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# Determination of Inheritance Rights for Transgender Individuals According to Positive Law in Indonesia

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**This study** aims to analyse the legal position of transgender inheritance in the inheritance system in Indonesia concerning customary law, the Compilation of Islamic Law, and applicable civil law.

**This study uses** a normative legal method with a regulatory-legislative approach and a contextual approach. The data sources used include relevant laws and regulations, Islamic legal doctrines, and court decisions related to transgender inheritance cases in Indonesia. The analysis examined the relationship between applicable legal provisions and legal practices in society.

**The novelty** of this study lies in a comprehensive analysis of the position of transgender people in Indonesian inheritance law and the identification of alternative solutions outside the conventional inheritance system.

**The results** of this study reveal that although Islamic law does not recognise gender change about inheritance status, there is no explicit prohibition in the KHI regarding the distribution of inheritance to transgender people. Therefore, mechanisms such as grants, agreements, and wills are legal alternatives that can be used to provide part of the property to transgender people in a family. The results of the study indicate that in the legal system in Indonesia, transgender people do not have specifically recognised inheritance rights. However, legal provisions allow the use of other instruments such as grants and wills to provide property to transgenders without violating the principles of Islamic law or positive law.

**The study concluded** that although there are no explicit regulations regarding inheritance rights for transgender individuals, alternative mechanisms in Indonesian inheritance law can be used to ensure justice for all parties. Therefore, more inclusive legal policies are needed so that this issue can be adequately accommodated in the national legal system.

**Keywords** : Inheritance; Transgender; Islamic Law; Civil Law

**Abstrak**

**Tujuan penelitian** ini untuk menganalisis kedudukan hukum waris transgender dalam sistem kewarisan di Indonesia dengan mengacu pada hukum adat, Kompilasi Hukum Islam, dan hukum perdata yang berlaku.

**Metode Penelitian** ini menggunakan metode hukum normatif dengan pendekatan regulasi-legislasi dan pendekatan kontekstual. Sumber data yang digunakan meliputi peraturan perundang-undangan yang relevan, doktrin hukum Islam, dan putusan pengadilan yang terkait dengan perkara waris transgender di Indonesia. Analisis dilakukan dengan cara mengkaji keterkaitan antara ketentuan hukum yang berlaku dengan praktik hukum yang berlaku di masyarakat.

**Kebaruan penelitian** ini terletak pada analisis yang komprehensif mengenai kedudukan waria dalam hukum waris Indonesia dan identifikasi alternatif penyelesaian di luar sistem kewarisan konvensional.

**Hasil Penelitian** ini mengungkap bahwa meskipun hukum Islam tidak mengenal perubahan jenis kelamin dalam kaitannya dengan status kewarisan, namun tidak terdapat larangan yang tegas dalam KHI mengenai pembagian harta waris kepada transgender. Oleh karena itu, mekanisme seperti hibah, perjanjian, dan wasiat merupakan alternatif hukum yang dapat digunakan untuk memberikan sebagian harta benda kepada waria dalam suatu keluarga. Hasil penelitian menunjukkan bahwa dalam sistem hukum di Indonesia, transgender tidak memiliki hak waris yang diakui secara khusus. Akan tetapi, ketentuan hukum memperbolehkan penggunaan instrumen lain seperti hibah dan wasiat untuk memberikan harta benda kepada transgender tanpa melanggar asas hukum Islam maupun hukum positif.

**Kesimpulan** dari penelitian ini meskipun belum ada pengaturan yang tegas mengenai hak waris bagi transgender, namun mekanisme alternatif dalam hukum waris Indonesia dapat digunakan untuk menjamin keadilan bagi semua pihak. Oleh karena itu, diperlukan kebijakan hukum yang lebih inklusif agar persoalan ini dapat diakomodir secara memadai dalam sistem hukum nasional.

**Kata Kunci:** Waris; Transgender; Hukum Islam; Hukum Perdata

## 1. INTRODUCTION

God created humans to consist of male and female genders in accordance with their nature. However, some groups refuse to be identified as male or female because their behavioural patterns are contrary to their gender. This denial is reflected in the behaviour and lifestyle of those who classify themselves as transgender. Transgender is a general term used when a person's identity, expression or behaviour does not match their assigned gender. According to the concept, transgender people cannot simultaneously determine a person's sexual orientation. This is because a transgender person identifies themselves as homosexual, bisexual, heterosexual or even asexual.<sup>1</sup>

Transgender is a group that experiences a mismatch between gender identity and sex assigned at birth.<sup>2</sup> In Indonesia, the existence of transgender individuals is still a controversial issue, both from a social, cultural and legal perspective. Indonesian positive law does not explicitly recognise the existence of transgender individuals in the national legal system, but it also does not explicitly prohibit it. However, there are several court decisions that allow changes in gender status through certain legal procedures, especially through court decisions.

Transgender is viewed as deviant behavior is a social life that is contrary to gender and social life that is contrary to gender and biological life. Examples of men who appear feminine and women who appear masculine. Transgender occurs due to 2 (two) main factors, namely

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<sup>1</sup> Sri Sudono Saliro Risky Kasmaja, "Studi Komparatif Hak Waris Transgender Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam Sri," *Jurnal Mahkamah* 4, no. 1 (2019): 1–14, [http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484\\_SISTEM\\_PEMBETUNGAN\\_TERPUSAT\\_STRATEGI\\_MELESTARI](http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI).

<sup>2</sup> Ayden I. Scheim et al., "Health Status of Transgender People Globally: A Systematic Review of Research on Disease Burden and Correlates," *PLoS ONE* 19, no. 3 March (2024): 1–19, <https://doi.org/10.1371/journal.pone.0299373>.

internal factors, which could be due to illness (disorders) or external factors, namely due to family problems, bad company and lack of religious knowledge.

Living things are not eternal, all will return at a predetermined time. The problem of the fate of the family left behind and the assets obtained during life is a fairly serious problem. Thus, it can be determined who the family members are who are entitled to receive the inheritance, how much, when and how the transfer will be carried out. In the context of inheritance law, the recognition of transgender individuals is a debate, especially when someone who has undergone a change of identity wants to obtain inheritance rights. In Islamic law, inheritance is given based on bloodline and gender relationships which affect the portion of the inheritance received.

Likewise, in Article 838 of the Civil Code which regulates parties who are not allowed to become heirs, there is no provision stating that transgenders are prohibited from receiving inheritance.<sup>3</sup> The article only excludes those who have been convicted of committing a crime against the testator, those who have been declared ineligible to receive an inheritance by a judge, and parties who are proven to have hidden or destroyed a will. Therefore, legally, transgender people still have the right to inherit property, although in practice, social and family problems often arise that can hinder the realisation of these inheritance rights.<sup>4</sup>

Inheritance law in Indonesia is pluralistic, because currently there are three inheritance law systems in force, namely customary inheritance law, Islamic inheritance law, and inheritance law according to the Civil Code. Islamic inheritance law refers to the legal provisions that govern the distribution of assets owned by a Muslim when he dies. The basis of Islamic inheritance law is the Qur'an and hadith, then qiyas (analogy) and ijma (consensus of scholars).

The elements that must be fulfilled in inheritance law, both in terms of inheritance distribution from the perspective of the Civil Code and Islamic inheritance law, there are at least 3 (three) elements, namely the existence of an heir, the existence of inherited property, and the existence of heirs, but it is not explained regarding the prohibition and regulation of inheritance distribution. In Indonesia, it has been regulated regarding heirs, contained in the 1945 Constitution, regarding absolute rights, namely: Article 28G paragraph (1) of the 1945 Constitution: "Everyone has the right to protection of themselves, their families, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right." Article 28H paragraph (4) of the 1945 Constitution: "Everyone has the right to have personal property rights and such property rights may not be taken over arbitrarily by anyone". From the perspective of Islamic law that applies to Muslims, inheritance rights are determined based on bloodline relationships and gender status stated in official documents such as birth certificates or identity cards. KHI stipulates that boys receive twice the share of girls in accordance with the

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<sup>3</sup> Aurelia Lulu Heny Salsabila, Fatahullah Fatahullah, and Diangsa Wagian, "Hak Waris Transgender Menurut Hukum Positif Di Indonesia," *Private Law* 3, no. 2 (2023): 303–14, <https://doi.org/10.29303/prlw.v3i2.2587>.

<sup>4</sup> Aliya Sandra Dewi, Dian Fitriana, and Elvira, "Penerapan Hukum Waris Perdata Di Indonesia," *The Juris* 8, no. 1 (2024): 105–12, <https://doi.org/10.56301/juris.v8i1.1242>.

provisions in Surah An-Nisa verse 11.<sup>5</sup>

However, in the case of transgender people who have changed their gender identity, the issue arises as to whether they will receive their share of the inheritance as male or female. Courts in Indonesia tend to continue to refer to the gender recorded in the last population document, so if someone has obtained a change in gender status through a court decision, this can have an impact on their inheritance rights.<sup>6</sup>

The ambiguity regarding the position of transgender people in inheritance law raises various problems. One of the main problems is the difficulty for transgender people to obtain inheritance rights if their family does not recognise their new identity. This can lead to legal conflicts and protracted inheritance disputes, especially if other heirs refuse to recognise transgender people as part of the family who are entitled to receive the inheritance.<sup>7</sup>

In the Indonesian legal system, inheritance can be divided through various mechanisms, such as inheritance based on Islamic law, inheritance based on the Civil Code, or through an agreement between the heirs. Notaries can play a role in helping to ensure the validity of the distribution of inheritance through a valid and legally binding deed, but this does not immediately resolve the fundamental problem regarding the position of transgender people in inheritance law.<sup>8</sup> With the beginning of the existence of transgender individuals in society who receive civil status determination from the court, it will certainly raise new legal problems, in this case, the problem of inheritance, whether a transgender individual will inherit the portion according to their original gender, or will inherit according to their changed gender.<sup>9</sup>

Based on the fatwa of the Indonesian Ulema Council (MUI), deliberate gender change is declared haram in Islam. This was emphasised in the MUI Fatwa at the 2nd MUI National Conference (Munas) 1980, which was decided on June 1, 1980 and signed by Buya Hamka as Chairman and Kafrawi as Secretary. The fatwa stipulates that changing gender from male to female or vice versa is haram, because it is contrary to QS. An-Nisa: 119 and QS. An-Nisa: 10.

Furthermore, MUI Fatwa Number 03/MUNAS VIII/MUI/2010 concerning Gender Change and Improvement reaffirms the prohibition of sex change operations (except due to an illness). This fatwa was issued at the 8th MUI National Conference in 2010 and stated that changing genitals from male to female or vice versa intentionally, for example through sex change surgery, is haram. Not only that, assisting the sex change process is also considered haram. In addition, this fatwa emphasises that the determination of the validity of the sex status due to surgery is not recognised by Sharia law.

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<sup>5</sup> Hajatoleslam Siregar and Faisar Ananda Arfa, "KENDALA DAN PROBLEMATIKA HUKUM KELUARGA ISLAM DI INDONESIA" 8, no. 2021 (2025): 1319–24.

<sup>6</sup> Luthfiyah Nagita Histimuna Aisyah, Elly Zakiyatin, "TRANSGENDER DAN HAK ASASI MANUSIA DALAM TINJAUAN MAQASHID SYARIAH: HIFDZUL 'AQL" 14 (2024): 339–60.

<sup>7</sup> M Dimas Ravi, Putra Harahap, and Muh Jufri Ahmad, "Inheritance Rights Of Children Who Have Changed Sex Reviewed From The Civil Code And Islamic Inheritance Law" 8, no. 2 (2024): 159–76, <https://doi.org/10.52166/mimbar.v7i2>.

<sup>8</sup> Lulu Heny Salsabila, Fatahullah, and Wagian, "Hak Waris Transgender Menurut Hukum Positif Di Indonesia."

<sup>9</sup> Kasmaja, "Studi Komparatif Hak Waris Transgender Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam Sri."

In the context of customary law, the rules regarding transgender individuals also still maintain cultural and religious values. For example, in Bali, sex change cannot be done carelessly and must go through a traditional ceremony first. This shows that customary law in several regions has not yet expressly accepted or rejected the existence of transgender people, but still maintains the norms that have developed in society. Thus, there is still a legal vacuum in the national legal system regarding the status of transgender individuals, because there are no regulations that specifically regulate their acceptance or rejection in the formal legal system.

There are several previous studies that discuss the determination of inheritance rights for transgenders in Indonesian law. One of them is a study by Muhammad Satria Praja Perwira<sup>10</sup> and Anjar Sri Ciptorukmi Nugraheni from Sebelas Maret University (2024) entitled "The Position of Inheritance Rights of a Transsexual Who Has Changed His Gender Identity Through a District Court Decision". This study discusses how gender changes that are legalised through court decisions affect inheritance rights in three legal systems in Indonesia, namely Western civil law, Islamic law, and customary law. The novelty of this study lies in a comprehensive analysis of the effect of gender identity changes on the existing inheritance law system. Meanwhile, another study by Devi Permata Putri Iryanti<sup>11</sup> from IAIN Syekh Nurjati Cirebon (2023) entitled "Distribution of Inheritance Rights to Transgender Heirs in the Civil Code and Compilation of Islamic Law" discusses how the inheritance law system in the Civil Code and Compilation of Islamic Law regulates the inheritance rights of transgenders. The novelty of this study is the direct comparison between the two legal systems and the identification of gaps in the regulation of inheritance rights for transgenders. Both studies show that although transgenders can legally change their identity, the inheritance system in Indonesia has not provided explicit regulations regarding their status in the distribution of inheritance.

Research on the position of transgender individuals in inheritance law in Indonesia is still rarely discussed comprehensively within the scope of Islamic law, civil law, and customary law, even discussing the renewal of policy concepts. The legal vacuum regarding the distribution of inheritance for transgenders creates uncertainty in practice, considering that there are no explicit provisions prohibiting them from receiving inheritance, but on the other hand, they often experience social and legal discrimination. As a minority group that still faces stigma in society, transgenders remain individuals who have human rights, including the right to inherit family inheritance. Therefore, it is important to analyze how the existing inheritance system accommodates the rights of transgenders to obtain inheritance and the challenges faced in its implementation.

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<sup>10</sup> Muhammad Satria et al., "KEDUDUKAN HAK WARIS SEORANG TRANSEKSUAL YANG TELAH MENGGANTI IDENTITAS JENIS KELAMINNYA MELALUI PUTUSAN PENGADILAN NEGERI Staff Mahkamah Agung Republik Indonesia Jakarta," *Kedudukan Hak Waris Seorang... Private Law* 12 (2024): 137–46.

<sup>11</sup> Devi Permata Puttri, "PEMBAGIAN HAK WARIS TERHADAP AHLI WARIS YANG TRANSGENDER DALAM KITAB UNDANG – UNDANG HUKUM PERDATA DAN KOMPILASI HUKUM ISLAM," *AT-TAWASSUTH: Jurnal Ekonomi Islam* VIII, no. I (2023): 1–19.

This study aims to examine in depth the position of transgenders in inheritance law in Indonesia by referring to customary law, the Compilation of Islamic Law, and applicable civil law. In addition, this study also seeks to identify alternative solutions outside the conventional inheritance system that can be a solution for transgenders in obtaining their inheritance rights. This approach includes exploring legal mechanisms such as grants, wills, and inheritance agreements that can be used as a more inclusive legal basis for transgenders as well as the regulation of new, more comprehensive policy concepts. Thus, this study is expected to provide constructive recommendations for the formation of a more just and responsive inheritance law system to social realities in Indonesia. Therefore, this research is urgent to clarify the regulation and status of transgenders in the eyes of the law. Based on these problems, the author is interested in writing this journal with the title "Determination of Inheritance Rights for Transgender Individuals According to Law in Indonesia"

## **2. METHOD**

Normative legal research is research that focuses on the study of legal norms in a legal system to analyse and understand laws, regulations, and norms that develop in practice, as stated by Peter Mahmud Marzuki<sup>12</sup> Who stated that this research aims to explore, analyse, and interpret legal norms, both written and those that develop in society. In this research, the method used is normative juridical with a literature study that examines primary, secondary, and tertiary legal materials, such as the Civil Code and the Compilation of Islamic Law, as well as other relevant legal sources. The approaches applied include the statute approach, which refers to written legal rules, the conceptual approach, which is based on legal theory and doctrine, and the case approach, which examines court decisions as the basis for analysis. The data collection technique in this study was carried out through literature studies by relying on laws and regulations, legal doctrine, and jurisprudence to obtain a comprehensive understanding of the legal issues studied, while the analysis technique used was prescriptive, namely a method that is oriented towards finding legal solutions by interpreting and evaluating legal norms to provide recommendations for the problems faced, such as in the study of determining inheritance rights for transgenders in Indonesia.

## **3. DISCUSSION**

### **3.1. Distribution of inheritance according to positive law in Indonesia**

Islamic inheritance law in Indonesia is regulated in the Compilation of Islamic Law (KHI), which refers to sharia principles. In the context of the distribution of inheritance for transgenders, there is a legal debate regarding the legitimate gender status in Islam and its implications for inheritance rights. The Fatwa of the Indonesian Ulema Council (MUI) and various related regulations serve as references in understanding how transgenders are placed in Islamic inheritance law. KHI regulates the distribution of inheritance in Articles 171 to 193. In Article 171 letter (c), heirs are defined as people who have blood or marriage relations with the testator and are entitled to inherit their inheritance. However, KHI does not explicitly regulate the status of transgenders in inheritance law, thus requiring further interpretation

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<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 2010.

based on sharia principles.<sup>13</sup>

MUI Fatwa Number 57 of 2010 emphasises that gender reassignment in Islam is prohibited and not permitted in Sharia law. Therefore, a person who undergoes gender reassignment does not change their original sex. A man who transforms himself into a woman is still considered a man from an Islamic perspective, and vice versa. This has an impact on the inheritance status of transgenders, where their inheritance rights still follow their original gender.

Article 176 of the KHI states that a male child's share of inheritance is twice that of a female child. If transgenders are considered based on their original gender, then their inheritance shares remain in accordance with the original law. This means that someone who was born as a man but undergoes a change into a woman still inherits a male share in Islamic law. In fiqh, a person's gender status is determined based on their biological birth condition. Ulama emphasise that physical changes through surgery or hormone therapy do not change gender status in Islamic law. Therefore, transgenders do not have a new legal status in Islamic inheritance, but rather continue to follow their original gender.

In legal practice, disputes related to transgender inheritance can arise when other family members reject their inheritance rights. If a dispute occurs, it can be resolved through religious courts as regulated in Article 49 of Law Number 3 of 2006 concerning Religious Courts. Religious Courts have the authority to decide inheritance cases based on Islamic law and the KHI. In Islam, there is the concept of khuntsa or hermaphrodite, namely individuals who have biological characteristics of both men and women. Scholars divide khuntsa into khuntsa wadhih (clear gender) and khuntsa musykil (unclear gender). The division of inheritance is based on biological dominance. However, this concept cannot be equated with transgender because transgender is the result of medical changes, not a physical condition.<sup>14</sup> In Indonesian civil law, gender change must be recognized through a court decision. Article 56 of Law Number 23 of 2006 concerning Population Administration allows someone to apply for a change in their gender status. If the court recognises the change, then in state administration, transgender individuals can have a new legal status. However, in Islamic law, this recognition does not change the inheritance provisions as regulated in the KHI and the MUI Fatwa.

Although Islamic law emphasises the original gender status, in practice, some families can take a deliberative approach to divide inheritance more fairly. Article 183 of the KHI states that heirs can make an agreement on how to divide the inheritance, as long as all parties agree and it does not conflict with the basic principles of Islam. This can be a solution if transgender people face discrimination in inheritance rights. Based on the KHI, the MUI Fatwa, and the principles of Islamic law, transgender people are still considered to have their original gender in the distribution of inheritance. Their inheritance rights do not change even if there is a

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<sup>13</sup> Khairuldin Anas, "Konsep Hak Asasi Menurut Perspektif Islam Dan Barat: Analisis Terhadap Golongan Transgender The Concept of Human Rights According to Islam and the Western : Analysis on the Transgenders," no. I (2024): 181–91.

<sup>14</sup> Syaddan Dintara Lubis, "Kedudukan Transgender Terhadap Hak Waris Ditinjau Dari Fiqh Mawaris," *Journal Analytica Islamica* 12, no. 1 (2023): 41, <https://doi.org/10.30829/jai.v12i1.14519>.

change in gender medically or under state law. However, in some cases, amicable resolution can be a solution to provide justice for transgender people in the distribution of inheritance. If a dispute occurs, the resolution can be carried out through religious courts by considering the applicable Sharia provisions.

From an Islamic perspective, transgender as an identity that changes gender from that which has been determined by Allah is not recognised. Islam emphasises that humans are created in two genders, namely male and female, as stated in the Qur'an, Surah Al-Hujurat, verse 13. In addition, Islamic law prohibits the act of *tasyabbuh* or imitating the opposite sex, as stated in the hadith, which prohibits men from imitating women and vice versa. Therefore, in the Islamic legal system, the legal status of transgender individuals is not recognised because it is considered contrary to human nature as determined by Allah.

However, in the Compilation of Islamic Law (KHI), there are no rules that explicitly prohibit or regulate the legal status of transgender individuals, including in terms of inheritance distribution. KHI still adheres to the provisions of Islamic inheritance law, which divides property based on male and female gender without accommodating the existence of transgender individuals. In this case, if someone changes their gender identity, they must still refer to their original gender according to Islamic law. Therefore, when problems arise in the distribution of inheritance, the principles of Islamic law, referring to the Qur'an and Hadith, remain the main basis for determining inheritance rights.

As an alternative solution, Islamic law allows for a family agreement to divide inheritance through a certain contract or agreement. In Islam, the principle of contracts and agreements that do not conflict with Sharia is permitted, so if family members agree to give a certain portion to a transgender person based on consensus, this can be done in the form of a gift or other agreement. Thus, even though transgender people do not have legal standing in the Islamic inheritance system, they can still receive property through a valid agreement between the heirs.<sup>15</sup>

In addition, a will is also one of the mechanisms that can be used in Islamic law to give property to someone outside the established inheritance path. In Islam, a person is allowed to make a will of up to one-third of their property to be given to anyone they wish, including transgender people in their family. With a valid will, property can be given according to the wishes of the testator without violating the principles of Islamic law. Therefore, in this context, even though transgender people do not receive direct inheritance rights according to Islamic law, they can still receive a certain portion through a will or agreement within the family.

Customary law in Indonesia is very diverse because each tribe has a different inheritance system. The distribution of inheritance in customary law is generally flexible and adjusted to the norms and customs that apply in the local community. In the context of transgender individuals, customary law does not specifically regulate their status in the inheritance system,

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<sup>15</sup> Fathiyah Jamil Fathin, Universitas Muhammadiyah, and Sumatera Utara, "Legal Review of Transgender Heirs from the Perspectives of Islamic Law and Civil Law" 12, no. 2 (2024): 525–37.



but decisions usually depend on the social roles recognised by their community.<sup>16</sup>

The Minangkabau people in West Sumatra adhere to a matrilineal kinship system, where inheritance mainly falls to the maternal line. In this system, high inheritances are inherited by women in the family, while men only have the right to use, not the right to own. If someone who was born as a man undergoes the transition to become a woman, their position in inheritance can be ambiguous. However, because inheritance is more based on the maternal line, decisions still depend on the agreement of the family and *ninik mamak* (customary leaders).

The Batak people adhere to a patrilineal system, where inheritance is only given to male descendants in the clan. In this society, transgender people who are born as men are still recognised as part of the father's lineage and are entitled to receive inheritance.<sup>17</sup> However, if someone who was born as a woman later becomes a man, their inheritance rights can be disputed because Batak customary law does not recognise gender change. Decisions often depend on family deliberation.<sup>18</sup>

Balinese society also implements a patrilineal system, where inheritance goes to the male child as the successor to the family line. If a transgender person who was born as a man later becomes a woman, she can lose her inheritance rights, because in Balinese custom, women do not receive the main inheritance. However, in some cases, families can provide inheritance through gifts or family agreements, especially if the transgender person is still considered part of the family socially.<sup>19</sup>

In Indonesian customary law, the distribution of inheritance to transgender people does not have specific rules and is highly dependent on the applicable kinship system. In matrilineal systems such as Minangkabau, transgender people may still have inheritance rights if they come from the mother's line, meanwhile, in patrilineal systems such as Batak and Bali, transgender people who are born as men are more likely to still receive inheritance rights than those who are born as women. However, in practice, the final decision is often determined through family deliberation and local customs.

Inheritance law in the Civil Code (KUH Perdata) adopts an individual system, where each heir receives his/her share personally based on blood relations or marriage with the testator. The Civil Code does not differentiate inheritance rights based on gender, but rather is guided by lineage as regulated in Article 832 of the Civil Code, which states that heirs are blood relatives, both legitimate and recognised, as well as the testator's legal spouse. In the context

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<sup>16</sup> Katherine Abidea Salim, "The Status of Transgender Men Heir in Patrilineal System of Adat Inheritance Law," *Media Iuris* 3, no. 1 (2020): 27, <https://doi.org/10.20473/mi.v3i1.18656>.

<sup>17</sup> L Winarsih, "Epistemologi Pewarisan Garis Patrilineal Masyarakat Adat Batak Dalam Hukum Waris Adat Di Indonesia," *Noblesse Oblige Law Journal* 1, no. 1 (2024): 14–25, <https://jurnal.oso.ac.id/index.php/nolan/article/view/47>.

<sup>18</sup> Arman Arroisi Hatta and Josua Arya Subagiyo, "Pengaruh Modernisasi Terhadap Hukum Waris Adat Batak Karo," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 1 (2023): 314–20, <https://doi.org/10.59059/mandub.v2i1.920>.

<sup>19</sup> Ni Putu Andriani Sri Khayati, "Tinjauan Hukum Tentang Ahli Waris Perempuan Menurut Hukum Waris Adat Bali Dalam Perspektif Kesetaraan Gender (Suatu Studi Di Desa Kondoano, Kec. Mowila)," *Arus Jurnal Sosial Dan Humaniora* 4, no. 2 (2024).

of transgender individuals, there are no explicit provisions prohibiting or limiting their inheritance rights, so they can still receive inheritance like other individuals.

Article 852 of the Civil Code explains that legitimate children have the right to inherit all of their parents' inheritance in the same proportion. This means that a transgender person still has the right to inheritance as long as he/she has a blood relationship with the testator. If the transgender has changed his/her identity through a court decision based on Article 56 of Law Number 23 of 2006 concerning Population Administration, then legally he/she is still considered an individual with a new legitimate identity, but his/her inheritance rights do not change because the Civil Code does not base inheritance on gender.<sup>20</sup>

The Civil Code does not have an explicit prohibition on transgender individuals in the distribution of inheritance. In fact, Article 852a of the Civil Code emphasises that gender differences are not a reason to exclude someone from inheritance rights. Unlike Islamic law, which still considers gender in calculating inheritance shares, the Civil Code is neutral and does not question whether someone has changed gender or not. Therefore, legally legitimate transgenders can still claim their inheritance rights without any normative obstacles from the Civil Code.

Although positive law through the Civil Code does not discriminate against transgenders in inheritance rights, social norms in Indonesia which are still thick with religious and customary values often cause problems. In a society that strongly adheres to Islamic teachings or certain customs, transgenders are often considered not in accordance with social and religious norms. This can lead to the family's rejection of the transgender's inheritance rights, even though they are legally entitled to them. This conflict often ends in a legal dispute in court, especially if the family objects based on moral and religious considerations.<sup>21</sup>

From the perspective of the Civil Code, transgenders have the same inheritance rights as other individuals because this law does not distinguish heirs based on gender, but rather based on blood relations or marriage. There is no prohibition in the Civil Code on transgenders inheriting property, so they can still claim their rights. However, in practice, social and religious norms in Indonesia often conflict with positive law, which can cause inheritance disputes for transgenders within the family. Therefore, in certain cases, transgenders may need to fight for their inheritance rights through legal channels if they face discrimination or rejection from the testator's family.<sup>22</sup>

### **3.2. Concept of Inheritance Law Distribution in the Future**

In the context of future inheritance law, the debate on transgender rights to inherit

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<sup>20</sup> Marleen Natania and Jordanno Lesmana, "Analisis Sistem Pewarisan Di Indonesia Dalam Prespektif Hukum Perdata," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 990–99.

<sup>21</sup> Muhammad Farhan Hanif, H. M. Hasballah Thaib Yefrizawati, and T. Keizerina Devi Azwar, "Analisis Yuridis Mengenai Perubahan Gender Terhadap Kedudukan Transeksual Sebagai Ahli Waris Menurut Hukum Kewarisan Islam," *Rechtsnormen Jurnal Komunikasi Dan Informasi Hukum* 1, no. 2 (2022): 94–114, <https://doi.org/10.56211/rechtsnormen.v1i2.151>.

<sup>22</sup> Hafiz Muhammad, "THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2018: A SHARIAH APPRAISAL OF SELF-PERCEIVED GENDER IDENTITY WITH SPECIFIC REFERENCE TO RIGHT OF INHERITANCE" 2, no. 4 (2016): 1–23.

property will become more complex along with increasing legal recognition of gender change. Currently, the Civil Code does not limit transgenders in their inheritance rights, while Islamic law still maintains a binary gender system in its distribution. In the future, there needs to be legal clarity regarding the status of transgenders in the inheritance system, especially in Islamic law and customary law, so that there is no gap in the implementation of the law.<sup>23</sup>

If Indonesia wants to implement a more inclusive legal system, then reform in inheritance law is a must. One step that can be taken is to provide clear legal status for transgenders in the inheritance system, both from a civil law and Islamic law perspective. The government can consider revising the Civil Code and the Compilation of Islamic Law (KHI) so that there is legal certainty regarding how transgenders obtain their inheritance rights, whether based on their original gender or based on the gender that has been recognized by the state through a court decision.<sup>24</sup>

Legally, there is no strong basis for the government to reject transgender inheritance rights simply because their gender status has changed. Inheritance rights in the Civil Code are based on blood and marriage relations, not on gender status. Denying transgender inheritance rights may conflict with the principle of equality in civil law. However, from an Islamic legal perspective, this debate will remain because the division of inheritance in Islam has a very clear basis in the Qur'an and is not easily changed based on social developments.

Some may argue that transgender people should be excluded from inheritance rights because they are considered to have gender dysphoria, which in some countries is still categorised as a mental health disorder. However, the World Health Organisation (WHO) has removed gender dysphoria from the list of mental disorders in the ICD-11, making this approach irrelevant. If the government uses health reasons to exclude transgender people from inheritance rights, then this can be considered discrimination that is contrary to human rights.<sup>25</sup>

In the future, the courts can play a bigger role in determining the inheritance rights of transgender people, especially in cases of family disputes. If there is a difference of opinion in the family about whether or not transgender people are entitled to inheritance, then the court's decision can become a binding legal basis.<sup>26</sup> The government may consider strengthening the legal rules governing how transgender people can file inheritance claims and how the courts should consider their legal status in the distribution of inheritance.<sup>27</sup>

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<sup>23</sup> Syarifah Salimah Nailulmuna, "HUKUM WARIS TRANSGENDER (STUDI KOMPARATIF PANDANGAN ANGGOTA KOMISI FATWA MUI DI YOGYAKARTA DAN ANGGOTA MAJELIS TARIH WA TAJDID PIMPINAN PUSAT MUHAMMADIYAH)," *Universitas Islam Negeri Sunan Kalijaga*, 2024.

<sup>24</sup> Wieza Zahman, "PEMBAGIAN WARIS BAGI AHLI WARIS YANG MERUBAH JENIS KELAMIN / TRANSGENDER MENURUT KITAB UNDANG - UNDANG HUKUM PERDATA DAN KOMPILASI HUKUM ISLAM," *Jurnal Kajian Ilmu Hukum* 1, no. 1 (2024).

<sup>25</sup> Ihsan Harits Rustian, Ahmad Rizal Oktaviano, and Sofian Hadi, "TINJAUAN TERHADAP PANDANGAN MASYARAKAT TERHADAP TRANSGENDER DALAM KONTEKS SOSIAL, AGAMA, HUKUM, DAN MEDIS BERBASIS BUKU PANDUAN," *Education and Government Wiyata* 2 (2024).

<sup>26</sup> Agususanto, "Akibat Hukum Perubahan Status Transgender Terhadap Kewarisan Dalam Islam Dan KUHPerdara," 2019.

<sup>27</sup> Khilman Rofi Azmi, "Analisis Hak Waris Bagi Transgender Menurut Hukum Islam Dan Hukum Kewarisan Di

As a more moderate solution, the concept of family deliberation as stipulated in Article 183 of the KHI can be used as a guideline in determining the inheritance rights of transgender people. If there are transgender people in the family who are entitled to inheritance, then the family can make an agreement regarding the division of assets so that there is no dispute. With this approach, transgender people still get a share of the inheritance without having to cause conflict with the religious or customary norms adopted by the testator's family.<sup>28</sup>

In the future, inheritance law in Indonesia must be able to balance religious values, social norms, and positive legal principles in accommodating transgender people. The government should not immediately reject the inheritance rights of transgender people, because this could conflict with the principles of justice and legal equality.<sup>29</sup> However, an approach based on family deliberation and court decisions can be a solution to prevent prolonged conflicts in the distribution of inheritance for transgender people. Clearer legal reforms regarding the status of transgender people in inheritance can also help create legal certainty and avoid discrimination against this group in the future.

#### **4. CONCLUSION**

Based on the description above, the author concludes as follows, That the determination of inheritance rights for transgenders in Indonesian law still faces obstacles because there are no explicit regulations on whether it is prohibited or permitted in customary law, civil law or the Compilation of Islamic Law (KHI). Although Islamic law does not recognize sex change in inheritance, there is no explicit prohibition for transgenders to receive a portion of the property through other mechanisms such as grants or wills. In practice, positive Indonesian law also does not provide specific provisions regarding the inheritance rights of transgenders, so that settlement can be carried out through family agreements or other valid legal instruments. Therefore, a more inclusive policy formulation is needed so that transgender rights in the aspect of inheritance can be accommodated without conflicting with applicable legal principles.

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<sup>28</sup> Eka Abriyani et al., "Waris Transgender," *Jurnal Antologi Hukum* 2, no. 2 (2022): 176–91, <https://doi.org/10.21154/antologihukum.v2i2.1326>.

<sup>29</sup> Tasya Aunil Ahdah and Muh Jufri Ahmad, "Hak Waris Pada Orang Dengan Orientasi Gender Biner" 4, no. 1 (2025): 71–81.

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