



## Review of Islamic Inheritance Law in the Practice of Determining Inheritance Rights in an Underhanded Marriage in Cibulao Village

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### ABSTRACT

The position of widows and/or widowers in Islamic inheritance law is influenced by several factors, including the marital status of the husband and wife. Initially the position of widows and/or widowers did not inherit property in marriage, especially when the marriage was an underhand marriage, but in its development widows and/or widowers could inherit due to the times and customary law in the community itself. In an underhand marriage, there are still many legal obstacles to granting widows and/or widowers the right to inherit. The position of widows and/or widowers as heirs among their peers is due to the factor of marital relations, the existence of husband and wife relationships over marital ties. The legal consequences arising from the marital relationship give rise to a reciprocal position between husband and wife in inheritance, namely husband and wife inherit each other's property.

Based on the customary inheritance system itself, both in terms of the division of inheritance with the kinship system and with the distribution model, all of them have heirs for the distribution of property from the spouse who has been left behind. For couples who have been left behind, in this case those who have the status of widows and/or widowers, only a few regions allow widows and/or widowers to have inheritance rights to the property of a deceased husband or wife.

**Keywords:** *inheritance; itsbat; marriage.*

### I. INTRODUCTION

The position of widows and/or widowers in Islamic inheritance law is influenced by various factors, one of which is the marital status of the couple. Initially, widows and/or widowers did not have the right to inherit marital property, especially if the marriage was conducted underhand (not officially recorded). However, with the times and the influence of customary law, the position of widows and/or widowers in inheritance began to be recognized.

Underhand marriages, although religiously valid, are considered sinful if they are conducted without registration with the Office of Religious Affairs (KUA). This is due to disobedience to *ulil amri* (the government) which requires marriage registration as a form of obedience to established rules.

The position of widows and/or widowers as heirs among themselves is due to marital relationship factors, the existence of husband and wife relationships over marital ties. The legal consequences arising from the marital relationship give rise to a reciprocal position between husband and wife in inheritance, namely husband and wife inherit each other's property. If one of the parties dies, according to Islamic law, they inherit each other, meaning that the widow has the right to get the property of her husband and vice versa, the widower will get the inheritance from his wife's property.<sup>1</sup>

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<sup>1</sup> Novia Hasanah, "Kedudukan Hak Mewaris Duda Menurut Hukum Waris Islam," hukum online com, 2017, <https://www.hukumonline.com/klinik/a/kedudukan-hak-mewaris-duda-menurut-hukum-waris-islam-lt599f868e9712b/>.

Based on the customary inheritance system itself, both in terms of the division of inheritance with the kinship system and with the distribution model, all of them have heirs for the distribution of property from the spouse who has been left behind. For couples who have been left behind, in this case those who have the status of widows and / or widowers, only a few regions allow widows and / or widowers to have inheritance rights to the property of a deceased husband or wife. In the course of a marriage that has been legal and recognized by the state without a property separation agreement, automatically, if the husband or wife is still alive, the couple can get *gono-gini* property which has been regulated in the 1974 Marriage Law. For the benchmark of inheritance law itself can be seen from the area or origin of the heir left during his life.<sup>2</sup>

Legal efforts made by marriage partners to obtain inheritance rights can be made through *itsbat* nikah. *Itsbat* nikah in religious courts is an institution that can be taken by the community to obtain recognition of an underhand marriage. After performing *itsbat* nikah, the legal recognition of the underhand marriage that has been carried out is obtained.

## II. RESEARCH METHOD

This research uses a qualitative approach because it aims to deeply understand the practice of determining inheritance rights in an underhand marriage in Cibulao Village, as well as examining the application of Islamic inheritance law in that context. This type of research is a case study because it focuses on a specific case, namely the practice of determining inheritance rights in an underhand marriage in Cibulao Village. A case study was chosen to explore in-depth information about social and legal phenomena that occur in that location.

## III. DISCUSSION AND RESULTS

The position of widows and/or widowers in Islamic inheritance law is a complex issue influenced by various factors, including the marital status of the couple and the legal framework governing marriage and inheritance. Initially, widows and/or widowers did not have the right to inherit marital property, particularly in cases of underhand marriages (unregistered marriages). However, over time, the influence of customary law and evolving societal norms have led to the recognition of their inheritance rights, albeit with certain limitations and challenges.

### 3.1 Underhand Marriages and Their Implications

Underhand marriages, while considered valid under Islamic law, are often viewed as sinful if they are not officially registered with the Office of Religious Affairs (KUA). This is because registration is seen as a form of obedience to *ulil amri* (the government), which is a religious obligation

The lack of official registration creates significant legal challenges, particularly in matters of inheritance. Without formal recognition, widows and/or widowers may face difficulties in claiming their rightful share of the deceased spouse's estate. This is especially problematic in underhand marriages, where the absence of legal documentation can lead to disputes over property distribution.

### 3.2 Influence of Customary Law

Customary law (*adat*) plays a significant role in shaping inheritance practices, particularly in rural areas like Cibulao Village. In some regions, customary law recognizes the rights of widows and widowers to inherit property, while in others, these rights may be limited or denied. For example:

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<sup>2</sup> ahma Ayu Dwitarsari Longit, Vincentius Yohannes Ghanksar YuriSatrio, "Kedudukan Hukum Waris Perempuan Dan Janda Dalam Adat Batak," *Indonesian Journal of Social Sciences and Humanities* Vol. 3 No. (202

- a. In patrilineal systems, inheritance is typically passed through the male line, and widows may have limited or no rights to their husband's property.
- b. In bilateral or parental systems, inheritance is divided more equally between male and female heirs, and widows/widowers may have stronger claims to their spouse's estate.

### 3.3 Legal Efforts to Secure Inheritance Rights

One of the key legal mechanisms for addressing the challenges faced by widows and widowers in underhand marriages is *itsbat nikah* (marriage validation). This process involves obtaining a court order to recognize the marriage as legally valid, even if it was not officially registered at the time of the ceremony. Once the marriage is validated, the surviving spouse can claim their inheritance rights under Islamic law.

In Cibulao Village, the practice of *itsbat nikah* is crucial for widows and widowers seeking to secure their inheritance rights. However, many community members are unaware of this legal option or face barriers such as cost and distance to the court. As a result, many underhand marriages remain unregistered, leaving widows and widowers vulnerable to disinheritance.

### 3.4 Islamic Inheritance Practice

According to the law of inheritance in inheritance law itself, widows and/or widowers are included in the main group of heirs. Referring to the compilation of law (KHI), the heir is a person who at the time of death has a blood relationship or marital relationship with the testator, the heir himself is considered to be Muslim as seen from the identity card or witness testimony recognition. The widower himself gets half the share if the testator does not leave children, and if the testator or his wife leaves children, the widower gets a quarter of the share of the property left by his wife. For the widow herself gets a quarter of the share if the testator or her husband does not leave children, and if her husband leaves children then the widow gets one-eighth of the share left by her husband.

## IV. CONCLUSION

The position of widows and/or widowers in Islamic inheritance law is influenced by various factors, including the marital status of the couple. Initially, widows and/or widowers did not have the right to inherit marital property, especially if the marriage was conducted underhand (not officially recorded). However, with the times and the influence of customary law, the position of widows and/or widowers in inheritance began to be recognized, albeit with some challenges and limitations. Underhand marriages, although considered religiously valid, are often seen as a sin if they are not officially registered with the Office of Religious Affairs (KUA). This is because marriage registration is considered a form of obedience to *ulil amri* (the government), which is a religious obligation. Without official registration, widows and/or widowers often face difficulties in claiming their inheritance rights, mainly due to the lack of valid legal documents.

In Islamic inheritance law, widows and widowers are recognized as heirs with predetermined shares. For example, widows are entitled to a quarter of the husband's property if there are no children, and an eighth if there are children. Meanwhile, widowers are entitled to half of the wife's property if there are no children, and a quarter if there are children. However, the application of this rule is often complicated in an underhand marriage due to the absence of official recognition from the state. Customary law also plays an important role in inheritance practices, especially in rural areas such as Cibulao Village. In some kinship systems, such as patrilineal systems, widows' inheritance rights may be limited or even not recognized. In contrast, in bilateral or parental systems, the inheritance rights of

widows and widowers are more recognized. The interaction between Islamic inheritance law and customary law often creates tension, especially when these two systems conflict.

On this occasion the author intends to provide suggestions that may be useful, including:

1. The government can increase public awareness about the importance of marriage registration and inheritance rights for widows and/or widowers and also the government needs to establish institutions that can handle the inheritance rights of widows and/or widowers to ensure that community rights are protected. The government needs to conduct socialization of laws and regulations. Legal training for children in marriage and parental rights and obligations.
2. The community should have an important awareness of the essence of marriage and its long legal impact on children, on property and on community law. Ideally, although the Cibulao Village community conducts underhand marriages, there are still people who apply the principles of Islamic inheritance in organizing inheritance, through a mechanism of consensus between the family and the inherited family.

## REFERENCES

### Journals

Ahma Ayu Dwitasari Longit, Vincentius Yohannes Ghanksar YuriSatrio, "Kedudukan Hukum Waris Perempuan Dan Janda Dalam Adat Batak," *Indonesian Journal of Social Sciences and Humanities* Vol. 3 No. (202

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