

INHERITANCE RIGHTS OF WIVES AND CHILDREN IN SIRI MARRIAGES: COMMUNITY PERSPECTIVES AND LEGAL IMPLICATIONS IN SILANDROYUNG VILLAGE

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Abstract

This study investigates the inheritance rights of wives and children in unregistered (siri) marriages within the community of Silandoyung Village, Silau Kahean District, Simalungun Regency. Using an empirical socio-legal approach, the research combines field interviews with village officials, religious leaders, traditional leaders, and affected families, alongside a normative analysis of Islamic law, the Compilation of Islamic Law (KHI), and Indonesian positive law. The findings reveal that the community acknowledges inheritance rights for wives and children from siri marriages based on religious values and customary norms, despite the absence of state recognition due to the lack of official marriage registration. This discrepancy creates potential inheritance disputes, reflecting a legal tension between religious-customary legitimacy and state law. From the perspective of Islamic law, siri marriages are valid if their pillars are fulfilled, granting wives and children inheritance rights; however, under Indonesian positive law, registration is mandatory for legal recognition. The study concludes that marriage registration is not merely an administrative formality but a crucial mechanism to harmonize state law with local wisdom, thereby ensuring legal protection and justice for women and children in siri marriages.

Keywords: *Siri Marriage, Inheritance Rights, Women and Children, Islamic, Socio-Legal Study.*

Abstrak

Penelitian ini mengkaji hak waris istri dan anak dalam perkawinan siri di tengah masyarakat Desa Silandoyung, Kecamatan Silau Kahean, Kabupaten Simalungun. Dengan menggunakan pendekatan sosio-legal empiris, penelitian ini memadukan wawancara lapangan bersama aparat desa, tokoh agama, tokoh adat, serta keluarga yang terdampak, dengan kajian normatif terhadap hukum Islam, Kompilasi Hukum Islam (KHI), dan hukum positif Indonesia. Hasil penelitian menunjukkan bahwa masyarakat mengakui hak waris istri dan anak dari perkawinan siri berdasarkan nilai agama dan norma adat, meskipun secara hukum negara hak tersebut tidak diakui karena perkawinan tidak tercatat secara resmi. Ketidaksesuaian ini menimbulkan potensi sengketa waris dan mencerminkan ketegangan hukum antara legitimasi agama-adat dan hukum negara. Dari perspektif hukum Islam, perkawinan siri tetap sah apabila rukun dan syaratnya terpenuhi sehingga istri dan anak berhak atas warisan. Sebaliknya, menurut hukum positif Indonesia, pencatatan perkawinan menjadi syarat mutlak untuk pengakuan hukum. Penelitian ini menegaskan bahwa pencatatan perkawinan bukan sekadar formalitas administratif, melainkan mekanisme penting untuk mengharmonisasikan hukum negara dengan kearifan lokal demi menjamin perlindungan hukum dan keadilan bagi perempuan dan anak dalam perkawinan siri.

Kata Kunci: *Perkawinan Siri, Hak Waris, Perempuan dan Anak, Islam, Studi Sosio-Legal*

A. Introduction

In pursuing their respective lives, individuals always interact with one another. This interaction is directly determined by God, namely to live in pairs in the bond of marriage (Rustina, 2022). Marriage is a natural instinct that occurs between a man and a woman to continue their lineage as social beings (Wardana & Ananda, 2024). Marriage is conducted between two people to realize a common goal in one commitment, namely Sakinah, Mawaddah, and Rahmah in a lasting household (Nabil Hukama Zulhaiba Arjani et.al., 2024). Islam is a comprehensive religion that regulates all aspects of human interaction (Sari Dewi et.al., 2023), as stated in the words of Allah SWT in Qs. An-Nisa verse 3, which commands men to marry women they like. This recommendation to marry is Allah's law in accordance with the provisions set out in Islamic law, fiqh literature, and the Compilation of Islamic Law in Indonesia (Fauzan, 2023). Marriage is also carried out according to each person's religion and beliefs as explained in KHI 2 verse (1) (Noya et.al., 2024).

Marriage in Islam must meet certain requirements in order to be valid. The law also requires the registration of marriages so that they are legally valid. A marriage is declared legally official when it has been registered (Marwin, 2014). Before the marriage contract takes place, the bride and groom can make a written marriage agreement that is legalized by the marriage registrar to strengthen the bond of the household (Budiawan, 2023). Marriage registration is important, its main purpose being to protect the community in maintaining family integrity. In addition, it provides certainty and legal

guarantees for couples and children in accordance with the rights and obligations arising from the marriage relationship. Unregistered marriages are called siri marriages and have no legal guarantee under Indonesian law (Pristiwiyanto, 2019).

Siri marriages often occur in Silandoyung Village, so that all rights arising from the marriage have no legal force, one of which is inheritance. The inheritance mechanism for wives and children from siri marriages varies and is influenced by religion, tradition, and positive law. Although siri marriages are considered valid according to religion, they are not recognized by the state, which affects the inheritance rights of children, while siri wives do not obtain inheritance rights according to civil law provisions (Nanda Eka Prasetya et.al., 2024). Inheritance rights are also the rights of children that must be fulfilled by parents as a result of marriage. The inherited estate includes all of the deceased's assets plus a portion of the joint assets, after deducting the deceased's expenses during their illness until their death, funeral expenses, debt repayment, and gifts to close family members (Muhammad Arsad Nasution, 2021).

Adverse effects on spouses will arise if the marriage lacks legal validity due to not being registered. Similarly, children do not receive comprehensive legal protection. One example is not obtaining a birth certificate, which is an important document for child administration, due to the lack of population data resulting from their parents' unregistered marriage status (Faizal, 2016). Another negative impact is on children resulting from marriage Siri did not receive a share of the inheritance when her parents died, especially her father, and would find it difficult to claim her inheritance rights through a court decision because of the legal position of children who are not legally bound to their fathers (Najmuddin & Laksono, 2021). All issues that arise in society are governed by law because Indonesia is a country based on the rule of law. This also applies to matters of marriage and inheritance, which are regulated in the compilation of Islamic law and, conceptually, in the principles of fiqh that have been implemented in society (Zakaria & Saad, 2021).

In Indonesia, siri marriages are not an uncommon phenomenon. Those who enter into unregistered marriages come from all walks of life, regardless of age, education, or economic status. The definition of an siri marriage in modern times differs from that of the past. The difference lies in the conditions and elements that must be fulfilled in the marriage. In the past, siri marriages referred to marriages that were not announced to the public or did not have a wedding party, but the requirements and conditions for marriage were fulfilled. Meanwhile, in modern times, a siri marriage is defined as a marriage attended by a guardian and witnesses, but not conducted in front of a marriage registrar, so it is not officially recorded at the Office of Religious Affairs for Muslims or the civil registry office for non-Muslims (Norhaliza et.al., 2024). Some people believe that a siri marriage is valid because it fulfills the requirements for a valid marriage, namely the exchange of *ijab* and *qobul*, the presence of the prospective husband and wife, a guardian, and witnesses to the marriage. Therefore, siri marriages are chosen as an option to prevent adultery between couples who are unable to marry officially due to economic, moral, and

psychological constraints (Herlina Herlina et.al., 2024). This practice has become a complex issue in terms of legal matters, social and psychological impacts on children born in siri marriages, including the status of children in obtaining inheritance rights.

A marriage is valid if it is conducted in accordance with the provisions of each religion and belief, as stated in Article 1, Paragraph 2 of the Marriage Law. However, in the following paragraph, the law requires the registration of marriages to obtain a marriage certificate (Mansoba, 2021). Thus, if a siri marriage is conducted only in accordance with religious provisions as stated in paragraph 1, such recognition is insufficient in terms of legal and administrative aspects. In the law, a marriage certificate is used as official evidence that a marriage has taken place (Syamdan & Purwoatmodjo, 2019). The practice of siri marriage is also called an under-the-table marriage and is highly prone to abuse and violation of the law. Many divorces arise from siri marriages where the divorced party does not receive their rights. Specifically, the rights of the child, including alimony, custody, and inheritance rights. The child is considered to be born out of wedlock and therefore has no civil rights with their biological father. In fact, the father can deny the child at any time (Judiasih et.al., 2024).

As a result of these siri marriages, disputes arise regarding the fulfillment of alimony and inheritance rights. Efforts to resolve the dispute through legal channels have been difficult due to the lack of evidence in the form of documents or official records proving that the marriage took place (Alfaiza et.al., 2024). Although there is no definitive data on the number of unregistered marriages and their contribution to the divorce rate, it can be estimated that the number be quite high given the practice for to be abused, both in the implementation process and in the very easy process of divorce. The fact that there are many cases of siri marriages in society also occurs in the village of Silandoyung. In the village of Silandoyung, unregistered marriages often occur and cause problems, especially regarding the inheritance of children from unregistered marriages. The focus of this study is to examine the views of the Silandoyung village community regarding the inheritance status of wives and children in unregistered marriages, analyze the factors that influence these views, and review the perspective of Islamic family law regarding these community views. The author also reviews several previous studies related to this topic, including: Previous research by Dion Putra Wijaya entitled "A Legal Review of the Inheritance Rights of Children Born from Unregistered Marriages in the Perspective of Islamic Law and Marriage Law." Using a normative legal method, this study examined the status of children born from unregistered marriages and the effect of not registering unregistered marriages on the inheritance rights of children. The results of the study show that marriage registration is a crucial element, because the marriage certificate is authentic evidence of the legality of a marriage (Wijaya, 2025).

Furthermore, previous research by Anisya Devi Aprilia Damasynta entitled *The Legal Status of Siri Wives and Children Resulting from Siri Marriages in Justice-Based Inheritance*. This study discusses the legal status of siri wives and children in the context of inheritance law. This study shows that siri marriages are not legally valid because it

does not comply with Article 2 paragraphs 1 and 2 of the Marriage Law, resulting in complex legal issues, especially for children born in siri marriages (Damasynta, 2021). Furthermore, previous research by Zahro'ul F.A, et al entitled Protection of Inheritance Rights of Children from Siri Marriages According to the Compilation of Islamic Law and Positive Indonesian Law examines the issue of the rights of children and wives in siri marriages. Siri marriages are a major issue because they weaken the position of wives and children in claiming their rights as a result of marriage. Children do not obtain inheritance rights from their biological fathers. Through normative juridical and normative theological methods, the results of the study show that in essence, Islamic law equalizes the status of legitimate children even though there is no official approval. Conversely, in Indonesian positive law, these children are only recognized when their parents' marriage status is official and accompanied by a marriage certificate. Without registration, the status of the child is considered to be an illegitimate child (Alfaiza et.al., 2024).

From the above explanation, the purpose of this study is to determine and understand the views of the people of Silandoyung Village, Silau Kahean District, Simalungun Regency, regarding inheritance given to wives and children resulting from unregistered marriages. This study aims to identify the factors behind the views of the Silandoyung village community. In addition, this study also aims to examine the perspective of Islamic family law on these community views. The solution that can be offered is the need for official marriage registration before the state. Therefore, this study seeks to emphasize that marriage registration is not merely an administrative formality, but an effort to provide legal certainty and justice, particularly regarding inheritance rights for wives and children from unregistered marriages. Thus, the results of this study are expected to provide a realistic picture of the social reality developing in the Silandoyung Village community regarding inheritance issues in unregistered marriages.

B. Method

This research is an empirical study using a sociological approach to law to describe the social reality regarding the views of the Silandoyung Village community on inheritance for wives and children from siri marriages and to analyze its conformity with applicable legal provisions. The research was conducted in Silanduyong Village, Silau Kahean District, Simalungun Regency, North Sumatra. This location was chosen because the phenomenon of unregistered marriages occurs quite frequently, directly impacting inheritance rights. Primary data was obtained from interviews with research subjects, including one village head staff member, one traditional leader, one religious leader, one wife affected by a siri marriage, and two villagers. Informants were selected using purposive sampling, which involves choosing sources based on their experience and understanding of inheritance issues in siri marriages. Secondary data was obtained from primary legal materials, Law No. 1 of 1974 on marriage, the Compilation of Islamic Law (KHI), and other supporting documents.

Data collection techniques involved semi-structured interviews, in which guided questions were asked to the informants and they were given the opportunity to explain further based on their views. The interviews were conducted face-to-face, and the data was recorded and transcribed with permission to facilitate data transcription. Data analysis techniques were carried out using qualitative analysis through the following stages, including data reduction, whereby data from interviews and observations were selected to focus on information about inheritance rights in unregistered marriages. Next was data presentation, whereby data was presented in narrative form to facilitate the identification of themes or patterns. Then, conclusions are drawn based on the themes that emerge to gain a deeper understanding of the views of the community in Silandoyung Village, Silau Khaean District, Simalungun Regency. Finally, data triangulation is carried out by combining empirical data with legal sources (laws, KHI, fiqh) to increase validity. All interviewees were asked for their consent. Personal identities were protected by listing their positions or social status in the community. This was done to maintain the confidentiality and comfort of the sources. The data presented is based on the information obtained. All questions were based on the interviewees' experiences, views, and understanding of inheritance issues in siri marriages.

C. Results and Discussion

1. Siri Marriage According to Legislation

Etymologically, marriage comes from the word kawin, which means to build or form a household with a partner, or can also be interpreted as sexual intercourse or intimate relations. Marriage is also known as pernikahan, which comes from the Arabic word nikaahun with the root word nakaha or its equivalent tawwaja, which means to unite, to insert into each other, and the act of sexual intercourse (Gusmawan et.al., 2023). The definition of marriage according to the civil law code is not explicitly stated. Article 26 states that marriage is only a civil relationship, while Article 27 affirms the principle of monogamy. Furthermore, in marriage, spouses must be faithful to each other, help each other, and cooperate with each other in accordance with Article 103 (Sam'un, 2022). The definition of marriage according to legal experts is a bond between a man and a woman that is valid according to the laws and regulations, with the aim of forming a permanent family. Law No. 1 of 1974 concerning marriage explains that marriage must be based on belief in One God, so that religion has a close relationship with marriage and is not merely physical (S et.al., 2025)

Siri marriage is defined as a marriage that is conducted secretly and not publicly announced. The views of the fuqaha regarding siri marriage are derived from Islamic law itself. This can be viewed from two sides. First, it relates to the presence of witnesses, which the fuqaha consider to be one of the pillars of marriage. According to them, a marriage is not valid if it is not attended by two witnesses and a guardian (Kharisudin, 2021). Siri Marriage is considered based on Article 2 paragraph 1 of Law No. 1 of 1974 concerning marriage, which explains that a marriage is valid if it complies with the

procedures of each religion and belief. However, the next paragraph implies that marriages must be registered in order to obtain a marriage certificate. This private siri marriage is still carried out in accordance with Islamic law, only that it is not registered at the religious affairs office (KUA) or the civil registry office (Al-Amruzi, 2021).

There are various reasons that lead to siri marriages, including obedience to parents, whereby children tend to follow their parents' orders to marry a partner chosen by their parents for reasons of kinship, even though they are not yet of legal age to marry. Second, economic constraints in holding a wedding party, marriage administration costs, or other financial limitations that lead couples to choose to reduce the cost of marriage. Third, the efforts of a retired widow to continue receiving pension benefits from her previous husband, so she chooses to marry secretly with the man she loves. Fourth, educational or employment factors that prohibit marriage during a certain period; if violated, the individual will be expelled or receive sanctions. Fifth, pregnancy outside of marriage violates religious norms, so parents marry off their children secretly through religious leaders to protect the family's honor. Sixth, the community's low understanding of the urgency of registering marriages, leading to the assumption that registered and unregistered marriages have the same status, even though the law stipulates the obligation to register marriages (Supriyadi, 2018).

2. Village Community's View on Inheritance to Wife and Children in a Siri Marriage

Silandoyung Village is one of the villages located in Silau Kahean Subdistrict, Simalungun Regency, North Sumatra Province. Silandoyung Village is located in the Nagori Silou Paribuan area, Silou Kahean Subdistrict, Simalungun Regency, North Sumatra. Silou Kahean Subdistrict has an area of approximately 228.74 km². This village is located at an altitude of about 320 meters above sea level, with a geographical condition dominated by hills and agricultural land. With the passage of time, the wedding culture in Silandoyung Village, Silau Kahean Subdistrict, Simalungun Regency has also undergone changes, such as the emergence of the practice of unregistered marriage. In the past, the pre-wedding processions focused more on customs such as proposals and wedding party preparations. This research was conducted in Silandoyung Village, Silau Kahean District, Simalungun Regency, a village where the majority of the population is Muslim and still upholds customs and family values. Based on interviews and field observations conducted with community leaders, religious leaders, and the village head, the following results were obtained:

Interview with Mr. SS, Head of Silandoyung Village, who said, "In my personal opinion, and also based on my experience in this village, I believe that unregistered wives and their children still have inheritance rights. Even though the marriage has not been officially registered at the Religious Affairs Office, if it is valid according to religious law, there is a guardian, witnesses, and a clear *ijab kabul* (marriage vow), then they are still valid wives and children. In this village,

there are quite a few unregistered marriages, sometimes due to circumstances. For example, they may not be able to officially practice polygamy, or there may be administrative issues. However, that cannot be a reason to deny the rights of the children and wife if the husband dies. We must recognize that they are also part of the family. These children are also direct descendants; *kan lang mungkin hita tutup mata* (we cannot turn a blind eye. As the Village) Head, I often receive complaints from unregistered wives or their children seeking help regarding inheritance”

Mr. SS also responded to the issue of inheritance rights in unregistered marriages, which, according to him, can be resolved through community deliberation. “From the perspective of state law, it is indeed difficult, because there is no official marriage certificate. However, within society and the extended family, the matter can still be discussed through *musyawarah* (collective dialogue). Ideally, their rights should still be given. No one should be treated unjustly. Since they live under the same roof, they should naturally help and take care of each other. But when it comes to inheritance, sometimes they are left behind. That is why I always remind the community that even in cases of unregistered marriage, the children must still be recognized. We can assist by issuing a certificate of origin or a statement acknowledging that they live as husband and wife. It is unfair if only because of administrative issues, the wife and children lose the rights that they rightfully deserve. As village officials, we must be fair and wise in responding to such realities on the ground.”. (Bapak SS, komunikasi pribadi, 2025)

Thus, the interview results show the importance of recognizing the inheritance rights of unregistered wives and their children, even though their marriages are not officially registered at the Religious Affairs Office. The source, who is the village head, explained that religiously, unregistered marriages are still valid if they meet the existing requirements. He highlighted that many residents in his village were married unofficially for various reasons, and emphasized that children from such marriages were part of the family and were entitled to inheritance. Despite legal challenges related to administration, the source encouraged the community to recognize their rights and suggested the use of certificates to help recognize their status. He emphasized the importance of fairness and wisdom in handling this issue so that no party is wronged, as well as the need for mutual support within the family.

In the second interview, the researcher explored the perspective of Oppung Sur, a traditional leader, regarding the position of inheritance rights within the framework of customary law. He emphasized that in their *adat* tradition, blood relations are undeniable and remain the primary basis for kinship recognition. He explained: “A child remains a child, and a wife remains a wife, even if the marriage is not legally registered by the state. As long as the marriage is conducted in accordance with religious rites and witnessed by the community, we continue to acknowledge it as a legitimate family unit. With regard to inheritance, our customary law affirms that both the child and the wife from an unregistered marriage still possess rightful claims. Within our tradition, there is no teaching that permits discrimination against biological children simply because they are

born from such a union. When a father passes away and leaves behind property, all family members are entitled to inheritance, including the wife from an unregistered marriage. This principle reflects the essence of justice embedded in our adat values.”) (O. Sur, komunikasi pribadi, 2025).

The findings of this interview emphasize that within the practiced customary law, blood relations cannot be denied, including those originating from unregistered marriages, who still retain equal rights in matters of inheritance. The informant explained that although such marriages may not be formally registered by the state, they are nonetheless recognized both religiously and socially as legitimate family members. This perspective aligns with the principle of justice in law. Furthermore, it resonates with the objectives of *maqashid sharia*, particularly *hifz al-nasl* (the protection of lineage), which includes guaranteeing the fulfillment of children’s rights, and *hifz al-mal* (the protection of property), which serves as a fundamental purpose of inheritance distribution.

In the third interview, the researcher asked Mr. JS, a religious leader, regarding the position of unregistered marriages in Islam. He explained: “In Islam, a marriage is considered valid as long as it fulfills its pillars and conditions: the presence of a guardian (*wali*), two witnesses, the offer and acceptance (*ijab kabul*), and the dowry (*mahar*). If all of these requirements are met, the marriage is valid in the eyes of religion, even if it has not been officially recorded at the Office of Religious Affairs (KUA). Therefore, a wife in an unregistered marriage remains legitimate, and the children born from that marriage are also legitimate. With regard to inheritance, children from such a marriage are entitled to full inheritance rights from their father. Their rights must not be diminished in any way. If a family refuses to acknowledge this, it amounts to an act of injustice. Islam is very clear on the matter of inheritance, as the distribution is explicitly laid out in the Qur’an. Anyone who denies the rightful share of others especially one’s own children will be held accountable in the Hereafter. It is true that, from the perspective of state law, the absence of official registration complicates the matter. However, as a religious leader, I emphasize that as long as the pillars and conditions of marriage are fulfilled, the family should still recognize the rights of both the wife and children from an unregistered marriage. I also recommend that such marriages be subsequently registered, so that they also gain legal recognition from the state. Nonetheless, even if they are not yet recorded, their inheritance rights must not be abolished. From the standpoint of Islam, denying these rights is unequivocally forbidden (*haram*).” (Bapak JS, komunikasi pribadi, 2025)

The results of this interview confirm that in Islam, a marriage is considered valid if it fulfills the stipulated conditions and requirements, even if it has not been registered at the KUA. A secret wife and children born from such a marriage are still recognized by religion and have full inheritance rights from their father. The source emphasized that denying inheritance rights to children from unregistered marriages is an unjust act and contrary to Islamic teachings, which clearly regulate inheritance

distribution inheritance clearly in the Qur'an. Despite legal challenges related to registration, the source encouraged families to continue to recognize the rights of wives.

The fourth interviewer asked Mr. SP, "In my opinion, wives and children from unregistered marriages are equally valid. There is no difference from marriages registered at the Religious Affairs Office. As long as the marriage is valid according to religion, there is a guardian, witnesses, and a clear *ijab kabul* (marriage vow), then it is valid in the eyes of God. So, don't consider it inferior or invalid just because there is no marriage certificate from the state. In Islamic law, there is no difference between children from official marriages and children from unregistered marriages. If a child is the legitimate child of a father, then he or she is entitled to an equal share of the inheritance. The wife also has a share. There should be no difference. What is important is responsibility and clarity in the relationship. Religion never teaches us to discriminate against children or wives just because of administrative matters. So for me, inheritance from a secret marriage must still be divided, and it must be fair. Children from secret marriages get their share, and children from official marriages also get their share. It must be equal. There should be no discrimination." (Bapak SP, komunikasi pribadi, 2025)

The results of this interview confirm that wives and children from unregistered marriages are considered legitimate and have the same rights as those who are officially married at the KUA. The source argued that as long as the marriage meets the religious requirements, such as the presence of a guardian, witnesses, and *ijab kabul* (marriage vows), then its status in the eyes of God is valid, regardless of whether it is registered with the state. He emphasized the importance of protecting the human rights of wives and children from unregistered marriages, who are also part of the family and have responsibilities in raising children. In terms of inheritance, the source asserted that there is no difference between children from official marriages and secret marriages; both are entitled to an equal share. He emphasized that religion does not teach discrimination based on administrative status, and therefore, inheritance from secret marriages must be divided fairly and equally.

The final interview asked Mr. DS, a member of the Silandoyung village community, "In my opinion, wives and children from unregistered marriages are legitimate, as long as the marriage is conducted in accordance with Islamic law. Therefore, their status cannot be taken lightly. If the husband dies, the wife and children from a secret marriage are clearly entitled to inheritance. They have a blood relationship and legal responsibilities, and in Islamic teachings, inheritance rights apply as long as the marriage is valid, even if it is not registered with the state. So, no one should think that they have no rights. Wives and children from secret marriages also has the legal right to claim inheritance if necessary." (Bapak DS, komunikasi pribadi, 2025)

The results of this interview show that unregistered marriages are considered valid under Islamic law as long as they fulfill the requirements and conditions of

marriage, such as the presence of a guardian, witnesses, and *ijab kabul*. Therefore, wives and children from unregistered marriages have a valid status under religious law and are entitled to inheritance if their husband dies. They also have the legal right to claim inheritance as long as they can provide sufficient evidence. However, the interviewee suggested that marriages should also be officially registered by the state to have legal force and facilitate administrative matters in the future. Thus, even though *siri* marriages are valid according to religion, official registration is still important for stronger legal protection.

In the last interview, the author highlighted wives who were directly affected by secret marriages. Mrs. N, a secret wife, said that "our secret marriage had lasted ten years. When my husband died, his family refused to give my children their inheritance rights, as well as my rights. They argued that my marriage was a secret marriage without a marriage certificate. I feel this injustice but cannot do anything about it. Even though my husband and I lived harmoniously, worked, and raised our children together. My children are treated as if they have no rights." (Ibu N, komunikasi pribadi, 2025)

From the interview with Mrs. N, it is clear that wives in unregistered marriages experience legal vulnerability. Even though they have lived together, the status of unregistered wives is often used as an obstacle to obtaining inheritance rights because they are not legally recognized due to the absence of a marriage certificate. This also shows the gap between religious and customary legitimacy, which recognizes rights in unregistered marriages, while positive law cannot protect inheritance rights without official registration.

The Views of the Silandoyung Village Community on Inheritance for Wives and Children in Unregistered Marriages. Based on interviews with the Silandoyung Village community, the community believes that even if they are not registered, morally and according to custom, children must still receive a share because they are the flesh and blood of the heir. This shows a sense of justice in marriage. The views of Islamic law and the KHI on inheritance for wives and children in unregistered marriages are influenced by several factors, including religious factors, where some communities understand inheritance law from Islamic teachings that emphasize justice for children and wives. Cultural factors, which prioritize family deliberation and a sense of kinship in the distribution of assets. Religious and cultural figures, who are very influential in providing guidance to the community. Customary factors, which prioritize family deliberation and a sense of kinship in the distribution of assets. Religious and customary leaders play a significant role in shaping public opinion.

The social implications of inheritance status in the Silandoyung village community include the emergence of conflicts within extended families regarding inheritance rights, the weak legal position of wives and children from unregistered marriages in the community, the community becoming increasingly aware of the importance of marriage registration to protect family rights, and the urge for village

officials, religious leaders, and traditional leaders to be more active in promoting the importance of marriage registration.

Based on the results of research in Silandoyung Village, it can be concluded that when viewed from a fiqh perspective, siri marriages are still considered valid as long as they fulfill the pillars and requirements of a valid marriage, namely: the presence of a prospective husband and wife, a guardian from the woman's side, two fair witnesses, ijab-qabul, and dowry. According to the Shafi'i school of thought, the validity of a marriage does not depend on its registration or announcement to the general public, but rather on the fulfillment of these elements in accordance with Islamic law (Ahmad Supiannor & Anwar Hafidzi, 2025).

3. View of Islamic Law and KHI Regarding Inheritance to Wife and Children in Siri Marriage

According to Islamic law, a marriage is valid if it fulfills the requirements and pillars of marriage, namely the presence of a prospective husband, prospective wife, guardian, two witnesses, and ijab kabul. If these requirements and pillars are fulfilled, the marriage is considered valid, so that the wife and children born from the marriage are entitled to inherit from the deceased (Ahmad Supiannor & Anwar Hafidzi, 2025). However, in the context of positive law in Indonesia, inheritance rights can only be legally recognized if the marriage is officially registered at the Office of Religious Affairs (KUA). This is confirmed in the Compilation of Islamic Law (KHI), Article 171 letter c, which states that heirs are people who, at the time of death, have a blood relationship or marriage relationship with the deceased, are Muslim, and are not prevented by law from becoming heirs (Naskur, 2016). Thus, unregistered siri marriages cannot be used as a legal basis for wives to claim their inheritance rights, because administratively, the existence of a marital relationship cannot be proven.

The main difference is seen in the aspect of legal formalities. The people of Silandoyung Village place more emphasis on justice based on customs and family values, so that children remain is considered eligible to receive inheritance even though she was born from a secret marriage. Meanwhile, according to Islamic law and the KHI, legal registration is an important requirement for inheritance rights to be legally recognized. Imam Shafi'i explicitly states that a marriage that is not announced but witnessed by two just people is still considered valid. In the book *al-Umm*, Imam Shafi'i states: If a man marries a woman witnessed by two just witnesses and a guardian, then the marriage is valid, even if it is not announced to the wider community (Syafi'i, 2017).

From this, it can be concluded that marriage registration is not a valid requirement under Islamic law, but is only administrative in nature. Therefore, in the view of fiqh, unregistered marriages are valid and have legal consequences in terms of inheritance, especially for children born from such marriages, who are legally attributed to their biological father and are entitled to inheritance (Nanda Eka Prasetya et.al., 2024).

However, in the context of Indonesian positive law, a marriage must not only be valid according to religion, but must also be registered by the state. This is regulated in Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, which states that: Every marriage shall be registered in accordance with the applicable laws and regulations. Without registration, a marriage has no legal force in the eyes of the state. This means that the husband and wife cannot obtain a marriage certificate, and as a result, children born from such marriages often cannot be issued birth certificates that include the father's name, so they are considered illegitimate children under civil law (Mansoba, 2021).

Furthermore, the Compilation of Islamic Law (KHI) issued through Presidential Instruction No. 1 of 1991 as a guide to Islamic family law in Indonesia emphasizes the importance of marriage registration. Article 7 paragraph (1) letter c of the KHI states that a marriage can only be proven by a marriage certificate issued by a Marriage Registrar (Faishol, 2020). Thus, registration is the only authentic evidence recognized by the state to determine the validity of marital relationships and the status of children (Andalas et.al., 2025). Without registration, legal rights such as inheritance rights, alimony rights, and guardianship rights are difficult to claim in court. Legal protection for children is also strengthened by national legislation. Article 1 paragraph 2 of Law Number 35 of 2014 concerning Child Protection states that every child has the right to identity, legal status, and protection from all forms of discrimination, including discrimination based on birth status.

An important development in national law that supports the rights of children from unregistered marriages is Constitutional Court Decision Number 46/PUU-VIII/2010, which states that: 'Children born out of wedlock have a civil relationship with their mother and her family as well as with their father and his family if it can be proven scientifically and/or by other means of evidence according to the law' (Hidayati et.al., 2022). This decision is a milestone in the recognition of children born out of unregistered marriages, who previously only had a legal relationship with their mother. With evidence such as a DNA test or an acknowledgment under oath, the child can obtain civil rights from their biological father, including inheritance rights. Reinforcing this, the Indonesian Supreme Court issued Supreme Court Circular Letter (SEMA) No. 3 of 2018, which in the formulation of the results of the Civil Chamber Plenary stated: "Children born from unregistered marriages can obtain civil rights (including inheritance) from their fathers as long as the blood relationship can be proven through evidence that is valid according to the law." (Rumusan Hasil Pleno Kamar Perdata, 2018)

This SEMA is a judicial interpretation of national civil law provisions and serves as a guideline for judges throughout Indonesia to no longer reject children's inheritance claims simply because their parents' marriage is not administratively registered. This means that the state has begun to accept the social reality that administrative legal status should not hinder substantive justice for children. From the results of research in Silandoyung Village, the community considers that wives and children from unregistered marriages are still entitled to inheritance based on religious considerations and traditional

values. They adhere to the principle that blood relations cannot be denied, and children's rights must still be guaranteed even if their parents' marriage is not registered. Even local traditional and religious leaders stated that denying inheritance rights to children from unregistered marriages is a form of social and religious injustice.

However, on the other hand, some members of the community who have begun to develop legal awareness believe that the absence of registration will harm wives and children because their legal status is unclear in the eyes of the state. When inheritance disputes arise, the legal position of children born out of wedlock and their mothers becomes very weak because they cannot legally prove their family relationship with the deceased. The understanding of the Silandoyung Village community, which recognizes inheritance rights for children born out of unregistered marriages, is basically based on the *maqāṣid al-syarī'ah* (main objectives of Islamic law) approach. One of the main objectives of *maqāṣid* is *ḥifẓ al-nasl* (preserving lineage/nasab) and *ḥifẓ al-māl* (preserving wealth). In this context, children are vulnerable beings whose rights, including inheritance rights, must be protected in order to maintain dignity, survival, and fairness in the distribution of inheritance (Al-Syatibi, 2003).

If children born from unregistered marriages are excluded from inheritance rights simply because their parents' marriage is not administratively registered, then this contradicts the spirit of *maqāṣid*, which places the protection of children's basic rights as part of Islamic law that is *rahmatan lil 'alamin*. Denying children their inheritance rights in such circumstances has the potential to cause *mafsadah* (social harm) in the form of child neglect, discrimination, and legal inequality. The most significant social implications are experienced by women as wives in unregistered marriages and children born from unregistered marriages. Discrimination against wives arises, resulting in them not receiving inheritance rights as economic providers when their husbands pass away, while children born from unregistered marriages face social stigma and injustice in the distribution of inheritance, and may not even receive inheritance rights. This situation reinforces the importance of marriage registration as an effort to protect the rights of women and children. Advocacy for women and children is needed to ensure that their rights are not neglected in social practices, as well as socialization at the village level involving religious leaders regarding rights and obligations in marriage according to state law.

D. Conclusion

From the results of the study in Silandoyung Village, it can be concluded that the community there has a similar view regarding inheritance for wives and children from unregistered marriages. The community, including traditional leaders, religious leaders, and village officials, believe that as long as the marriage is valid according to religion (there is a guardian, witnesses, *ijab kabul*, and dowry), then the wife and children are still valid and deserve a share of the inheritance. They disagree that wives and children from unregistered marriages should be treated differently simply because the marriage is not

registered at the KUA. However, on the other hand, state law requires marriages to be officially registered in order to be recognized. If they are not registered, wives and children from unregistered marriages are considered to have no legal rights, for example when it comes to inheritance. This often becomes a problem because they are valid according to religion, but have no legal standing. Thus, there is a kind of “conflict” between religious rules, customs, and state law. The people of Silandoyung Village tend to prioritize justice and humanity. They believe that children are still children, and wives are still wives, and they have equal rights. Therefore, according to them, inheritance rights must still be granted even if the marriage is not officially registered. Thus, many also suggest that if you are in a secret marriage, it is best to register it officially so that in the future, it will not cause difficulties for the wife and children, and they will also be protected by law.

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