin, "The Malaysian Shari'ah Courts: Polygamy, Divorce and the Administration of Justice," *Asian Women* 25, no. 1 (2009): 21–54.
- <sup>3</sup> Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hawwa* 18, no. 2–3 (October 28, 2020): 295–324, <https://doi.org/10.1163/15692086-12341380>.
- <sup>4</sup> Miftahul Huda and Tri Wahyu Hidayati, "The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation," *El-Ussrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 262–80.
- <sup>5</sup> Farooq e Azam et al., "Polygamy in Islam: Cultural Pressures and Religious Justifications in Pakistan," *Journal of Islamic Thought and Civilization* 11, no. 2 (Fall 2021): 245–57, <https://doi.org/10.32350/iitc.11.2.13>; Casey E. Faucon, "Marriage Outlaws: Regulating Polygamy in America," *Duke J. Gender L. & Pol'y* 22 (2014): 1; Zaleha Kamaruddin and Raihanah Abdullah, "Protecting Muslim Women against Abuse of Polygamy in Malaysia: Legal Perspective," *Hawwa* 6, no. 2 (January 1, 2008): 176–201, <https://doi.org/10.1163/156920808X347250>; Iqra Saleem Khan, "Unwilling Co-Wives and the Law of Polygamy in Pakistan," *UCLA Journal of Islamic and Near Eastern Law* 20, no. 1 (2023); Karin Carmit Yefet, "What's the Constitution Got to Do With It - Regulating Marriage in Pakistan," *Duke Journal of Gender Law & Policy* 16 (2009): 347.
- <sup>6</sup> Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (2016): 427–46; Stijn Cornelis van Huis and Theresia Dyah Wirastrri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law* 13 (2013–2012): 87; Theresia Dyah Wirastrri and Stijn Cornelis van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (May 4, 2021): 246–68, <https://doi.org/10.1080/07329113.2021.1912579>.
- <sup>7</sup> Ashraf Booley, "Progressive Realisation of Muslim Family Law: The Case of Tunisia," *Potchefstroom Electronic Law Journal* 22 (2019): 1; Faida Fidiani, "Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan and Tunisia," *SAKINA: Journal of Family Studies* 5, no. 1 (2021); Bin Borhanudin Zamiq Azmeer, "Fifty Years since Enacting the Administration of Muslim Law Act: Muslim Law on Polygamy in Singapore," *Singapore Academy of Law Journal* 31 (2019): 1096.
- <sup>8</sup> Elizabeth A. Archampong, "Reconciliation of Women's Rights and Cultural Practices: Polygamy in Ghana," *Commonwealth Law Bulletin* 36 (2010): 325; Medhavi Capoor, "Rights of Women in Polygamous Relationships in India," *Indian Journal of Law and Legal Research* 5 Issue 2 (2023): 1; Dri Santoso and Muhamad Nasrudin, "Polygamy In Indonesia And Its Relevance To The Protection Of Women And Children In The Perspective Of Islamic Law Philosophy," *AKADEMIKA: Jurnal Pemikiran Islam* 26, no. 1 (2021): 121–36.
- <sup>9</sup> Nurhidayatulloh Nurhidayatulloh et al., "Forsaking Equality: Examine Indonesia's State Responsibility on Polygamy to the Marriage Rights in CEDAW," *Jurnal Dinamika Hukum* 18, no. 2 (2018): 182–93.
- <sup>10</sup> Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," *Matan: Journal of Islam and Muslim Society* 5, no. 1 (2023): 15–30; Muhammad Roy Purwanto et al., "Polygamy in Muslim Countries: A Comparative Study in Tunisia, Saudi Arabia, and Indonesia," in *2nd Southeast Asian Academic Forum on Sustainable Development (SEA-AFSID 2018)* (Atlantis Press, 2021), 435–37.
- <sup>11</sup> Nihrul Bahi Alhaidar, Muhammad Muhajir, and Syamsud Dhuha, "The Closure of Isbat For Polygamous Marriage on Legal Purpose Perspective," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 13, no. 1 (2023): 1–26; Najmah Jaman, "Implications of Polygamy Practices on Positive Law in Indonesia," *Prophetic Law Review* 2, no. 1 (2020): 22–36; Muhammad Muhajir and Qurratul Uyun, "SEMA Waiver Number 3 of 2018 in the Case of Isbat for Polygamous Marriage: Study of Legal Considerations of Judges in Decision Number 634/Pdt. G/2018/PA. Mtr," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 55, no. 2 (2021): 263–90.

Decisions: Decision Number 4191/Pdt.G/2019/PAJS and Decision Number 103/Pdt.G/2021/PTA.JK. Both decisions pertain to inheritance disputes within the context of polygamous marriages.

In both cases, the inheritance properties were controlled by the second wives and their children.<sup>12</sup> The first wives contended that the estates should be distributed according to Islamic law. Additionally, the first wives and their children acknowledged that their late husbands had granted them certain properties. However, these granted properties were not mentioned in the lawsuit's *posita* (reasons) and *petitum* (requests). Despite this, the judges included these properties as part of the inheritance. In resolving these cases, the judges reached different conclusions, particularly regarding the status of the properties left by the testator. These differences significantly impacted the shares allotted to the two wives and their children in the polygamous marriage.

The normative rules of Islamic inheritance are articulated in the Quran, specifically in Surah al-Nisa, verses 7, 8, 9, 10, 11, 12, 13, and 176. These rules encompass the principles and terms for distributing inheritance among individuals.<sup>13</sup> In Indonesia, these Islamic inheritance rules are codified in the Islamic Law Compilation.<sup>14</sup> However, there are notable differences between the principles of inheritance division in the Compilation of Islamic Law and those in classical Islamic jurisprudence (*fiqh*).<sup>15</sup> For instance, the Islamic Law Compilation acknowledges the concept of joint property<sup>16</sup> between a husband and wife within a marriage.<sup>17</sup> This implies that the surviving spouse is entitled to half of the joint property,<sup>18</sup> with the remaining half considered the deceased's estate to be inherited. In contrast, classical Islamic jurisprudence does not recognize the concept of joint property<sup>19</sup> in marriage.<sup>20</sup> As a result, upon the husband's death, all assets are treated as inherited property to be distributed among all heirs.

The stipulations in the Islamic Law Compilation have been a subject of debate.<sup>21</sup> Nevertheless, this compilation is frequently used as a reference and source of law in the Religious Courts.<sup>22</sup> According to Article 49 of Law Number 3 of 2006, inheritance falls under the exclusive jurisdiction of the

<sup>12</sup> Elfia et al., "Patterns for Settlement of Puhah Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 480–505, <https://doi.org/10.191105/al-hkam.v17i2.6246>.

<sup>13</sup> Iman Jauhari dan T. Muhammad Ali Bahar, *Hukum Waris Islam* (Yogyakarta: Deepublish, 2021).

<sup>14</sup> Durotun Nafisah et al., "Comparative Analysis of Islamic Family Law and Normative Laws: Examining the Causes of Divorce in Purwokerto, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 847–71.

<sup>15</sup> Muhammad Saleh Ridwan, Wahidah Abdullah, and Idham Idham, "Public Perception of Polygamy in Makassar, Indonesia: Cultural Perspective and Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 20–38.

<sup>16</sup> Nurunnisa Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (July 4, 2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

<sup>17</sup> Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rasanjani, "Disparity in Judge Decisions in Resolving RAD Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 249–61.

<sup>18</sup> Taufiqurohman Taufiqurohman and Nelli Fauziah, "The Evaluation of Maqāṣid Asy-Syari'ah on Discourses of the Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 1 (2023): 81–90.

<sup>19</sup> Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing The Best Interests of The Child With A Focus on Residency," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (March 7, 2024): 245–66, <https://doi.org/10.18592/sjhp.v23i2.12278>.

<sup>20</sup> Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 207–19.

<sup>21</sup> Asman Asman, "Dynamics of Adult Age and Its Relevance to Age Limits of Marriage in Indonesia: A Juridical-Normative Perspective," *Journal of Islamic Law* 2, no. 1 (February 27, 2021), <https://doi.org/10.24260/jil.v2i1.66>.

<sup>22</sup> Dadang Hermawan and Sumardjo Sumardjo, "Kompilasi Hukum Islam Sebagai Hukum Materiil Pada Peradilan Agama," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 6, no. 1 (2016): 24–46; Arip Purkon, Ahmad Hidayat Buang, and Mohd Hafiz Jamaludin, "The Strengthening Of Islamic Law Compilation As Material Law In Indonesian Religious Court," *Al-Afkar, Journal For Islamic Studies*, 2022, 144–56.

Religious Courts,<sup>23</sup> and thus, the Islamic Law Compilation should be applied as the legitimate source of law for resolving and deciding inheritance cases.<sup>24</sup> Given that Indonesian society observes three systems of inheritance law in Islamic law, state law, and customary law the practice of inheritance division in the Religious Courts<sup>25</sup> warrants examination to determine if judges strictly adhere to these material laws.<sup>26</sup> This study, in particular, investigates the variations in judicial decisions when resolving inheritance disputes in polygamous marriages. This scrutiny is essential to understanding the decision-making process in the Religious Courts, where Islamic law is applied in contemporary contexts, especially in complex cases like inheritance disputes in polygamous marriages.

### Inheritance in a Polygamous Marriage

Indonesia upholds monogamous marriage,<sup>27</sup> as outlined in Marriage Law Number 1 of 1974. However, the state permits men to marry more than one woman under certain conditions, as specified in Article 3 Paragraph 2 of the same law, which mandates that a husband must seek a polygamy permit from the Religious Court.<sup>28</sup> To obtain this permit, two sets of conditions must be met: alternative conditions,<sup>29</sup> as detailed in paragraph 2 of Article 4, and cumulative conditions, as outlined in Marriage Law Number 1 of 1974's Article 5 Paragraph 1. Judges assess these petitions in accordance with the guidelines provided in Government Regulation Number 9 of 1975, Article 41.<sup>30</sup> If granted by the Religious Courts, the polygamous marriage can be registered as stipulated by Supreme Court Regulation Number 20 of 2019, and a marriage certificate can be obtained from the Religious Affairs Office. Consequently, the marriage is recognized as lawful by the state, entitling both husband and wife to rights and obligations specified by law.<sup>31</sup> Similar restrictions on polygamy exist in Malaysia, governed by the Islamic Family Law (IFL).<sup>32</sup>

<sup>23</sup> Naskur Naskur, "Asas Asas Hukum Kewarisan Dalam Islam (Studi Analisis Pendekatan Al-Qur'an Dan Al-Hadis Sebagai Sumber Hukum Islam)," *Jurnal Ilmiah Al-Syir'ah* 10, no. 2 (2016).

<sup>24</sup> Muhammad Yusron, "Rational Reasoning and Maslahah: Umar Ibn al-Khattab's Ijtihād on Cases of Islamic Inheritance," *Journal of Islamic Law* 2, no. 2 (August 5, 2021), <https://doi.org/10.24260/jil.v2i2.327>.

<sup>25</sup> Azni Azni et al., "The Timing Analysis of Inheritance Distributions in the Compilation of Islamic Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (December 31, 2023): 258–73, <https://doi.org/10.30631/alrisalah.v23i2.1431>.

<sup>26</sup> Landy Trisna Abdurrahman, "Conflict in Islamic Jurisprudence: Noel J. Coulson's Historical Approach and His Contribution to the Study of Islamic Law," *Journal of Islamic Law* 3, no. 1 (February 9, 2022), <https://doi.org/10.24260/jil.v3i1.495>.

<sup>27</sup> Abdurrohman Kasdi and Khoiril Anwar, "Inheritance Distribution of Adopted Children in The Perspective of Customary Law and Islamic Law Compilation: Case Study of the Application of Inheritance Law in Kudus," *Al-Ahkam* 29, no. 2 (November 7, 2019): 141–58, <https://doi.org/10.21580/ahkam.2019.29.2.4203>. determine the position of adopted children's inheritance rights, as well as the application of the distribution of inheritance for adopted children in Customary Law and Compilation of Islamic Law in Kudus Regency. The method used is qualitative with a comparative approach. The results showed that the teachings of Islam did not deny the existence of adopted children as far as giving welfare and education to children. The position of adopted children in customary law is influenced by the family or family system. Their position from one region to another varies. In the case of the application of the distribution of inheritance for adopted children in adat law in Kudus District, several provisions of customary law state that the portion of adopted children is equated with the portion of biological children (if there is inheritance rights

<sup>28</sup> Lukman Santoso, Arij Amaliyah, and Miftahul Huda, "Refusal of Polygamy Permit in Religious Court Decision: Criticism of Gender Justice Against Judge's Legal Reasoning," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (December 31, 2023): 160–73, <https://doi.org/10.30631/alrisalah.v23i2.1472>.

<sup>29</sup> Anwar Hafidzi et al., "Sirri Marriage Celebration and Its Impact on Social Change in Banjarese Community, South Kalimantan," *Al-Ahkam; Vol 32, No 2 (2022): OctoberDO - 10.21580/Ahkam.2022.32.2.12789*, October 30, 2022, <https://journal.walisongo.ac.id/index.php/ahkam/article/view/12789>.

<sup>30</sup> Ali Trigiyan, Dewi Rahmawati, and Purwoko Utomo, "Comparative Analysis of the Polygamy Regulations in Indonesia and Morocco," *DIKTUM: Jurnal Syariah Dan Hukum* 21, no. 1 (2023): 34–48.

<sup>31</sup> Zainal Muttaqin Dahli et al., "The Problematic Duality of Motives in Polygamy Marriages in the Banjar Community," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024).

<sup>32</sup> Raihanah Abdullah et al., "Financial Support for Women under Islamic Family Law in Bangladesh and Malaysia," *Asian Journal of Women's Studies* 21, no. 4 (2015): 363–83; Abdullah and Khairuddin, "The Malaysian Shari'ah Courts."



The regulations governing Muslim inheritance are delineated in Book II, from Article 171 to Article 193 of the Islamic Law Compilation. According to Article 171, point e, of this Law, inheritance property comprises the owned property of an individual and joint property,<sup>33</sup> which is divided by two and adjusted for the needs, debts, and bequests of the deceased until their demise.<sup>34</sup> Joint property is defined as assets acquired during marriage, as stated in Article 35, paragraph 1 of Marriage Law Number 1 of 1974.<sup>35</sup> Depending on mutual agreement, joint property can be registered under the name of either the husband or the wife.<sup>36</sup> Such joint property may originate from either spouse individually or from both jointly. The regulations concerning joint property in polygamous marriages are stipulated in Article 65 of Law Number 1 of 1974.<sup>37</sup> Assets owned by either spouse before marriage are categorized as personal property and do not automatically become joint property unless there is a formal agreement, as specified in Article 35, paragraph 2 of the Marriage Law.<sup>38</sup>

In monogamous marriages, the complexities surrounding inheritance and joint property divisions are comparatively less pronounced than in polygamous unions, as previously discussed. According to Islamic inheritance law (*faraidh* or *fiqh al-mawaris*), in inheritance distributions,<sup>39</sup> a wife is entitled to one-eighth of the inherited properties left by her husband if he has offspring(s). In the absence of offspring(s), the wife's share increases to one-fourth. Consequently, there are no disparities in inheritance divisions for wives, whether in monogamous or polygamous marriages. In contrast the Islamic Law Compilation mandates a distinction between the inherited properties of the husband and joint property to be shared with his wife.<sup>40</sup> As per Article 97 of the Islamic Law Compilation, joint property is to be divided equally between the husband and wife, unless a prenuptial agreement specifies otherwise.

<sup>33</sup> Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024).

<sup>34</sup> M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (September 1, 2022): 117–34, <https://doi.org/10.18326/ijtihad.v22i1.117-134>.

<sup>35</sup> Aristoni Aristoni, "Quo Vadis Marriage Dispensation in Indonesia: Judge's Decision in Preventing Child Marriage at the Jepara Religious Court," *De Jure: Jurnal Hukum Dan Syar'iah; Vol 14, No 2 (2022)* DO - 10.18860/j-Fsh.V14i2.17408, December 30, 2022, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/17408>. "plainCitation": "Aristoni Aristoni, "Quo Vadis Marriage Dispensation in Indonesia: Judge's Decision in Preventing Child Marriage at the Jepara Religious Court," *De Jure: Jurnal Hukum Dan Syar'iah; Vol 14, No 2 (2022)*

<sup>36</sup> Abdul Helim et al., "Cumulative Versus Alternative Conditions: A Study of Polygyny Permits in Indonesia From the Perspective of the Legal Certainty Principle," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (July 4, 2023): 21–38, <https://doi.org/10.18860/j-fsh.v15i1.15384>.

<sup>37</sup> Ismail Ismail et al., "Legal Age Equality in Marriage According to Indonesian Positive Law in the Studies of Gender and Maqāṣid Al-Sharia," *De Jure: Jurnal Hukum Dan Syar'iah; Vol 15, No 1 (2023)* DO - 10.18860/j-Fsh.V15i1.17696, July 6, 2023, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/17696>. "plainCitation": "Ismail Ismail et al., "Legal Age Equality in Marriage According to Indonesian Positive Law in the Studies of Gender and Maqāṣid Al-Sharia," *De Jure: Jurnal Hukum Dan Syar'iah; Vol 15, No 1 (2023)*

<sup>38</sup> Bani Syarif Maula, Muhammad Fuad Zain, and Syifaun Nada, "Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law," *El-Aqwal : Journal of Sharia and Comparative Law* 3, no. 1 (December 31, 2023): 1–16, <https://doi.org/10.24090/el-aqwal.v3i1.10508>.

<sup>39</sup> Nur Alfy Syahriana and Zaenul Mahmudi, "The Principle of Segendong Sepikul in the Inheritance Distribution System of the Muslim Community from the Perspective of Multidisciplinary Studies," *De Jure: Jurnal Hukum Dan Syar'iah; Vol 14, No 2 (2022)* DO - 10.18860/j-Fsh.V14i2.15238, December 30, 2022, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/15238>.

<sup>40</sup> Nur Avita, Ahmad Rusyaid Idris, and Frina Oktalita, "Integration of Tradition and Sharia: Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency," *El-Mashlahah* 12, no. 2 (November 24, 2022): 124–38, <https://doi.org/10.23971/elma.v12i2.4712>.

The complexity emerges in inheritance division when the Islamic Law Compilation mandates the division of joint property.<sup>41</sup> According to Article 94 of the Islamic Law Compilation, in a polygamous marriage, the deceased husband's property should be allocated to the joint property of the first and second wife. This aligns with the provisions outlined in Article 94 of the Compilation of Islamic Law (Paragraph 1), which stipulates, "Joint property from the marriage of a husband who has more than one wife, each separate and independent." Additionally, Article 94 (2) specifies that ownership of joint property resulting from the marriage of a husband with multiple wives, as mentioned in Paragraph (1), is to be calculated at the time of the second, third, or fourth marriage contract. Furthermore, Article 190 of the Islamic Law Compilation states that for a testator with multiple wives, each wife is entitled to a portion of the joint property acquired during the marriage, while the entire share of the testator constitutes the right of the heirs.

In Book II on Guidelines for the Implementation of Duties and Administration of Religious Courts, it is elucidated that property acquired during a marriage with the first wife is to be regarded as joint property of the husband and the first wife. Conversely, in a polygamous marriage, property obtained during the marriage is deemed joint property among the husband, the first wife, and the second wife.<sup>42</sup> The calculation entails that during a monogamous marriage period, the first wife is entitled to half of the joint property, whereas during a polygamous marriage, she is entitled to one-third. Conversely, the second wife only obtains one-third of the joint property from the polygamous marriage. The deceased husband is entitled to one-third of the total joint property, which, when combined with his personal property, constitutes the inheritance to be distributed among the heirs, including his wives and children.

Furthermore, based on the Islamic Law Compilation, the wife or wives are categorized under *dzawil furudh*, individuals whose share of Islamic law has determined the law of inheritance. If the testator passes away without leaving children, the wife is entitled to one-fourth of the inheritance. Conversely, if the testator leaves behind children, the wife's share is reduced to one-eighth of the inheritance (The Compilation of Islamic Law, Article 180). On the contrary, if the wife deceases, the husband inherits half of his wife's estate if she does not leave behind any children or grandchildren from her sons. In the presence of children or grandchildren, the husband's share is reduced to one-fourth of his wife's inheritance.

### **Inheritance Disputes in Polygamous Marriages in Court Decisions**

This section will explore the rulings on inheritance disputes within polygamous marriages, exemplified by Decision Number 4191/Pdt.G/2019/PA.JS and Decision Number 103/Pdt.G/2021/PTA. JK.

#### **1. Decision Number 4191/Pdt.G/2019/PA.JS**

This case involves four plaintiffs: the first wife, two sons, and a daughter, who have taken legal action against the defendants, comprising the second wife and her two biological daughters.

<sup>41</sup> Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah*; Vol 15, No 2 (2023) DO - 10.18860/j-fsh.V15i2.23050, December 29, 2023, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/23050>. "plainCitation": "Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hukum Dan Syar'iah*; Vol 15, No 2 (2023

<sup>42</sup> *Buku II Pedoman Teknis Administrasi Dan Teknis Peradilan Agama Edisi Tahun 2013* (Mahkamah Agung, Direktur Jenderal Badan Peradilan Agama, n.d.).

The plaintiffs initiated this lawsuit following the death of their husband and father, as the distribution of inheritance had not occurred. Allegedly, all properties belonging to the deceased, both movable and immovable, were under the control of the second wife. The plaintiffs sought the court's recognition of their status as rightful heirs of the deceased and requested entitlement to their inheritance according to Islamic law. Additionally, they requested that all properties be sold at the State Auction Hall.

Both parties are represented by their legal counsels. Despite the court's directive for reconciliation and mediation, these efforts proved unsuccessful, prompting the trial to proceed. The judge panel formally presented the lawsuit, to which the defendants responded with a counterclaim. Subsequently, the plaintiffs submitted their second declaration, or *replik*, in response to the defendants' counterclaims. Both parties presented evidence and called upon two witnesses each during the proceedings.

In the final decision, the judge panel ruled in favor of certain aspects of the plaintiffs' claims. This ruling identifies the heirs and specifies their respective shares of the inheritance. Two wives are allocated 7/126 shares each, two sons receive 32/126 shares each, and three daughters are entitled to 16/126 shares each. The inherited properties encompass land, a building, two apartment units, and a house.

## 2. Decision Number 103/Pdt.G/2021/PTA.JK

This appellate court decision involves the first wife, her children, the second wife, and her children. The decision, submitted to the first-instance court, overturns the initial ruling. The appellate judges granted some of the claims requested by the plaintiffs. These include recognizing the first wife and her children, as well as the second wife and her children, as the heirs of the deceased. Moreover, the judges specified the joint assets of the deceased husband and his two wives, comprising two apartment units and a house.

Furthermore, the judges determined that the joint properties should be divided into three before the inheritance distribution. Subsequently, one-third of the husband's share was allocated among his heirs. Lastly, the judges determined the shares of each heir as follows: 1) 133/336 shares for the first wife; 2) 20/336 shares for each of the two sons from the first wife; 3) 10/336 shares for the daughter from the first wife; 4) 133/336 shares for the second wife; and 5) 10/336 shares for each of the two daughters from the second wife.

### Judges' Considerations in Determining the Heir's Estate in Polygamous Marriages

The definition of inheritance property as specified in Article 171(d) of the Islamic Law Compilation refers to the Maliki, Shafi'i, and Hanbali madhhabs. These three madhhabs define the estate as "everything left by the deceased, including properties, rights, and both material and non-material rights." Similarly, the Egyptian Law of Inheritance defines the estate as "everything left by the deceased, encompassing all assets and responsibilities related to others' rights, including care and funeral costs, and debt settlement such as *ainiyah* and *mutlaqah* debts, with the remainder to be passed down and bequeathed to the heirs".<sup>43</sup>

<sup>43</sup> Fatchur Rahman (Bandung: PT. Alma,arif, 2005), 37-40. Kamarusdiana, Kamarusdiana, Muhammad Ilham Fuadi, and Muhammad Ishar Helmi, "Keadilan Waris Islam Dalam Kedudukan Anak Perempuan Sebagai Hajib Hirman Terhadap Saudara Dalam Putusan Mahkamah Agung". *Al-Manahij: Jurnal Kajian Hukum Islam* 15 (2), 2021: 221-232.

Article 171(e) of the Islamic Law Compilation further clarifies that inheritance property consists of both inherited and shared joint property, after deductions for care and funeral costs, debt payments, and gifts to the deceased's relatives. This definition is applied in both Decisions analyzed in this study. Decision Number 4191/Pdt.G/2019/PA.JS includes the phrase "determining the inheritance of the heir," whereas Decision Number 103/Pdt.G/2021/PTA.JK employs the term "heir's inheritance."

The judges' differing word choices in these two decisions reflect their distinct perspectives on inheritance properties. In the first-instance Decision, the judges deemed all disputed objects as inheritance property solely owned by the deceased. Conversely, the appellate Decision considered that the properties should first be deducted from the joint property shared with the deceased's wives, with the remainder distributed to all heirs. In essence, the second Decision acknowledges the concept of joint property in a marriage. Despite the variation in terminology, both Decisions ultimately determine a similar distribution of the inheritance shares.

Among the disputed objects, only the first and second were mentioned in the lawsuit, while the third and fourth were not. However, the trial revealed that the testator had granted the second and third objects to the first wife and their daughters. In light of this, the judges ruled that the third and fourth objects should be distributed as part of the husband's inheritance property for the following reasons:

- a) The spouse's grants to his first wife are prohibited; therefore, the granted properties should be considered part of the inheritance properties.

In Decision Number 4191/Pdt.G/2019/PA.JS, the judges determined that the house inhabited by the plaintiffs (the first wife) should be included in the legacy to be divided among the heirs, despite the house not being mentioned in the plaintiffs' petition. This decision was influenced by the defendants' demand that the house be considered part of the inheritance. The plaintiffs objected, asserting that the house was legally their property following a grant from the testator, formalized by a notary on July 11, 2005. In response to this objection, the judges referred to Article 1678 of the Indonesian Civil Code, which stipulates that grants between spouses are prohibited throughout their wedded life.

A grant or *hibah*, as defined in Article 171(g) of the Islamic Law Compilation, refers to the voluntary transfer of something from one person to another without expecting any compensation. Similarly, Article 668, point 9, of the Sharia Economic Law Compilation, stipulates that *hibah* is the transfer of ownership of an item to another person without any return.

The Islamic Law Compilation does not explicitly outline the fundamental components of grants but specifies the conditions, which imply that the essential elements include the grantee, the giver, the property, and witnesses. In contrast, the Sharia Economic Law Compilation explicitly defines the foundations of grants in Article 685, which includes the *wahib* (giver), *mawhub* (recipient), *mawhub bih* (object), *iqrar* (statement), and *qabd* (handover). Comparing these two laws reveals that their foundational elements align closely with the views of the majority of Islamic legal scholars, albeit with some differences. The Compilation of Islamic Law does not explicitly mention *ijab-qabul* (offer and acceptance) and includes witnesses as a requirement. Meanwhile, the Compilation of Sharia Economic Law includes *qabd* (handover) along with the grantor, grantee, granted object, and statement.<sup>44</sup>

<sup>44</sup> Zakiyatul Ulya, "Hibah Perspektif Fikih, KHI Dan KHES," *Maliyah: Jurnal Hukum Bisnis Islam* 7, no. 2 (2017): 1–23.



Article 210 of the Compilation of Islamic Law states that the conditions for a grantee include being at least 21 years old, of sound mind, and acting without coercion. The property must rightfully belong to the grantee, and the amount should not exceed one-third of the grantee's total property. Additionally, the grant must be given to a person or institution and witnessed by two individuals. The age requirement is based on the Civil Code rather than Islamic law. Furthermore, the stipulation that the grant amount must not exceed one-third of the grantee's total property aligns with the conditions for a will and is intended for the benefit of the community.<sup>45</sup>

Articles 704–707 of the Sharia Economic Law Compilation stipulate that the grantee must be of sound mind, mature, and act without coercion, being at least 18 years old or married. Additionally, the grantee may be a child capable of acting like an adult (*mumayyiz*) or not yet *mumayyiz* if their guardian manages the property. The object of the grant must belong to the grantee or be authorized by the owner, and it must be specific and known. The *iqrar* (statement) can be expressed through words, writing, gestures, or actions. Moreover, the *qabd* (handover) requires permission to receive the goods from the grantee.<sup>46</sup>

Moreover, Article 715 of the Sharia Economic Law Compilation stipulates that if a husband or wife, while still married, give grants to each other, they are not entitled to withdraw their respective grants after the transfer of property. Although this Article specifies that the grantor cannot withdraw the grant, it implies that a husband's grant to his wife, or vice versa, is permitted. Additionally, Articles 86 and 87 of the Compilation of Islamic Law indicate that a husband has the right to grant his property to his wife, and the wife to her husband.<sup>47</sup> Therefore, when considering the elements and conditions of grants according to the opinions of scholars, as well as the stipulations in the Islamic Law Compilation (KHI) and the Sharia Economic Law Compilation (KHES) as outlined above,<sup>48</sup> there is no prohibition against a husband granting an object to his wife, whether movable or immovable. This legitimizes the exchange of grants between spouses, permitting a husband to grant his property to his wife and vice versa.

Referring to Republic of Indonesia Minister of Religious Affairs' Decision No. 154 of 1991, which serves as the guidance for implementing Presidential Instruction Number 1 of 1991 on the dissemination of the Compilation of Islamic Law to all government agencies and the community through orientation, upgrading, or legal counseling, it is evident that since 1991, the practice of grants for Muslims has been guided by the Compilation of Islamic Law. Consequently, grants from husbands to wives or vice versa are permissible. This stance contrasts with the determination in Decision Number 4191/Pdt.G/2019/PA.JS, which ruled that the house granted by the testator to his first wife should be included in the testator's inheritance.

However, the outcome would differ if the opinions of Ulama as reflected in the Compilation of Islamic Law and the Compilation of Islamic Economic Law were applied. One crucial condition

<sup>45</sup> Abu Syhabudin, "Fiqh Indonesia: Transformasi Dan Sinkronisasi Fiqh Wasiat Dan Hibah Dalam Kompilasi Hukum Islam Di Indonesia," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 3, no. 05 (2017).

<sup>46</sup> Ulya, "Hibah Perspektif Fikih, KHI Dan KHES."

<sup>47</sup> Syaikhu Syaikhu et al., "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement," *El-Mashlahah* 13, no. 2 (December 31, 2023): 181–202, <https://doi.org/10.23971/el-mashlahah.v13i2.7375>.

<sup>48</sup> Riska Fauziah Hayati and Abdul Mujib, "Dispute Resolution on Muḍārabah Musytarakah Contract on Sharia Insurance in Indonesia: Between Regulation and Practice," *El-Mashlahah* 12, no. 1 (June 30, 2022): 14–36, <https://doi.org/10.23971/elma.v12i1.3795>.

is that the granted object must be fully owned by the grantee. In Decision Number 4191, the granted object was not fully owned by the grantee because the property was acquired during the marriage with both the first and second wives. This implies that the property is considered joint property between the testator and his two wives, in accordance with Article 35 of Marriage Law No. 1 of 1974. If the husband intended to present the property as a gift, Article 36, Paragraph 1 of Marriage Law Number 1 of 1974 requires the consent of both wives. A similar stipulation is found in Article 92 of in the Islamic Law Compilation, which states, “A husband or wife, without the consent of the other party, is not allowed to sell or transfer joint property.” This implies that any legal action related to the property must involve the consent of all parties.<sup>49</sup>

Additionally, Article 705 of the Sharia Economic Law Compilation stipulates that one party can grant shared property to another if the other party consents, even if this consent is given after the property handover. The second wife’s demand to include the property as part of the inheritance implies her approval of the grant.

The judges’ refusal to accept the property transfer from the husband to the first wife as a grant serves as evidence of its illegality, even with official recording by a Notary Public and Land Titles Registrar (PPAT). This practice is deemed legally flawed, void, and without legal force as it contradicts Article 36 verse (1) of 1974’s Law Number 1, Section 92 of the Islamic Law Compilation, and Article 1678 of the Indonesian Civil Code. Muslims are subject to the first and second laws, as agreed by the Indonesian Ulama.<sup>50</sup> Additionally, the Compilation of Sharia Economic Law and the Indonesian Ulama Council’s Fatwa are considered material laws in resolving and deciding cases within the authority of the Religious Courts.<sup>51</sup>

b) Parent’s Grant to Child is Considered as Inheritance

One of the objects designated as inherited property in Decision Number 4191/Pdt.G/2019/PA.JS is an apartment unit. Initially, this object was not included in the petitum of the lawsuit. However, during the trial, it was revealed that the testator had granted the apartment to his daughter (Plaintiff III) during his lifetime, formalized before a notary and PPAT. Plaintiff III subsequently transferred the apartment to her mother, Plaintiff I, with the testator’s consent.

The panel of judges concluded that the apartment should be included the decedent’s inheritance to be divided among all inheritors, pursuant to Section 211 of the Islamic Law Compilation, which states, “grants from parents to their children can be calculated as inheritance.” Additionally, the panel referenced Article 1086 of the Civil Code, which stipulates, “grants given by the testator to his children/heirs down the line must be re-included in the calculation of the testator’s estate.”

There is no forbiddance on parents granting their assets to their children from the perspective of fiqh. However, it is recommended that such grants be made fairly.<sup>52</sup> The Maliki, Hanafite, and Shafi’ite schools consider it undesirable (*makruh*) to make unjust grants to children, though if the grants are already given, even if unfairly, they remain valid.<sup>53</sup> Some

<sup>49</sup> Fathalya Laksana, “Juridical Analysis of Lawsuits Case for Unlawful Acts of the Invalidity of Transfer of Property Rights to Movable Properties,” *Law and Justice* 5, no. 2 (2020): 134–44.

<sup>50</sup> Hermawan and Sumardjo, “Kompilasi Hukum Islam Sebagai Hukum Materiil Pada Peradilan Agama.”

<sup>51</sup> Domiri, “Analisis Tentang Sistem Peradilan Agama Di Indonesia,” *Jurnal Hukum Dan Pembangunan* 47, no. No 3 (2016): 149–95.

<sup>52</sup> Abdul Aziz Muhammad Azzam, *Fiqh Muamalat: Sistem Transaksi Dalam Fiqh Islam* (Jakarta: Sinar Grafika Offset, 2010), 439.

<sup>53</sup> sayyid Sabiq, *Fiqh Sunnah*, trans. Mudzakir A.S, vol. 14 (Bandung: PT. Alma’arif, 2018), 186.

scholars argue that fairness in granting is obligatory, meaning unfair grants should be canceled and revoked.<sup>54</sup> In contrast, Imam Ahmad ibn Hanbal permits unequal grants among children if there are justifiable reasons known to the testator. Al-Shaukani, however, insists that fairness is obligatory and unequal grants are prohibited (*haram*).<sup>55</sup> Most Islamic legal scholars believe fairness in grants should mean equal shares for males and females.<sup>56</sup> Nonetheless, Muhammad Ibn al-Hasan, Ahmad, and Ishak, from the Shafi'ite and Maliki schools, argue that fairness in grants should follow the inheritance model, where males receive two shares of the total grants.<sup>57</sup>

The Compilation of Islamic Law's article 211 governs gifts given by parents to their offspring, reflecting Indonesia's social and cultural realities and the living law.<sup>58</sup> The term "may" in Article 211 is not imperative but alternative, allowing parties to choose whether to consider grants as part of the inheritance. This Article is not mandatory but serves as an option in specific circumstances. Additionally, Article 211 can be applied in inheritance disputes among heirs when the deceased parents have previously distributed their estate as a grant to one or some of the children.<sup>59</sup>

By invoking Article 211 of the Islamic Law Compilation, the decision of the judge's panel in Decision Number 4191/Pdt.G/2019/PAJS that the apartment unit should be included in the testator's inheritance is justified. Moreover, this decision aligns with the principle of *maslahah*, as excluding the apartment unit from the inheritance could result in injustice and potentially provoke envy among heirs who did not receive any grants from their father.

### **Variations in Judicial Approach to Resolving Inheritance Disputes in Polygamous Marriages in Decisions Number 4191/Pdt.G/2019/PAJS and Number 103/Pdt.G/2021/PTA.JK**

Verdict Number 4191/Pdt.G/2019/PAJS and Verdict Number 103/Pdt.G/2021/PTA.JK pertain to polygamous marriages that have been legally recognized by the state. These marriages were authorized by the Religious Courts and certified by the Office of Religious Affairs (KUA). Given this legal recognition, all parties involved, including the wives and their children, have the right to bring inheritance disputes before the Religious Courts.

Decision Number 103/Pdt.G/2021/PTA.JK constitutes an appellate ruling. In this instance, the first wife and her children initiated legal action due to the defendants, comprising the second wife and her children, managing the estates. In the initial trial, the court identified the deceased's heirs and their respective shares, a decision the plaintiffs found unsatisfactory. Hence, they appealed to the higher Religious Court for a reevaluation of the case. Another basis for this lawsuit is the defendants' reluctance to divide the inheritance according to the rules of Islam.

Primarily, the discrepancy between the verdict of First-level court and Appeal courts lies in the treatment of the estates as inheritance properties, disregarding the presence of joint property within the marriage. This divergence, as perceived by the authors, stems from

<sup>54</sup> Hanif Luthfi, *Hibah Jangan Salah* (Rumah Fiqih Publishing, 2020), 55–57.

<sup>55</sup> Azzam, *Fiqh Muamalat: Sistem Transaksi Dalam Fiqh Islam*, 440.

<sup>56</sup> Luthfi, *Hibah Jangan Salah*, 56.

<sup>57</sup> Sabiq, *Fiqh Sunnah*, 14:191.

<sup>58</sup> Sakirman Sakirman, "Telaah Hermenutika Pasal 211 KHI Dalam Memberikan Access to Justice Terkait Hibah Dan Waris," *Jurnal Konstitusi* 15, no. 1 (2018): 95–117.

<sup>59</sup> Zainuddin, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2008), 25.

the judges' preference for classical Islamic jurisprudence rules of inheritance (*fiqh mawaris*), which do not acknowledge shared assets, unlike the Islamic Law Compilation. This observation underscores the earlier findings by Euis Nurlaleawati, indicating that certain Religious Court judges exhibit a preference for employing Islamic legal doctrines from classical texts over the Islamic Law Compilation.<sup>60</sup>

Conversely, the appellate judges instructed the litigants to account for the joint property, necessitating the deduction of the estates from the joint assets before their distribution as inheritance properties. Identifying shared assets entails considering the duration of the testator's marriages with the first and second spouses, spanning from 2005 to 2018. Specifically, the marriage with the first wife endured from 1975 to 2018, while the marriage with the second wife lasted from 1991 to 2018. The appellate judges allocated the joint assets into thirds, apportioning one-third to each of the first wife, second wife, and husband. Subsequently, the husband's share assumes the form of his inheritance. This allocation aligns with various legal provisions, including Article 35, Paragraph 1 of Marriage Law No. 1 of 1974, Article 94, Paragraphs 1 and 2 of the Islamic Law Compilation, Section 96, Verse 1 of the Islamic Law Compilation, Section 190 of the Islamic Law Compilation, and Book II on Guidelines for the Implementation of Duties and Administration of Religious Courts.<sup>61</sup>

Furthermore, another notable distinction between the judges in the first First-level court and Appeal courts pertained to the calculation of the *asl al-mas'alah* or the Least Common Multiple (LCM) of all denominators utilized in the inheritance distribution calculations. According to Islamic inheritance law, all denominators should be divisible by the LCM. The determination of the LCM involves employing methods such as *mubayanah* or *tabayun*, which entails finding the LCM by multiplying the denominators together. For instance, if the fractional numbers are  $1/2$  and  $1/3$ , the LCM is obtained by multiplying the two denominators, resulting in  $2 \times 3 = 6$ . Another method is *mudakhlah* or *tadakhul*, utilized when one denominator is a multiple of the other. For instance, the LCM of  $2/3$  and  $1/6$  is 6. The next method is *muwafaqah* or *tawafuq*, employed when the denominators share a factor. It is determined by multiplying  $1/2$  with the denominators. For example, in the case of shares of  $1/6$  and  $1/8$ , the LCM would be 24, obtained from the multiplication of  $\frac{1}{2} \times 6 \times 8$ . Finally, there is *mumathalah* or *tamathul*, which applies when the denominators are the same. For example, the LCM of  $1/3$  and  $2/3$  is 3.<sup>62</sup>

The appellate court, following a correction (*tashih*) to ensure accuracy, established the inheritance shares for each heir using 112 as the Least Common Multiple (LCM).

Owners of the joint property				
First wife	$1/3$	$8/24$	112	336
Second wife	$1/3$	$8/24$	112	
Testator	$1/3$	$8/24$	112	

<sup>60</sup> Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia."

<sup>61</sup> *Buku II Pedoman Teknis Administrasi Dan Teknis Peradilan Agama Edisi Tahun 2013*, 146.

<sup>62</sup> Hasbiyallah, *Belajar Mudah Ilmu Waris* (PT. Remaja Rosdakarya, 2007), 27–28.



Heirs	Fard of the heirs	LCM	Shares	Shares of each heir individually	Tashih 8x14=112	Shares of each wife + joint property
2 wives	1/8	8	1/8x8=1	1/8x1/3= 1/24	1/8x 112=14 @wife 7	112x2 + 14=238 @119/336
3 daughters 2 sons	Asabah bil ghair		8-1=7	7/8x1/3=7/24	112-14=98 @daughter 14 @boy 28	98/336 @daughter 14/336 @boy 28/336
Total						336

In the initial court proceedings, the judges allocated each heir's share according to Article 180 of the Islamic Law Compilation, while the wives' entitlements were determined grounded in Quran Surah An-Nisa, verse 12. As per this stipulation, a wife would receive a quarter of the estate if the deceased had no children or grandchildren from his sons, or one-eighth if such descendants were present. This principle applies uniformly in polygamous unions, where one-fourth or one-eighth shares are divided equitably based on the number of wives involved.

In allocating the children's shares, the judges referenced Quran Surah An-Nisa', verse 11, which specifies that a son's entitlement equals that of two daughters. This legal principle was also upheld by the appellate judges. The divergent rulings between the two courts stemmed from their contrasting methodologies in determining the properties' status. The breakdown of the calculation is as follows:

Heirs	Fard of the heirs	Asl al-Mas'alah	Shares	Individual share	Tashih 8x2=16
2 wives	1/8	8	1/8x8=1	1	1/8 x16= 2
3 daughters 2 boys	Asabah bil ghair		8-1=7	7:7 =1	@wife 1/16 16-2=14 14:7=2 @ daughter 2 @boy 4

The calculation presented above diverges from Decision Number 4191/Pdt.G/2019/PA.JS, where 126 was determined as the Least Common Multiple (LCM). The authors contend that this LCM is erroneous, as evidenced by the subsequent calculation:

Heirs	Fard of the heirs	Asl al-Mas'alah	Shares	Individual share
2 wives	1/8	126	1/8 x 126 = 15.75	15.75 : 2= 7.875 @ wive 7.875
3 daughters 2 boys	Asabah bil ghair		126-15.75= 110.25	110,25:7=15.75 @daughter 15.75 @boy 31.5

The calculation above illustrates the share of each heir expressed as a fraction. In Islamic inheritance law, fractions are integral for determining inheritance shares. It appears that 126 is derived from the correction (*tashih*) of the LCM, as the initial LCM is 8. Wives are considered *ashhabul furud* (heirs whose shares are specified in the Quran), with one-eighth of the shares.

### Ensuring Women's Right to Marital Property in a Polygamous Marriage

In polygamous marriages, women frequently encounter challenges in securing their entitlements to marital assets, including joint property, maintenance, and inheritance, particularly in cases of unauthorized polygamy.<sup>63</sup> This research examines two judicial rulings, demonstrating that even within the bounds of legal polygamy, realizing women's rights to marital property can present difficulties. Neglecting joint property in inheritance allocation is also conceivable in monogamous marriages, yet these court decisions highlight the potential for heightened complexity in polygamous unions.

In a prior investigation conducted by Euis Nurlaelawati, it was observed that judges within the Indonesian Islamic court system often favor husbands' requests for legal polygamy, relying on a more normative interpretation of Islamic law.<sup>64</sup> This includes invoking the principle of *maslahah* (benefit) while seeking to avoid *mafsadah* (harm). Additionally, the research underscores a tendency among judges to marginalize the perspectives of women. This aligns with the observation made in the first-instance court decision, where judges leaned towards classical *fiqh*, disregarding national legislation that holds greater relevance in achieving justice within the Indonesian context.

Conversely, the Appellate Court ruling demonstrates a more forward-thinking stance in addressing the complexities of inheritance within a polygamous marital framework. This can be interpreted as a departure from the traditional doctrines of classical *fiqh*, as the court recognizes the concept of shared property, outlined in the Islamic Law Compilation. By mandating the allocation of shares from joint assets to both wives prior to dividing the husband's estate, the judges ensure the equitable fulfillment of each wife's rights. This suggests a spectrum of judicial attitudes, with some judges exhibiting conservative tendencies in addressing marital property issues within polygamous unions, while others adopt a more progressive approach.

### Conclusion

In summary, this investigation underscores the intricate nature of inheritance distribution within polygamous marriages, contrasting with the relative straightforwardness of monogamous unions. The complexity inherent in resolving inheritance disputes within polygamous marital contexts is evident in the varied approaches adopted by Indonesian Islamic court judges, who draw upon a range of legal frameworks. Case analyses such as Decision Number 4191/Pdt.G/2019/PA.JS and Decision Number 103/Pdt.G/2021/PTA.JK illustrate that judicial deliberations extend beyond reliance solely on the Islamic Law Compilation, encompassing considerations of the Civil Code as well.

Moreover, in Verdict No. 4191/Pdt.G/2019/PA.JS, the judges applied Islamic inheritance law exclusively, overlooking the joint property status. Consequently, the entirety of the deceased's assets

<sup>63</sup> Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property."

<sup>64</sup> Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia."

was distributed without accounting for the wives' entitlement to joint property. Conversely, Decision Number 103/Pdt.G/2021/PTA.JK referenced the Islamic Law Compilation, which acknowledges joint property within marriages. Consequently, the court directed the litigants to deduct the estates with joint property, recognizing the wives' rights. Subsequently, a third of the husband's share was allocated to his heirs in accordance with Islamic inheritance law. The appellate decision demonstrates a nuanced interpretation of Islamic law, considering shared property prior to inheritance distribution. This juxtaposition suggests that the Appellate Court judges adopt a more progressive stance, mindful of the Indonesian context and equitable treatment of wives in polygamous unions.

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