



# Legal Implications of Joint Property Control by the Second Wife in Inheritance Disputes Islamic Law Perspective

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## Abstract

**Introduction:** Inheritance disputes in polygamous families often lead to conflict, especially when the second wife controls all the inheritance without a fair division to the first wife and her children.

**Purposes of the Research:** The purpose of this study is to find out the procedure for distributing inheritance to the first and second wives in accordance with Islamic principles, as well as to find out the legal consequences for the joint property of the first wife that is controlled by the second wife.

**Methods of the Research:** This research uses a normative juridical method with a legislative and conceptual approach, and is analyzed qualitatively. The data sources come from literature studies, legal literature, laws and regulations, and the Compilation of Islamic Law.

**Findings of the Research:** The procedure for distributing inheritance to the heirs of the deceased husband begins with identifying the inheritance, including inheritance and joint property, then deducting debts, funeral expenses, and wills, before being distributed to the heirs according to *fariath*. As a result of the law of the joint property of the first wife which is controlled by the second wife, without a valid legal basis, it is contrary to the principle of justice in Islam and can be considered as an act of *ghasab* (deprivation of rights). Wives in polygamous marriages are only entitled to joint property acquired during their respective marriages. Therefore, the second wife is not entitled to control the property that is the result of the husband's marriage to the first wife. Such possession can give rise to the obligation to restore rights, trigger inheritance conflicts, and lawsuits from other heirs.

**Keywords:** Inheritance; Polygamy; Islamic Law.

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## INTRODUCTION

The Qur'an employs the Arabic terms *zawwaja* (meaning "to pair" or "to marry") and *nakaha* (meaning "to unite") to refer to marriage. From these terms, the Indonesian word *perkawinan* (marriage) is derived.<sup>1</sup> Article 2 of the Compilation of Islamic Law defines marriage according to Islamic law as a *nikah*, which is "a strong and solemn contract, or *miitsaaqan ghaliidhan*, to obey the commands of Allah, and its fulfillment is an act of worship." This contract aims to fulfill Allah's commands and is undertaken as a form of devotion. The term *miitsaaqan ghaliidhan* is derived from the words of Allah the Almighty, who states: "How can you take back the dowry you have given your wife, while you have lived together as husband and wife, and they have taken a solemn covenant (*miitsaaqan ghaliidhan*) from you?"<sup>2</sup> The legislation governing marriage in Indonesia is Law Number 1

<sup>1</sup> Tinuk Dwi Cahyani, *Hukum Perkawinan* (Malang: UMM Press, 2020), p. 7.

<sup>2</sup> Ach Puniman, "Hukum Perkawinan Menurut Hukum Islam Dan Undang-Undang No. 1 Tahun 1974," *Jurnal Yustitia* 19, no. 1 (2018): 88, <http://ejournal.unira.ac.id/index.php/yustitia/article/view/408>.

of 1974 in conjunction with Law Number 16 of 2019 concerning Marriage, hereinafter referred to as the Marriage Law. Marriage in Indonesia carries significant meaning, affecting not only the relationship between husband and wife but also the broader familial ties of both parties. Upon entering into marriage, the husband and wife form a legally recognized family unit. Within this family, the husband bears the responsibility of earning a livelihood, while the wife may also contribute, thereby enabling the accumulation of family assets and wealth.<sup>3</sup>

Linguistically, inheritance refers to the transfer of wealth from one party to another, meaning that a person leaves their property to those who are entitled to receive it. In the terminology understood by Islamic scholars, inheritance refers to the transfer of ownership rights from a deceased individual to their surviving heirs. The assets inherited may include movable property such as money, immovable property such as land, or other legal rights that are recognized under shar'i (Islamic legal) principles. According to Soepomo, "Inheritance law encompasses the provisions that regulate the mechanisms of succession and the transfer of assets, whether in the form of tangible objects or intangible goods (immateriële goederen), from one generation to the next. Although the death of a parent, such as a father or mother, constitutes a significant legal event within this process, it does not result in a drastic change in the mechanisms of inheritance and asset transfer. This process continues in a consistent and uninterrupted manner despite the occurrence of such death."<sup>4</sup>

The status of a Muslim heir may be established through official identification, self-declaration, religious conduct, or witness testimony. For minors who are not yet of sufficient age to determine their own religious belief, their Islamic faith is presumed to follow that of their father or the religious environment in which they were raised. Furthermore, an individual may be disqualified from inheriting if they have been convicted by a court of law for certain actions and the verdict has obtained permanent legal force. Such disqualifying acts include: a) Killing, attempting to kill, or assaulting the deceased (the decedent); b) Being proven to have falsely accused the deceased by means of a fabricated report or complaint, alleging that the deceased committed a serious criminal offense – namely, one punishable by a minimum of five years' imprisonment or a more severe penalty, in accordance with applicable legal provisions.<sup>5</sup> In Islamic inheritance law, the determination of inheritance rights is based on the proportion of the estate allocated to each heir, which is categorized into three groups as follows: a) Ashhabul-furudh are individuals entitled to fixed portions of the inheritance, such as one-half, one-third, two-thirds, one-quarter, one-sixth, or one-eighth; b) Ashabah are heirs who receive the remainder of the estate after the shares of the ashhabul-furudh have been distributed, or the entire estate if there are no ashhabul-furudh; c) Dzawil-arham are relatives who do not fall into the categories of ashhabul-furudh or ashabah.<sup>6</sup>

Polygamy often raises questions regarding the inheritance rights of a second wife and her children. The Marriage Law and the Compilation of Islamic Law stipulate that if a polygamous marriage is lawful and officially registered, the second wife and her children

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<sup>3</sup> Muhammad Kamran Imran, "Pelaksanaan Pembagian Harta Bersama Dalam Perkawinan Poligami Setelah Perceraian," *Pleno Jure* 9, no. 1 (2020): 16–35, <https://doi.org/10.37541/plenojure.v9i1.328>.

<sup>4</sup> Tinuk Dwi Cahyani, *Hukum Waris Dalam Islam: Dilengkapi Contoh Kasus Dan Penyelesaiannya* (Malang: UMM Press, 2018), p. 9-10.

<sup>5</sup> Barzah Latupono et al., *Buku Ajar Hukum Islam* (Yogyakarta: Deepublish, 2017), p. 175.

<sup>6</sup> Utami Yustiasana Untoro et al., *Hukum Waris Islam* (Malang: Literasi Nusantara, 2022), p.55.

are recognized as legal heirs, although their status may differ from that of the first wife. Article 190 of the Compilation of Islamic Law states: "In the case of a deceased man who had more than one wife, each wife is entitled to a share of the jointly acquired property (*gono-gini*) accumulated during her marriage with the husband, whereas the entirety of the deceased's share belongs to his heirs." The second wife is therefore entitled to inherit from her husband's estate, provided that the assets were acquired during the course of their marriage. However, she has no right to claim assets that were acquired during the husband's marriage to a previous wife. An inheritance estate consists of both the deceased's personal property and the jointly acquired marital property. However, from this joint property, certain deductions must first be made – namely, the costs of medical treatment during the decedent's illness, funeral expenses (*tajhiz*), and the daily necessities of the deceased up to the time of death. Based on a legally valid marriage, the second wife holds the right to inherit from her late husband. In this context, property acquired during the marriage – referred to as *gono-gini* (joint marital assets) – is subject to equitable division. Each spouse is entitled to half of the joint property. Since the husband has passed away, his half is transferred to his heirs, which include his wife and children.

This research is relevant to previous literature that has discussed Islamic inheritance law, especially related to the complexities that arise in polygamous families. Various previous studies have outlined the basic principles of *faraidh* (Islamic inheritance law) as set forth in the Qur'an and the Compilation of Islamic Law. Article 190 of the Compilation of Islamic Law explicitly states that in the case of a polygamous husband, each wife is entitled to a share of the joint property (*gono-gini*) acquired during her marriage with her husband. (Compilation of Islamic Law, Article 190). Literature as written by Cahyani<sup>7</sup> and Khayati<sup>8</sup> It also affirms that every wife who is legal in a polygamous marriage is entitled to a share of her husband's inheritance, with an amount influenced by the existence of children or offspring. Study by Kerti Agus Manussa et al<sup>9</sup>, also underlines the problem of inheritance distribution in polygamous marriages from the perspective of Islamic law. In addition, this research intersects with the discussion of common property (*gono-gini*). As stipulated in the Marriage Law and the Compilation of Islamic Law, joint property acquired during marriage is an asset that must be taken into account in the distribution of inheritance. Article 35 of the Marriage Law affirms that property acquired during marriage becomes joint property. (Law Number 1 of 1974 concerning Marriage, Article 35). Previous studies, such as by Nawawi<sup>10</sup> and Imron<sup>11</sup>, has underlined the importance of separating the common property between the husband and each wife in the context of polygamy before the division of inheritance is carried out.

However, this study specifically explores the aspects of disputes that arise when the second wife controls the joint property that should be part of the rights of the first wife or other heirs, as well as analyzes its legal implications from the perspective of Islamic law, including the concept of *ghasab* (deprivation of rights). This suggests an emphasis on the dispute resolution aspect and the legal consequences of the practice of unauthorized

<sup>7</sup> Dwi Cahyani, *Hukum Waris Dalam Islam: Dilengkapi Contoh Kasus Dan Penyelesaiannya*.

<sup>8</sup> Sri Khayati, "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam Dan Kompilasi Hukum Islam," *Arus Jurnal Sosial Dan Humaniora* 3, no. 1 (2023): 15-24, <https://doi.org/10.57250/ajsh.v3i1.174>.

<sup>9</sup> Bagus Manussa Kerti et al., "Problematika Pembagian Harta Waris Perkawinan Poligami Perspektif Hukum Islam," *Jurnal Tana Mana* 4, no. 1 (2023): 101-11.

<sup>10</sup> Kholil Nawawi, "Harta Bersama Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia," *Mizan: Journal of Islamic Law* 1, no. 1 (2018): 1-16, [https://jurnalfai-uikabogor.com/index\\_php/mizan/article/download/104/30.pdf](https://jurnalfai-uikabogor.com/index_php/mizan/article/download/104/30.pdf).

<sup>11</sup> Imran, "Pelaksanaan Pembagian Harta Bersama Dalam Perkawinan Poligami Setelah Perceraian."

possession of property in the context of polygamy, which may not have been fully explored in some previous literature that focused more on the provision of division alone. This article uniquely discusses how the possession of property by a second wife without a valid legal basis can be categorized as *ghasab*, a concept that enriches legal analysis of polygamous inheritance disputes.

## METHODS OF THE RESEARCH

According to Muhammad Nazir, a research method is the principal step employed by a researcher to achieve objectives and find answers to the issues under investigation, using a specific approach or technique in its implementation.<sup>12</sup> In this study, the author employs a normative juridical method, which focuses on written legal norms, utilizing both statutory and conceptual approaches to analyze relevant legal provisions and theoretical frameworks. The legal materials used include primary sources such as legislation, secondary sources such as expert opinions and academic journals, and tertiary sources as supporting references. Data collection is conducted through a literature review, and the analysis is carried out using a qualitative descriptive method to interpret and draw conclusions based on the compiled legal materials.

## RESULTS AND DISCUSSION

### A. The Procedure for the Distribution of Inheritance to the First and Second Wives under Islamic Law

A husband or wife is referred to as an heir by *sababiyah* (causal relationship), as their right to inherit arises from a valid marital contract (*akad nikah*). If the husband or wife passes away while still in a lawful marital bond or even after divorce, provided it occurs during the *'iddah* (waiting period) they remain entitled to inherit from one another. The husband's share of the inheritance may be either  $\frac{1}{2}$  or  $\frac{1}{4}$ , while the wife's share may be either  $\frac{1}{4}$  or  $\frac{1}{8}$ .<sup>13</sup> As heirs, there is no dispute regarding the entitlement of either spouse. The husband is fully recognized as an heir to his wife, and likewise, the wife is fully recognized as an heir to her husband.<sup>14</sup> Before the distribution of an inheritance takes place, the first step is to compile all the assets left behind by the deceased. In Islamic inheritance law, these assets are referred to as *tirkah*, which encompasses all tangible and intangible possessions left by the deceased (*mayyit*). *Tirkah* includes not only material wealth such as money, land, houses, vehicles, or jewelry, but also property and non-property rights, such as receivables, business profits, lease rights, as well as liabilities such as debts.<sup>15</sup> The deceased's estate may consist of: a) Separate property refers to assets that are personally owned by the husband or wife prior to the marriage, or legally acquired at the time of marriage. It also includes assets received individually by either party, whether husband or wife, as a gratuitous transfer during the marriage, such as gifts, donations (*hibah*), or inheritance from third parties. Under prevailing legal principles, such separate property is entirely under the control of the individual owner. This means that either the husband or the wife has full and independent rights to manage, utilize, transfer, or otherwise legally act upon that property without

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<sup>12</sup> Moh. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2014), p. 32.

<sup>13</sup> Amin Husein Nasution, *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam* (Jakarta: Raja Grafindo Persada, 2012), p. 110.

<sup>14</sup> Ali Parman, *Kewarisan Dalam Al-Quran* (Jakarta: Raja Grafindo Persada, 1995), 59.

<sup>15</sup> La Ode Angga et al., *Hukum Islam* (Bandung: Widina Bhakti Persada, 2022), p 108.

requiring the consent of the other spouse – unless there exists a mutually agreed contract limiting those rights. These provisions serve to protect individual ownership rights, ensuring that property which is not classified as jointly acquired remains the exclusive property of the recipient. However, in practice, the spouses may agree on arrangements concerning the management or amalgamation of separate property with joint property, depending on their mutual understanding and household needs. Thus, the law offers flexibility while maintaining clear ownership status and control over individual property;

b) Joint property, also known as *gono-gini* or *syirkah*, includes all assets acquired during the course of a marital relationship. This includes any form of assets or income obtained by either the husband or the wife – individually or collectively – while they remain in a valid marital bond. It is immaterial whether the income was generated by the efforts of one party or through joint collaboration; as long as it was acquired during the marriage, it is categorized as joint property. In managing or taking legal action involving joint property, neither spouse is permitted to act unilaterally. Any decisions concerning the use, transfer, sale, or other transactions of such property must be based on mutual consent between husband and wife. This is intended to uphold the balance of rights and responsibilities and to prevent dominance or abuse of control over assets legally recognized as jointly owned. In the event of divorce, joint property does not automatically become the exclusive possession of either party; rather, it must be divided and regulated according to the applicable legal system. This division may refer to several legal frameworks, depending on the couple's social and religious context – such as religious law (e.g., Islamic law), customary law in their region, or the prevailing national civil law. Accordingly, the principles of fairness and protection of each party's economic rights are maintained in the post-divorce division of assets.<sup>16</sup>

The Compilation of Islamic Law classifies heirs based on the predetermined method of distribution, as follows: A wife is entitled to 1/6 of the inheritance if the deceased (the heir) has children or descendants, or if the heir has two or more siblings (whether full, paternal, or maternal). She is entitled to 1/3 if the deceased leaves no children or descendants, or only one sibling (full, paternal, or maternal). A widow is entitled to 1/4 of the inheritance if the deceased leaves no children or descendants, and 1/8 if the deceased leaves children or descendants.<sup>17</sup> In the Qur'an, Surah An-Nisa (Chapter 4), verse 12 states: "And for you (husbands) is half of what your wives leave, if they have no children. But if they have children, then for you is one fourth of what they leave after fulfilling any bequest they may have made or debt they owe. And for them (the wives) is one fourth of what you leave, if you have no children. But if you have children, then for them is one eighth of what you leave." In receiving inheritance or estate from her husband, if there is only one wife, she alone is entitled to the entire prescribed share (*fardh*). However, if there is more than one wife, they equally divide that prescribed share. There is consensus (*ijmā'*) among scholars that the inheritance share of multiple wives collectively equals that of a single wife. This means that whether the husband leaves behind one wife or several, if he has no surviving children (male or female), nor grandchildren through a son (male or female), then the one-fourth share is to be divided equally among the wives. Whether there is one wife or more, the wife does not act as a barrier (*ḥājib*) to any other heir, nor is anyone a barrier to the wife – except in cases where the deceased leaves behind a child or grandchild, which

<sup>16</sup> Indah Sari, "Pengaturan Pembagian Hak Kewarisan Kepada Ahli Waris Dalam Hukum Waris Islam Berdasarkan Kompilasi Hukum Islam (KHI)," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 2 (2017): 86–109, <https://doi.org/10.35968/jh.v7i2.133>.

<sup>17</sup> Khayati, "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam Dan Kompilasi Hukum Islam."

reduces the wife's share to one-eighth (1/8). A second wife, in a legally valid marriage, is entitled to one-fourth (1/4) of the estate if the deceased (husband) leaves no children or grandchildren, and to one-eighth (1/8) if there are children or grandchildren. It can thus be concluded that the portion of inheritance received by the second wife is influenced by the presence of children or descendants (walad).<sup>18</sup>

Before delving further into the mechanisms of asset distribution between husband and wife, it is essential to first understand the principle of justice as a fundamental foundation in Islamic law. In this context, justice is not merely understood as equal division, but rather as placing matters in their rightful position and granting rights to those entitled to them, in accordance with both the provisions of the Sharia and existing realities. In Islam, justice represents one of the most essential values across all aspects of life, including in social transactions (mu'āmalāt), such as the division of marital property. Justice entails respecting individual rights without causing harm to others and ensuring that each party receives their due portion based on contribution, need, and status. This means that, in asset division, the husband and wife are not necessarily required to receive equal shares; instead, each receives what is rightfully theirs without injustice. It must also be understood that, in Islam, the concept of justice does not always equate to quantitative equality. For instance, a wife who does not directly contribute to income generation but fully manages the household is still entitled to a share of the marital property, as her contribution is morally and legally recognized. Conversely, a husband who serves as the primary breadwinner bears greater financial responsibility, which is also taken into account in the division process. Based on this principle of justice, the plan for asset division between husband and wife is acceptable in Islam, provided it does not violate Sharia provisions and does not result in inequity or harm to either party. This understanding serves as a crucial foundation before addressing the technical discussion on how property is distributed under Islamic law, whether in the case of divorce or inheritance. In Islamic law, it is strongly emphasized that within a polygamous marital relationship, the principle of justice in the distribution of wealth must be upheld. All forms of property acquired during the course of the marriage are considered joint property, and neither the husband nor any of the wives is permitted to claim or control a portion that does not rightfully belong to them. Every wife involved in such a marital arrangement is entitled to a fair and legitimate share of the jointly acquired property. This is intended to ensure a balanced distribution of rights and responsibilities within the household and to protect the interests of all parties involved – particularly the wives – so that none are disadvantaged or treated with partiality. Islam places justice as a foundational element in marital life, including in the management and distribution of wealth.

From the foregoing explanation, it is evident that spouses in a polygamous marriage are entitled to a portion of the joint property. There exists joint property in a polygamous marriage, rather than separate property for the husband and each wife. The first wife retains her rightful share of the joint property, regardless of whether the husband enters into a second, third, or fourth marriage. The first wife receives a larger portion of the joint property than the second wife; the second wife receives a larger share than the third; and the third wife receives more than the fourth this is based on the distribution hypothesis.<sup>19</sup> The distribution hypothesis, in the context of the division of joint property in a polygamous

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<sup>18</sup> Abdul Hafidz Miftahuddin, "Metode Pembagian Warisan Terhadap Istri Kedua Perspektif Kompilasi Hukum Islam Dan Hukum Perdata (Studi Komparatif)," *Usratuna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2019): 1-21, <https://ejournal.staidapondokkrempeyang.ac.id/index.php/usrotuna/article/download/349/390>.

<sup>19</sup> Kerti et al., "Problematika Pembagian Harta Waris Perkawinan Poligami Perspektif Hukum Islam."

marriage, is a theoretical assumption used to explain how the joint assets are proportionally allocated among the wives, based on the order of marriage or the duration of each wife's marital relationship with the husband. According to Mahmud Yunus, the distribution of inheritance is a matter of great significance and must be carried out in accordance with the provisions set forth in the Qur'an, as well as with the principles of inheritance law recognized among Muslims. In his scholarly writings, Mahmud Yunus emphasizes that Allah SWT has explicitly commanded His followers to adhere to the rules of inheritance distribution as detailed in various Qur'anic verses. These provisions are not merely moral recommendations but constitute binding legal obligations for every Muslim. Furthermore, Mahmud Yunus warns that anyone who deliberately violates these rules or unlawfully takes a portion of the inheritance—especially by usurping the rightful shares of other heirs—has committed a grave sin in the sight of Allah.

Although in this world a perpetrator may evade legal sanctions or not receive a punishment commensurate with their actions, in the hereafter they will be held accountable and threatened with the torment of Hell for betraying Allah's trust and seizing the rights of others. According to Mahmud Yunus, taking another person's inheritance without their consent or without a legitimate legal basis is tantamount to theft or robbery, even if carried out through administratively legal means. This indicates that, in Islamic perspective, justice and transparency in the distribution of inheritance are not merely matters of worldly legal concern, but also encompass spiritual dimensions and accountability in the afterlife. Therefore, every Muslim is obliged to act with honesty, fairness, and responsibility in the process of inheritance distribution, in order to preserve family harmony and attain the pleasure of Allah SWT.<sup>20</sup>

## **B. Legal Consequences of Joint Property from the First Wife Being Controlled by the Second Wife**

The concept of "joint property," commonly referred to as *harta gono-gini*, constitutes an essential element within the framework of matrimonial law. Joint property refers to all assets acquired and utilized collectively by a married couple during the course of their marriage. This includes not only tangible assets jointly owned, but also any form of benefit or gain obtained jointly throughout the duration of the marital relationship. When the husband passes away, the initial step that must be taken is to identify and separate the joint property held with each wife. Assets acquired during the course of marriage with the first wife constitute their joint property, and likewise, assets obtained with the second, third, or fourth wife are considered joint property with each respective spouse. These portions of joint property do not automatically become part of the inheritance, as half of each belongs to the respective wife. Only after this separation is conducted does the remaining portion, which constitutes the deceased husband's share, enter the category of inheritance. This residual property is then distributed among the heirs in accordance with Islamic inheritance law, including among the surviving wives. For instance, if the deceased husband leaves behind children, the wives collectively are entitled to one-eighth of the remaining inheritance, to be divided equally based on the number of wives. Conversely, if one of the wives passes away, the joint property shared between her and the husband must first be separated. Half of the joint property becomes the rightful share of the surviving husband, while the other half is distributed as inheritance to the deceased wife's heirs, which may

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<sup>20</sup> Kerti et al.

include her husband, children, or even her parents if they are still alive. In such cases, the other wives have no claim over the inheritance of the deceased wife, as joint property is considered exclusive between the husband and each individual wife.

Article 35 of the Marriage Law explicitly regulates the concept of joint property, or what is commonly referred to as *harta gono-gini*, which encompasses all assets acquired jointly by husband and wife during the course of their marriage. This property is considered the result of mutual effort and hard work throughout the duration of the marital relationship. The concept of joint property, often associated with the term *gono-gini*, has long been established and deeply rooted in Indonesian customary law (*hukum adat*). In most regions of Indonesia, there exists a strong consensus regarding the principle of shared ownership over assets acquired during marriage. Although variations in interpretation and detail may exist across different local traditions, the fundamental principle of joint ownership remains consistent. This continuity between customary law and modern legal frameworks demonstrates a harmonious integration in regulating the proprietary rights of spouses. A proper understanding of joint property is essential to prevent future conflicts and legal disputes.<sup>21</sup> According to Article 35 paragraph (1) of the Marriage Law, all assets and wealth acquired by either the husband, the wife, or jointly by both parties during the course of the marriage are, by law, considered joint property. This encompasses a wide range of assets, from tangible properties such as houses and land, to financial assets such as savings, investments, and income. It is important to understand that the origin of such assets (for example, the husband's salary or the wife's inheritance) does not alter their status as joint property.

Both the husband and the wife have the right to utilize the jointly acquired marital property, provided that such use serves the interests of the household and is based on mutual consent. This stands in contrast to individually owned property (referred to as *harta bawaan*), over which each party has the autonomous right to exercise control and usage without the need for the other party's approval unless otherwise agreed upon by both parties. This distinction is regulated under Article 35 of the Marriage Law. Household life often encounters issues concerning property, which frequently become critical matters requiring special attention particularly in cases of divorce or inheritance distribution. Therefore, a comprehensive understanding of property arrangements within marriage is essential to prevent future disputes. The Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI), as a legal guideline for Muslims in Indonesia, provides a clear explanation regarding the classification and management of assets within marital unions. Furthermore, joint property (*harta bersama*) is regulated under Articles 85 to 97 of the Compilation of Islamic Law, which state that marital assets may include: assets obtained by the wife through gifts (*hadiah*), grants (*hibah*), inheritance (*waris*), and alms (*shadaqah*)—that is, property acquired as a result of such transfers. In the Compilation of Islamic Law (*Kompilasi Hukum Islam*, or KHI), specifically Chapter XIII, Article 85, it is clearly stated that although a joint property regime is established within a marriage, this does not eliminate the individual rights of either the husband or the wife to own and control property independently. In other words, the law explicitly recognizes two forms of ownership within a household: joint property (*harta bersama*) and personal property (*harta pribadi*). Personal property refers to assets exclusively owned by either the husband or the wife, remaining fully under the control of the individual owner. Meanwhile, joint property consists of assets

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<sup>21</sup> Nawawi, "Harta Bersama Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia."

acquired during the course of the marriage and is jointly owned by both parties, distinct and separate from each individual's personal property.

Marital property (*harta bersama*) is legally constituted from the moment the marriage is contracted, regardless of which party earns the income or in whose name the assets are registered. This principle affirms that all income and assets acquired during the course of the marriage are considered joint property, unless proven to be personal property. Therefore, neither the husband nor the wife is permitted to transfer or dispose of joint property without the consent of the other party. If any debts arise during the marriage for the benefit of the household, such liabilities are charged against the joint property. In the context of a polygamous marriage, the legal system differentiates the ownership of joint property between the husband and each of his wives. In other words, the joint property between a husband and his first wife is not to be commingled with the joint property between the husband and his second wife, and so forth.

As a legal consequence of a husband entering into a polygamous marriage and subsequently passing away, the division of joint marital property must be carefully calculated. Half of the joint property acquired with the first wife, and half of the joint property acquired with the second wife, and so on, must be treated as separate and distinct, with no intermingling of assets between them. The distribution of the inheritance among the wives is to be made equally, whether there are two, three, or more wives, with each wife receiving an equal portion of her respective share. If the husband is survived by children, then the share of the wife or wives is one-eighth (1/8). In the case of two wives, this one-eighth portion is divided equally, resulting in one-sixteenth (1/16) each. If the husband leaves no children, then the wife's share is one-fourth (1/4), and this one-fourth portion is to be equally divided among all surviving wives.<sup>22</sup>

In Islamic law, the control of property by one of the wives is strictly regulated within the framework of justice, clear ownership, and respect for individual rights. A wife in Islam possesses full rights over her own property, whether acquired prior to the marriage or during the marriage, provided that such property is not the result of a gift or a joint effort with the husband that would render it communal. This means that if a wife acquires assets through inheritance, grants, her own business ventures, or personal employment, those assets are considered her individual property, and neither the husband nor the other wives have any right to claim or exercise control over them. In a polygamous setting, each wife remains an individual with distinct property rights. A wife's control over a particular asset is only legitimate if the asset truly belongs to her or if she has been granted authority to manage it by the rightful owner. Should a wife take possession of property that rightfully belongs to another wife or to the extended family without lawful justification, such an act would violate the principle of justice in Islam and could lead to accountability, both morally and legally.

The legal consequences of the second wife's control over jointly acquired property largely depend on the context and the legal basis of such possession. From the perspective of Islamic law, the implications may vary depending on whether or not the second wife holds a legitimate right to the property in question. If the second wife takes control of property that is legally considered joint property between the husband and the first wife (or between the

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<sup>22</sup> Zainul Fanani, "Implementasi Pembagian Harta Bersama Dalam Perkawinan Poligami," *Jurnal Negara Dan Keadilan* 10, no. 1 (2021): 1-8.

husband and all wives in a polygamous marriage), such possession without legitimate grounds may result in legal consequences. In Islamic law, property ownership is to be respected and cannot be appropriated without permission or mutual agreement. Although the second wife is lawfully married, she does not automatically acquire rights over assets obtained by the husband and the first wife – unless such property was acquired after her marriage to the husband and within the framework of an ongoing marital relationship.

According to Sharia, if the second wife takes possession of property that does not rightfully belong to her, such an act may be categorized as *ghasab* – the unlawful seizure or retention of another person’s property. This entails both moral and religious obligations to return the property to its rightful owner or, in the case of jointly owned assets, to the party legally entitled to that portion. Socially, the second wife’s unlawful control over joint property may also provoke familial conflict, disputes among heirs, and a breach of the principle of justice, which is held in the highest regard in Islam. What, then, are the consequences for the first wife and her children? The unauthorized appropriation of jointly acquired assets by the second wife can have serious legal implications under Islamic law. It involves the violation of rights, the emergence of inheritance-related disputes, and the undermining of legal protections for the deceased’s estate. If the second wife seizes all or part of the inheritance and refuses to distribute or relinquish the portion rightfully belonging to the first wife and her children, her actions constitute a violation of Islamic inheritance law. In *fiqh*, such conduct is regarded as the unlawful usurpation of the rights of other heirs – that is, taking or controlling something that does not belong to her without lawful justification or permission. In Islamic law, *ghasab* (wrongful appropriation) is considered a prohibited act (*haram*) and a serious form of injustice. The perpetrator is deemed sinful and is obligated to return the property to its rightful owner. The Prophet Muhammad (peace be upon him) said: "Whoever wrongfully seizes the right of another, Allah will forbid Paradise for him." (Narrated by Muslim).

According to Article 3 paragraph (2) of the Marriage Law, if a man has more than one wife, the following provisions apply: the man is obliged to provide equal maintenance (*nafkah lahir dan batin*, i.e., material and emotional support) to all his wives and children. The second wife is not entitled to any portion of the joint property acquired prior to her marriage to the husband. In the presence of a first wife, such property is considered jointly owned by the husband and the first wife. The same principle applies if the husband marries a third or fourth wife. As long as the property reserved for the second wife does not exceed half of the joint property shared between the husband and the first wife, legal provisions concerning common assets may be enforced. The joint property acquired during the marriage with the first wife must be separated from that acquired with the second wife. In the event of divorce or death, the joint property is calculated as half of the total assets accumulated during the time the husband lived with the first wife. If a man has multiple wives, the Supreme Court determines the distribution of joint property between the husband and each of his wives.<sup>23</sup>

Islam regulates the distribution of inheritance through a system known as *‘ilm al-farā’id*, which aims to ensure justice and prevent disputes among heirs. In the case of a deceased man who had more than one wife, each lawfully wedded wife is entitled to receive a share

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<sup>23</sup> Ach Fahrezi Fahrezi, Shofiatul Jannah, and Syafiatul Mirah Mashum, "Hak Istri Kedua Untuk Berbagi Harta Dalam Poligami (Studi Kasus Di Pengadilan Agama Kangean Sumenep Madura)," *Jurnal Hikmatina* 6, no. 1 (2024): 166-72, <https://jim.unisma.ac.id/index.php/jh/issue/view/1521>.

of her husband's estate. However, it is important to understand that the wives do not receive individual full shares; rather, the portion allocated to wives is distributed collectively in accordance with Islamic legal provisions. Problems that frequently arise in inheritance cases often stem from a lack of understanding of the laws of *farā'id*, or from disputes among heirs—whether due to differing interpretations of inheritance rights, ambiguity in the marital status of the deceased, or unequal treatment of children from different wives. In such situations, Islamic law strongly recommends resolution through family consultation (*musyawarah*). If such discussions fail to yield an agreement, the matter may be referred to a knowledgeable expert in *farā'id* or brought before a religious authority. However, if the conflict remains unresolved and escalates into a serious dispute, recourse may be taken to the religious courts. In such proceedings, the court will evaluate the legitimacy of the wives' marriages and the lineage (*nasab*) of the children before determining who is legally recognized as an heir. Critical documents such as marriage certificates, birth certificates, and other forms of evidence demonstrating familial ties will serve as the foundation of the court's considerations.

## CONCLUSION

In the case of a valid polygamous marriage, each wife (first, second, third, and so on) has the right to be the heir of the deceased husband, as stipulated in Islamic *faraidh law*. The amount of inheritance rights of the wife is determined based on the existence of children or descendants. If the husband has children, then the collective share of the entire wife is  $1/8$  of the inheritance. If there are no children, then the wife's collective share becomes  $1/4$ , which is then divided equally between them. The inheritance distribution procedure begins with the identification of all inherited property, including personal property and joint property, which is then deducted from debts, funeral expenses, and wills before being distributed to the heirs according to *fariathh law*. Polygamy does not eliminate the individual right of each wife to a fair share of the inheritance, and the division must be based on the principle of justice. The possession of joint property acquired during the first marriage by the second wife, without a valid legal basis, is contrary to the principle of justice in Islam and can be categorized as an act of *ghasab* (deprivation of rights), in the Islamic inheritance system, each wife in a polygamous marriage is only entitled to the joint property acquired during the period of their respective marriages. Therefore, the second wife does not have legal rights to the property that is the result of the husband's marriage to the first wife. This kind of control has implications for the obligation to return the rights that should be restored, triggering inheritance conflicts, and potential lawsuits from other heirs. This *act of ghasab* not only violates Islamic law, but can also cause family disharmony and social injustice.

## REFERENCES

- Angga, La Ode, Christina Bagenda, Sumirahayu Sulaiman, Mohsi Ainul Mardhiah, Susi Kusmawaningsih, Shofiatul Jannah, Suhartini Eka Nurlina, et al. *Hukum Islam*. Bandung: Widina Bhakti Persada, 2022.
- Cahyani, Tinuk Dwi. *Hukum Perkawinan*. Malang: UMM Press, 2020.
- Dwi Cahyani, Tinuk. *Hukum Waris Dalam Islam: Dilengkapi Contoh Kasus Dan Penyelesaiannya*. Malang: UMMPress, 2018.

- Fahrezi, Ach Fahrezi, Shofiatul Jannah, and Syafiatul Mirah Mashum. "Hak Istri Kedua Untuk Berbagi Harta Dalam Poligami (Studi Kasus Di Pengadilan Agama Kangean Sumenep Madura)." *Jurnal Hikmatina* 6, no. 1 (2024): 166-72. <https://jim.unisma.ac.id/index.php/jh/issue/view/1521>.
- Fanani, Zainul. "Implementasi Pembagian Harta Bersama Dalam Perkawinan Poligami." *Jurnal Negara Dan Keadilan* 10, no. 1 (2021): 1-8.
- Imran, Muhammad Kamran. "Pelaksanaan Pembagian Harta Bersama Dalam Perkawinan Poligami Setelah Perceraian." *Pleno Jure* 9, no. 1 (2020): 16-35. <https://doi.org/10.37541/plenojure.v9i1.328>.
- Kerti, Bagus Manussa, Ahmad Muslimin, Iwannudin, Veri Triyono, and Meri Fitri Yanti. "Problematika Pembagian Harta Waris Perkawinan Poligami Perspektif Hukum Islam." *Jurnal Tana Mana* 4, no. 1 (2023): 101-11.
- Khayati, Sri. "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam Dan Kompilasi Hukum Islam." *Arus Jurnal Sosial Dan Humaniora* 3, no. 1 (2023): 15-24. <https://doi.org/10.57250/ajsh.v3i1.174>.
- Latupono, Barzah, La Ode Angga, Muchtar Anshary Hamid Labetubun, and Sabri Fataruba. *Buku Ajar Hukum Islam*. Yogyakarta: Deepublish, 2017.
- Miftahuddin, Abdul Hafidz. "Metode Pembagian Warisan Terhadap Istri Kedua Perspektif Kompilasi Hukum Islam Dan Hukum Perdata (Studi Komparatif)." *Usratuna: Jurnal Hukum Keluarga Islam* 3, no. 1 (2019): 1-21. <https://ejournal.staidapondokkrempyang.ac.id/index.php/usrotuna/article/download/349/390>.
- Nasution, Amin Husein. *Hukum Kewarisan Suatu Analisis Komparatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam*. Jakarta: Raja Grafindo Persada, 2012.
- Nawawi, Kholil. "Harta Bersama Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia." *Mizan: Journal of Islamic Law* 1, no. 1 (2018): 1-16. [https://jurnalfai-uikabogor.com/index\\_php/mizan/article/download/104/30.pdf](https://jurnalfai-uikabogor.com/index_php/mizan/article/download/104/30.pdf).
- Nazir, Moh. *Metode Penelitian*. Jakarta: Ghalia Indonesia, 2014.
- Parman, Ali. *Kewarisan Dalam Al-Quran*. Jakarta: Raja Grafindo Persada, 1995.
- Puniman, Ach. "Hukum Perkawinan Menurut Hukum Islam Dan Undang-Undang No. 1 Tahun 1974." *Jurnal Yustitia* 19, no. 1 (2018): 88. <http://ejournal.unira.ac.id/index.php/yustitia/article/view/408>.
- Sari, Indah. "Pengaturan Pembagian Hak Kewarisan Kepada Ahli Waris Dalam Hukum Waris Islam Berdasarkan Kompilasi Hukum Islam (KHI)." *Jurnal Ilmiah Hukum Dirgantara* 7, no. 2 (2017): 86-109. <https://doi.org/10.35968/jh.v7i2.133>.
- Untoro, Utami Yustihassana, Istiqomah, Yusuf Hudi, Sari Puspita, Fahlevie Rinaldi Agusta, and Tarmudi. *Hukum Waris Islam*. Malang: Literasi Nusantara, 2022.

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