

## Inheritance Rights Of Children Who Have Changed Sex Reviewed From The Civil Code And Islamic Inheritance Law

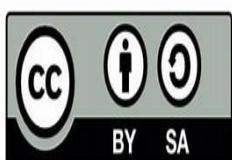
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**Abstract:** This study discusses the problem of inheritance law for children (transvestites) from the perspective of the Civil Code (KUH Perdata) and Islamic law. The Civil Code (KUH Perdata) and Islamic law. The phenomenon of transsexuals is a complex problem, both socially, religiously, and legally, because it involves changes in gender identity that have implications for legal status and inheritance rights. This study aims to analyze how inheritance law in Indonesia, both in the Civil Code and Islamic law, accommodates the rights of transvestites as heirs. The method used is normative juridical with a statutory approach and a conceptual approach. statutory approach and a conceptual approach. This study examines positive law in Indonesia, the fatwa of the Indonesian Ulema Council (MUI), and the views of scholars on the phenomenon of transsexuals. transsexual phenomenon. In civil law, inheritance rights are regulated based on blood relations or marriage, without considering changes in gender. Meanwhile, in Islamic law, gender reassignment is seen as problematic because it contradicts the basic teachings of the provisions of Allah. because it contradicts the basic teachings of the provisions of Allah. The MUI fatwa states that deliberate sex change is haram, except for cases that require confirmation. This study reveals a legal vacuum related to specific regulations regarding the legal status of transsexuals in inheritance in Indonesia. In the Civil Code, transsexuals are recognized based on changes in population data that are validated by the court. However, in Islamic law, the inheritance rights of transsexuals are not recognized.

**Keywords:** Inheritance Law; Children; Transsexual.



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## I. INTRODUCTION

In the era of modernization, there have been many changes in various aspects of human life, bringing both positive and negative impacts. Society must be careful in assessing and adapting to the changes that occur around it. One phenomenon that is increasingly seen is gender reassignment. For example, individuals who are biologically male but feel like women, or vice versa. In addition, there are men who look like women and women who look like men. There are also individuals with dual gender, namely those who have biological characteristics of both men and women, so that their status or gender is unclear. This phenomenon is known as transsexual.<sup>1</sup>

Transsexual is a term used to describe individuals who experience, feel, think, or present themselves differently from the sex they were assigned at birth. This phenomenon encompasses a range of different gender identities, including those who have undergone medical procedures to change their sex, as well as those who have not or do not plan to do so but live and identify with a gender different from the one they were assigned at birth.<sup>2</sup> In addition, there is the term transsexual, which refers to transsexual individuals who decide to change sex medically. This decision certainly has a significant impact on society, because it involves changing a person's sexual status from female to male, or vice versa. This phenomenon has triggered various pros and cons in society. Many Indonesians oppose this phenomenon, because they adhere to religious teachings and prevailing norms, and believe that sex is a divine decree that cannot be changed. On the other hand, there are also groups that support this phenomenon. They are known as part of the LGBT (Lesbian, Gay, Bisexual, and Transsexual/Transsexual) community.<sup>3</sup>

The change in sexual status is closely related to their social status in society. When someone has completely changed their gender through sex reassignment surgery, they must make changes to their population data, such as their ID card, driver's license, and birth certificate. However, these changes often introduce complex legal challenges, particularly concerning inheritance rights. The absence of explicit provisions addressing the inheritance rights of transgender individuals within many legal frameworks, such as the Civil Code (KUHPerdata), creates a legal vacuum that leads to uncertainties and disputes.<sup>4</sup> Linking this issue to inheritance rights underscores the critical need for legal systems to adapt and ensure

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<sup>1</sup> Abu Dzarrin Al Hamidy, "Tinjauan Hukum Internasional HAM Dan Hukum Islam Terhadap LGBT Perspektif Human Dignity Mashood A. Baderin," *ISLAMICA: Jurnal Studi Keislaman* 10, no. 1 (2015): 198–221.

<sup>2</sup> Fitri Meliya Sari, "Konstruksi Media Terhadap Transgender," *Professional: Jurnal Komunikasi Dan Administrasi Publik* 3, no. 1 (2016): 27.

<sup>3</sup> Rahayu Roby Yansyah, "Globalisasi Lesbian, Gay, Biseksual, Dan Transgender (LGBT): Perspektif Ham Dan Agama Dalam Lingkup Hukum Di Indonesia," *Jurnal Law Reform* 14, no. 1 (2018): 134.

<sup>4</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>.

equitable treatment in the evolving socio-legal context, as highlighted by scholars advocating for progressive interpretations of existing laws. According to the Population Administration Law, sex change is considered another important event, as regulated in Article 56 Paragraph (1) of Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration ("Population Administration Law"), which states that "What is meant by 'other important events' are events determined by the district court to be recorded at the Implementing Agency, including changes in gender".

Therefore, it is necessary to record the change in sexual status to the authorities as accurate data in population data collection. As a country of law, Indonesia needs to review whether regulations or rules regarding sex change already exist or not to guarantee the human rights of its citizens who undergo sex change. Until now, there has been no specific regulation governing this phenomenon. However, based on the Population Administration Law No. 24 of 2013, sex change is included in the category of other important events. Article 56 Paragraph (1) of the Population Administration Law states that "Recording of other Important Events is carried out by the Civil Registration Officer at the request of the Resident concerned after a district court decision has obtained permanent legal force". Thus, one common interpretation is that in Indonesia it is permissible to undergo gender reassignment, as long as it is recorded at the Implementing Agency and preceded by a court ruling. If someone undergoes gender reassignment without a court ruling, then it will not be recognized by law because there is a difference between the data and the existing legal facts.

In addition to being a country of law, Indonesia also has a majority Muslim population. Therefore, Islamic norms and teachings are very dominant. There is no religious teaching that justifies sex change, because all religions believe that a person's sex is a gift and the will of God. According to MUI Fatwa Number 3 of 2010 concerning Change and Improvement of Genitals, intentional sex change is forbidden because it is considered to change God's creation, namely changing the genitals from male to female or vice versa. The legal basis is the Qur'an, Hadith, Istishab, and the rules of fiqh. However, surgery to improve or improve sex is permissible, because it aims to clarify existing but imperfect genitals by operating on the external genitals to match the internal genitals. The legal basis used is the Qur'an, Maslahah Mursalah, and the rules of fiqh.<sup>5</sup>

Based on the statement above, there is a legal vacuum in Indonesia that results in legal uncertainty for people who are transsexual, thus causing other problems. One of the problems that arises is related to inheritance law. There are three inheritance law systems that apply in Indonesia, namely inheritance law according to the Civil Code (KUH Perdata) which applies to Eastern and European

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<sup>5</sup> Nurul Wafa Maulidina, "Analisis Fatwa MUI Nomor 03/MUNAS/VIII/2010 Tentang Perubahan Dan Penyempurnaan Jenis Kelamin Dan Kaitannya Dengan Implikasi Hukumnya" (2015).

communities, Islamic inheritance law according to the Compilation of Islamic Law (KHI) which applies to Muslims, and customary inheritance law which applies among indigenous communities.

Basically, inheritance is the process of transferring the inheritance of a deceased person to his heirs. Therefore, inheritance has several elements, namely:

- a. Inheritance assets (erfenis), are all the assets of a person who dies after deducting all their debts. If the element is inheritance or inheritance, inheritance is still relevant. However, if there are no surviving family members, the deceased person's inheritance falls to the State.
- b. The heir or legacy (boedel), is a family member who dies and leaves inheritance to the surviving family members. The heir or legacy in a family relationship is usually the father or mother. In this sense, the important elements are inherited assets and surviving family members. The cause of the death of a family member does not need to be questioned.<sup>6</sup>
- c. Heirs (erfgenaam), are people who replace the testator in his position regarding inheritance, either in whole or in part. The Civil Code (KUHPerdata) does not distinguish between sons and daughters, between husband and wife. They have the right to inherit by receiving the same share. The share of a son is the same as the share of a daughter. The share of a wife or husband is the same as the share of a child if a child is born from the marriage. When connected with the descent system, the Civil Code (KUHPerdata) adopts a bilateral descent system. Each person connects himself to the descent of his father or mother. This means that heirs have the right to inherit from the father if the father dies and have the right to inherit from the mother if the mother dies.<sup>7</sup>

This inheritance right is based on marital relations, blood relations and the nature of the will given to a person who is referred to as a legatee, which is regulated by law, but the legatee is not an heir, even though he has the right to the inheritance of the testator because his share is limited to the right to certain objects without obligations. In closer blood families, the more distant relatives are eliminated or closed off, this is applied or explained in book II with the title of inheritance of legitimate families, and the husband and wife who live the longest. According to the Civil Code (KUHPerdata), blood relatives are arranged into groups, called heir groups. These groups consist of group I to group IV, calculated according to the proximity of the blood relationship with the testator, where the closer group closes the more distant group.

Furthermore, in inheritance law, there are three main elements that must be fulfilled, namely the existence of inheritance or inherited property, the existence of an heir who leaves behind wealth, and the existence of heirs who will receive a portion of the property. In Islamic teachings, there are also elements of inheritance that must be fulfilled, namely Al-Muwarris, namely the person who inherits the

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<sup>6</sup> Abdulkadir Muhamad, *Hukum Perdata Indonesia* (Bandung: PT.Citra Aditya Bakti, 2010).

<sup>7</sup> Muhamad.

property or who dies; Al-Wariṣ, namely the heirs who were still alive at the time of Al-Muwarris' death; and Al-Mauruṣ, namely inherited property, which is also called tirkah (inherited property).<sup>8</sup>

There are four groups of heirs according to Article 832 of the Civil Code, namely group I, group II, group III, and group IV. Meanwhile, in Article 174 Paragraph (1) of the Compilation of Islamic Law there is also a classification of groups of heirs, namely;

- a. "According to blood relations: The male group consists of: father, son, brother, uncle, and grandfather and the female group consists of: mothers, daughters, sisters and grandmothers.
- b. According to marital relationship, it consists of: widowers or widows".<sup>9</sup>

Based on several cases of gender reassignment requests in Indonesia, there is legal recognition with evidence of decisions issued by judges. One example is the Tasikmalaya District Court Decision Number 20/Pdt.P/2021/PN.Tsm on February 15, 2021, where the applicant filed a request for gender reassignment from female to male due to a disorder experienced since childhood. Based on statements from witnesses and the applicant, the Tasikmalaya District Court judge granted the request.

The phenomenon of sex change through medical procedures followed by legal recognition poses unique challenges in various legal domains, including inheritance law. When a transsexual individual undergoes a sex change and receives legal determination of their new gender, questions arise regarding the basis for distributing their inheritance-whether it should follow their original sex or their legally recognized gender. This issue is particularly complex when viewed from the perspectives of the Civil Code and Islamic Inheritance Law, which have distinct principles and methodologies for determining inheritance rights. Therefore, this study aims to analyze the inheritance rights of children who have changed sex from the perspective of the Civil Code and explain how these rights are addressed in Islamic Inheritance Law. By examining both legal frameworks, this research seeks to provide a nuanced understanding and offer possible solutions to address this legal dilemma.

## II. METHODS

The type of research used in this study is normative legal research, which examines law as a positive norm in legislation to address the inheritance rights of children who have changed sex from the perspectives of the Civil Code and Islamic Inheritance Law. This research employs two approaches to analyze the legal issues comprehensively. First, the statute approach is applied to study the laws and regulations related to the subject matter, focusing on understanding the hierarchy,

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<sup>8</sup> Yasin, *Fiqh Mawaris* (Yogyakarta: Idea Press, 2009).

<sup>9</sup> Oemar Moechthar, *Perkembangan Hukum Waris: Praktik Penyelesaian Sengketa Kewarisan Di Indonesia* (Jakarta: Kencana-Prenadamedia Group, 2019).

principles, and provisions within relevant legislation, particularly the Civil Code and Islamic inheritance law. Second, the conceptual approach is utilized to explore the theoretical foundations and frameworks underpinning the legal issues. This approach draws on the views of legal scholars and experts to provide deeper insights into the principles and frameworks that guide the interpretation and application of inheritance laws to individuals who have undergone sex changes. By combining these approaches, the study aims to offer a holistic analysis of the legal norms and concepts relevant to this issue.

### III. ANALYSIS AND DISCUSSION

#### **The Inheritance Rights of Children Who Change Sex (Transsexual) are Viewed from the Inheritance Laws of the Civil Code**

The phenomenon of gender reassignment or transsexualism is increasingly prevalent and has a strong impact on various social aspects, including inheritance. The change in gender status has raised debates about how the inheritance rights of transsexual children are regulated by civil inheritance law.<sup>10</sup> In the Indonesian civil inheritance law system regulated in the Civil Code (KUHPerdata), children's inheritance rights are determined based on blood relations and marriage ties. However, social developments, including changes in gender identity or transsexuality, present new challenges to the inheritance system. Changes in gender are not explicitly regulated in the Civil Code (KUHPerdata), so questions arise about how these changes affect the status and rights of children as heirs.<sup>11</sup>

##### **a. Legal Status of Children The Sex Changer (Transsexual) As Heirs After Sex Change In The Civil Code (KUHPerdata)**

In the Civil Code (KUHPerdata), the position of transsexuals as heirs is not differentiated from other heirs. Legitimate children still have inheritance rights, regardless of whether they have changed sex. This is supported by the principle of the Civil Code (KUHPerdata) which does not consider gender status as a factor that hinders or increases inheritance rights, as long as the child has the right to inherit. According to the provisions of Article 852 of the Civil Code (KUHPerdata), children, including transsexuals, inherit equally and on an equal footing with other heirs in a straight line.<sup>12</sup>

The Civil Code (KUHPerdata) regulates that inheritance can be given to heirs who have blood relations or a legal marriage bond with the testator. The Civil Code (KUHPerdata) does not recognize gender in terms of inheritance distribution, heirs

<sup>10</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam," *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 1 (2023): 30–41, <https://doi.org/10.55606/jhpis.v2i1.963>.

<sup>11</sup> Diana Anisya Fitri Suhartono, Naysha Nur Azizah, and Claressia Sirikiet Wibisono, "Sistem Pewarisan Menurut Hukum Perdata," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 3 (2022): 204–14, <https://doi.org/10.55606/jhpis.v1i3.921>.

<sup>12</sup> Sri Sudono Saliro and Risky Kasmaja, "Comparative Study of Transsexual Inheritance Rights According to the Civil Code and Islamic Law," *Jurnal Konstitusi* 4, no. 1 (2019): 6.

are recognized based on three main principles, namely the personal principle (individual inheritance), the bilateral principle (recognizing the relationship from the father and mother's line), and the descent principle (based on closeness of relationship). The main heirs according to the Civil Code (KUHPerdata) include biological children, legal spouses, parents, and siblings.<sup>13</sup>

Based on this, the inheritance rights of Transsexual Children in Civil Inheritance Law, there is no difference, because inheritance rights are based on the sex or gender identity of the testator. In other words, a child who changes sex does not lose his right to inheritance as long as he is still recognized as the child of the testator. The Civil Code (KUHPerdata) divides heirs into four main groups:

- a. First Group, Including biological children (both legitimate and recognized), husband or wife of the testator.
- b. Second Group, Parents and siblings of the testator.
- c. Third Group, Grandmother and grandfather in a straight line up.
- d. Fourth Group: Siblings of both parents of the testator or other extended family members of the testator.<sup>14</sup>

In the Civil Code, inheritance distribution is gender neutral, meaning there is no distinction based on gender. The main requirement is legal recognition as an heir. Therefore, a change in gender does not eliminate a child's inheritance rights in the Civil Code (KUHPerdata).<sup>15</sup> Based on this division, biological children remain included in the main heir group, regardless of their sex or gender identity. If a transgender child is included in the First Group, then their inheritance rights are guaranteed as long as they are legally recognized as the heir's child.

**b. Sex Change (Transsexual) Does Not Affect the Inheritance Portion Received According to the Civil Code (KUHPerdata)**

According to the principles of the Civil Code (KUHPerdata), a child who has changed gender is still considered an heir as long as he/she is still related by blood to the testator. The inheritance system of the Civil Code (KUHPerdata) does not differentiate between male and female heirs in the First Group. Therefore, a child who has changed gender is entitled to the same share as other heirs, such as brothers and sisters.<sup>16</sup> Therefore, transsexuals are considered no different from other heirs in terms of inheritance. Transsexual children who are legitimate descendants are still given the right to inherit their parents' inheritance, regardless of changes in

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<sup>13</sup> Diana Anisyah Fitri Suhartono, Naysha Nur Azizah, and Claressia Sirikiet Wibisono, "Sistem Pewarisan Menurut Hukum Perdata."

<sup>14</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

<sup>15</sup> Asmaul Fanhar, M. Zuhdi, and Yusida Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata," *Jurnal Muqarranah* 4, no. 2 (2020): 47–69.

<sup>16</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

gender identity. This is in accordance with the principle of inheritance in the Civil Code (KUHPerdata) which does not differentiate inheritance portions based on gender in a straight line, so that both male and female children and transgenders have the same inheritance rights.<sup>17</sup>

As an example, a child named “A” is born as a girl and is registered on the birth certificate as a girl. After growing up, “A” feels trapped in the wrong gender and decides to undergo a sex change operation to become a boy. “A” legally changes his gender from female to male, including changes to population documents such as KTP and KK. After “A”’s father dies, an inheritance distribution process occurs involving several other heirs, including “A”’s siblings. In the Civil Code, the inheritance for boys and girls is not explicitly distinguished, because this law recognizes equality between men and women in terms of inheritance rights. Thus, “A”’s sex change will not affect his inheritance rights because:

- a. Inheritance Rights Remain the Same: According to the Civil Code (KUHPerdata), the portion of inheritance received by “A” will not change even though “A” has changed her gender from female to male. The Civil Code (KUHPerdata) does not differentiate inheritance between males and females, so all legitimate children have the same right to receive inheritance.
- b. Position as Heir: Because “A” is still recognized as a legitimate biological child, even though there has been a change in gender, “A” still has the same rights as an heir according to his position in the family.
- c. Population Documents: A legally recognized change of gender does not change “A”’s position as an heir. The distribution of the inheritance will be based on “A”’s last legal status recorded in the official document.<sup>18</sup>

Indonesian law in the Civil Code (KUHPerdata) does not exclude the rights of children who change gender, as long as the child's legal status remains valid. As heirs of the First Class, transsexual children still receive inheritance regardless of their gender. Article 852 of the Civil Code (KUHPerdata) states that all children or descendants have the same inheritance rights, both male and female.<sup>19</sup> The rules for the distribution of inheritance in the Civil Code (KUHPerdata) are based on blood relations and marriage, without distinguishing between genders. Children from a legitimate marriage are entitled to inheritance regardless of their gender or time of birth. Therefore, even if a child experiences a change of gender, their inheritance rights are still recognized based on this basic principle. If a female child changes

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<sup>17</sup> Syera Nadia Prastyo et al., “Transsexual Inheritance Rights Based on the Understanding of Positive Law in Indonesia and Islamic Law,” *Journal of Law and Citizenship* 3, no. 7 (2024).

<sup>18</sup> Miftahul Jannah, *Tinjauan Yuridis Pembagian Harta Waris Bagi Ahli Waris Yang Melakukan Transeksual Menurut Hukum Positif Di Indonesia*, Universitas Muhammadiyah Jember, 2015.

<sup>19</sup> Fanhar, Zuhdi, and Fitriyati, “Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata.”

her gender to male, her status as an heir in the First Group (children) does not change. She is still entitled to receive the same portion of inheritance as other children, because there is no provision in the Civil Code (KUHPerdata) that distinguishes distribution based on gender.<sup>20</sup>

The Civil Code (KUHPerdata) clearly states that as long as the child is legitimate and has the right to receive inheritance, transsexual status is not an obstacle. As per Article 852 of the Civil Code, children, regardless of gender, receive an equal share of the inheritance of their parents or ancestors. In this case, gender reassignment status does not affect the amount or portion of inheritance received by a transsexual child.<sup>21</sup> Furthermore, in the Civil Code (KUHPerdata), inheritance law for a transsexual regarding a change in gender has the following legal implications:

- a. Legal Status After Sex Change: Once a person undergoes sex change surgery and is legally recognized, his/her residency documents will be updated to reflect the new gender identity. The Civil Code (KUHPerdata), which does not differentiate inheritance shares based on gender, does not reduce or increase the inheritance rights of a child who changes his/her sex. Therefore, sex change does not affect a person's status as an heir.
- b. Inheritance Rights Remain Equal: Based on the principles of the Civil Code (KUHPerdata), all legitimate children receive an equal share in the distribution of inheritance. Even if there is a change in gender, the child's legal status as an heir does not change. The Civil Code (KUHPerdata) ensures equality in the distribution of inheritance, regardless of whether a person is male or female.
- c. Population Documents as Reference: One of the important aspects considered in the distribution of inheritance is valid population documents. When someone has changed their gender and is legally recognized, the change will be reflected in official documents such as KTP or Family Card. This is the basis for the notary or court in the process of dividing inheritance.<sup>22</sup>

In addition, the Civil Code (KUHPerdata) also regulates legitieme portie or absolute portion, which is the minimum portion of the inheritance that must be given to the heirs. This protects the rights of the heirs, including children, so that they continue to receive their share of the inheritance in accordance with the provisions of the law. Based on Article 914 of the Civil Code, namely If there is only one child, then the absolute portion is  $\frac{1}{2}$  of the total inheritance. If there are

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<sup>20</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

<sup>21</sup> Nadia Prastyo et al., "Transsexual Inheritance Rights Based on the Understanding of Positive Law in Indonesia and Islamic Law."

<sup>22</sup> Miftahul Jannah, *Tinjauan Yuridis Pembagian Harta Waris Bagi Ahli Waris Yang Melakukan Transeksual Menurut Hukum Positif Di Indonesia*.

two children, the absolute portion is 2/3 of the total inheritance. If there are three or more children, the absolute portion is ¾ of the total inheritance. This absolute portion will be given to children, including those who have changed gender, as long as they are included in the list of legitimate heirs according to the Civil Code (KUHPerdata).<sup>23</sup>

Although gender reassignment does not disenfranchise a child, there are legal obstacles that arise if the child's new gender status is not officially recognized in legal identity documents. The Civil Code requires legal recognition of inheritance status, including recognition of blood or marriage relationships. For transgender children, this legal certainty may depend on the legality of the gender change in the civil registry, which can raise administrative issues. Administrative issues can arise if the child's new gender status is not officially recognized. According to Article 10 of Law No. 48/2009 on Judicial Power, the court is obliged to decide a case even if there is no explicit rule. Thus, the court can recognize the child's new gender status for the sake of legal certainty and justice.<sup>24</sup>

As explained above, it can be explained that: First, the Civil Code (KUHPerdata) does not have specific rules regarding individuals who change gender. Therefore, the courts and notaries refer to the general principles contained in civil law. This can cause difficulties if there is a dispute between heirs regarding the legal status of a person who changes gender. Second, although legally, inheritance rights do not change, in society, gender change can cause conflict, especially if the family does not accept a person's new gender identity. These social and cultural factors often become obstacles in the implementation of fair inheritance distribution for transsexual individuals.<sup>25</sup> Therefore, there is no provision that explicitly regulates the inheritance rights of transsexuals in the Civil Code (KUHPerdata) which indicates a legal vacuum that causes uncertainty in the succession of transsexuals. However, the general principles of the Civil Code (KUHPerdata) still guarantee inheritance rights for heirs regardless of gender and the law gives full rights to the court to decide cases using case law or principles of justice.<sup>26</sup> To address the legal vacuum regarding the inheritance rights of transgender individuals in the Civil Code (KUHPerdata), **ijtihad** (independent reasoning) serves as a significant approach in interpreting and adapting legal principles to contemporary social realities. Through the application of **maqasid al-shariah**, which emphasizes the preservation of justice, equality, and human dignity,

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<sup>23</sup> Diana Anisyah Fitri Suhartono, Naysha Nur Azizah, and Claressia Sirikiet Wibisono, "Sistem Pewarisan Menurut Hukum Perdata."

<sup>24</sup> Fanhar, Zuhdi, and Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata."

<sup>25</sup> Miftahul Jannah, *Tinjauan Yuridis Pembagian Harta Waris Bagi Ahli Waris Yang Melakukan Transeksual Menurut Hukum Positif Di Indonesia*.

<sup>26</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

transgender individuals can be recognized within inheritance laws based on their affirmed gender identity and familial roles. This interpretation aligns with the views of Jasser Auda, who argues that Islamic legal principles must respond to social changes to uphold substantive justice.<sup>27</sup> Similarly, Abdullahi An-Na'im advocates for legal reform to address modern challenges while ensuring justice and inclusivity.<sup>28</sup> By adopting such a progressive approach, legal systems can offer more inclusive and equitable solutions, ensuring justice in light of evolving societal dynamics.

In Indonesian civil law, children who change gender still have the same rights as heirs. The Civil Code (KUHPerdata) guarantees that the inheritance of First Class transgender children is the same as other heirs. The absence of specific provisions relating to transsexuals poses challenges in the application of inheritance law, but the principle of equality in the Civil Code (KUHPerdata) remains the main reference in maintaining the inheritance rights of transsexual children.<sup>29</sup> Therefore, transsexuals who have a legal marital status are also recognized in positive law. The government is advised to guarantee this succession right in positive law to avoid a legal vacuum and ensure legal certainty for transsexuals in succession cases.

### **Inheritance Rights of Children Who Have Changed Sex (Transsexuals) Reviewed from Islamic Inheritance Law**

In the study of Islamic inheritance law, the inheritance rights of children who have changed sex or are transsexual have caused their own debate because there are no specific rules that accommodate this condition. The issue of sex change (transsexual) affects a person's sexual and social status which ultimately impacts their inheritance rights. Islam as a religion that highly upholds the laws and rules of Allah SWT, considers sex change to be an act that is not in accordance with the nature given by Allah SWT. The Qur'an, Surah Al-Hujurat verse 13 states that Allah created humans as men and women as a nature, not to be changed. Fatwa of the Indonesian Ulema Council (MUI) Number 3 of 2010 states that sex change operations are forbidden because they are considered an act of changing God's creation.<sup>30</sup>

Referring to this, every human being has been created with a certain gender, and deliberate gender change without medical reasons is considered contrary to God's decree. Sex change in the form of surgery or physical modification is considered a form of alteration of God's creation and is generally prohibited. However, gender reassignment surgery is permitted in cases of "khunntsa abstruse"

<sup>27</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008), <https://doi.org/https://doi.org/10.2307/j.ctvkc67tg>.

<sup>28</sup> Abdullahi An-Na'im, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press, 2008).

<sup>29</sup> Nadia Prastyo et al., "Transsexual Inheritance Rights Based on the Understanding of Positive Law in Indonesia and Islamic Law."

<sup>30</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

(dual gender), where medical procedures are performed to clarify or determine the dominant gender.<sup>31</sup>

#### a. Legal Position of Transsexual Children as Heirs After Gender Change in Islamic Inheritance Law

In the Compilation of Islamic Law (KHI), gender is one of the important aspects that affect the distribution of inheritance. Islam has a provision that male heirs generally receive a larger share than females, with a division of two to one. Men receive a larger share than women, with a division of two to one. In Islamic jurisprudence (fiqh), the principle that men inherit twice the share of women is rooted in their financial responsibilities as prescribed by Islamic law. Men are obligated to provide for their families, covering expenses such as housing, food, clothing, and dowry (mahr), while women, even if wealthy, are under no obligation to contribute financially. This system ensures that men shoulder the economic burdens of familial support, while women retain full ownership of their inheritance, granting them financial autonomy.<sup>32</sup> The division reflects equity rather than equality, aligning with the broader objectives of Islamic law (maqasid al-shariah) to ensure justice and balance within societal roles.<sup>33</sup> Scholars argue that this principle must be contextualized within the socio-economic framework of Islam, which prioritizes fairness in both rights and responsibilities.<sup>34</sup> As explained in the Qur'an, namely Surah An-Nisa Verse 11:

يُؤْصِلُكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مُثْلُ حَظِّ الْأُنْثَيَيْنِ ۝ فَإِنْ كُنَّ نِسَاءً فَوْقُ النِّسَاءِ فَلَهُنَّ ثُلَّا مَا تَرَكَ ۝ وَإِنْ كَانَتْ وَاحِدَةٌ فَلَهَا النِّصْفُ ۝ وَلَا يَوْمَ يُهْلِكُ لُكْلٌ وَاحِدٌ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۝ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرَثَتْهُ أَبُوهُهُ فَلِأُمُّهُهُ الْثُلُثُ ۝ فَإِنْ كَانَ لَهُ أَخْوَةٌ فَلِأُمِّهِهِ السُّدُسُ مِنْ بَعْدِ وَصِيلَةٍ يُؤْخِذُنِي بِهَا أَوْ دِينٍ ۝ أَبْأُوكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيْمَنَهُمْ أَقْبَرُ ۝ لَكُمْ نَفْعًا ۝ فَرِيْضَةٌ مِنْ اللَّهِ ۝ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا (النساء)

Meaning: "Allah has ordained for you concerning (the division of inheritance for) your children: (namely) the share of a male child is equal to the share of two female children. If the children are all females, more than two, their share is two-thirds of the estate left behind. If there is only one female child, she gets half (the estate left behind). For both parents, each of them gets one-sixth of the estate left behind, if he (the deceased) has children. If he (the deceased) has no children and he is inherited by his parents (only), his mother gets one-third. If he (the deceased) has several siblings, his mother gets one-sixth. (The inheritance is divided) after (the

<sup>31</sup> Fanhar, Zuhdi, and Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata."

<sup>32</sup> Md Abdullah Hil Gani and Md Nadir Khan, "Women Rights of Inheritance in Islam: Equity versus Equality," *Jouornal of ELT and Education* 2, no. 3 & 4 (2019): 73–80.

<sup>33</sup> Herianto Putra and Desi Anwar, "Muhammad Shahrur's Perspective on Gender Equality in Inheritance Distribution," *Indonesian Journal of Islamic Law* 6, no. 2 (2023): 56–72, <https://doi.org/10.35719/ijil.v6i2.2018>.

<sup>34</sup> Muneer Abduroaf, "An Analysis of the Rationale behind the Distribution of Shares in Terms of the Islamic Law of Intestate Succession," *De Jure* 53, no. 1 (2020): 115–22, <https://doi.org/10.17159/2225-7160/2020/v53a8>.

fulfillment of) his will or (and the payment of) his debts. (As for) your parents and your children, you do not know which of them is of greater benefit to you. This is the decree of Allah. Indeed, Allah is All-Knowing, All-Wise.<sup>35</sup>

Then what is the position of transsexuals in Islamic Inheritance Law? In children who change gender or are transsexual, their inheritance rights are calculated based on their original gender before the change. For example, a man who changes gender to a woman is still treated as a man in terms of inheritance rights, and vice versa.<sup>36</sup> The position of transsexuals in Islamic inheritance law is traditionally based on their gender at birth, with inheritance rights calculated accordingly. This does not change the inheritance share of a person who changes gender, where a man who changes into a woman will still receive the same inheritance as a man, which is two parts compared to a woman who only receives one part. Women who only receive one part. This is based on the principle that gender identity in Islamic inheritance is based on the original nature, and physical changes do not change the existing inheritance provisions. Physical changes do not change the existing inheritance provisions.<sup>37</sup>

According to Islamic principles, sex change does not change inheritance rights according to one's original nature. The distribution of inheritance is based on the original sex because Islam considers that the established gender identity cannot be legally changed. Thus, Islamic inheritance law aims to maintain the structure established by the Shari'a in the distribution of inheritance, even if the gender identity of the heir changes as a result of transsexual surgery.<sup>38</sup>

In practice, Islamic law still considers a person's initial status in the distribution of inheritance. This means that if the child is born as a boy or a girl, then he or she will receive an inheritance in a portion according to the provisions of his or her original gender, even though he or she has undergone a sex change operation. This is also reflected in the Compilation of Islamic Law (KHI) which is used as a guideline for the distribution of inheritance in Indonesia which does not have specific regulations regarding the distribution of inheritance for individuals who have undergone a sex change.<sup>39</sup> Except, the gender surgery aims to strengthen or perfect the genitals because of the status of "abstruse khunsa". Gender reassignment surgery is permitted in cases of "khunsa abstruse" (dual gender), where medical procedures are performed to clarify or determine the dominant

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<sup>35</sup> Nn, "An-Nisa' · Ayat 11," NU Online, n.d.

<sup>36</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

<sup>37</sup> Fanhar, Zuhdi, and Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata."

<sup>38</sup> Ucik Fatimatuzzahro, Yohanna Andriani N. H., and Gita Laksmi Zalsabilla, "Analisis Hukum Pembagian Waris Anak Yang Berganti Jenis Kelamin Berdasar Perspektif Hukum Perdata Dan Islam."

<sup>39</sup> Fanhar, Zuhdi, and Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata."

gender. So thatFrom here we can draw a conclusion that the existence of transsexuals in their inheritance rights is:

- a. Transsexuals with Non-Medical Surgery: If gender reassignment is done based on personal desire without medical basis, a person's gender status remains based on their biological sex before the surgery. This means that inheritance distribution follows the initial status.
- b. Transsexuals with Medical Surgery: If the gender change is done for medical reasons, such as to improve the genitals due to a disability, Islamic law can recognize the change. In this case, the new gender identity can be used as a basis for inheritance distribution.<sup>40</sup>
- b. Interpretation of Verses of the Qur'an and Hadith Relating to Inheritance and Their Implications for Transsexual Children.

Surah An-Nisa verses 11 and 12 detail the inheritance portions for men and women. Paragraphs establish clear rules about inheritance: sons usually receive double the share of daughters. This division is based on traditional social roles within the family, where men are considered responsible for maintaining the family. In the context of a child undergoing gender reassignment, Islamic law traditionally does not change the share of inheritance based on the changed gender identity. A child who was born male, even though he has undergone sex reassignment surgery and becomes female, is still considered a male under Islamic law in terms of inheritance and vice versa.<sup>41</sup>

Surah Al-Hujurat states in verse 13 that Allah created humans as male and female to know each other. This means that gender is part of Allah's creation that has a certain wisdom and as something that is divine. In addition, Surah Asy-Syams in verses 7-10 talks about the creation of the human soul, which is given the ability to distinguish between good and evil. And bad. This is often interpreted in the context that gender identity and sex are part of human nature as determined by God.<sup>42</sup>

In addition to the Qur'an, it is also found in the hadith of the Prophet Muhammad SAW in a hadith narrated by Imam Bukhari and Muslim: "Allah curses men who imitate women and women who imitate men." This hadith is often used as a basis for prohibiting transsexual behavior that seeks to change the original gender identity. Given this, sex change is considered an act that violates human nature and God's creation, so Islamic law still recognizes a person's original gender even though he or she has undergone sex change surgery.<sup>43</sup>

Based on this, the implications of sex change or transsexualism in Islamic law, namely that sex plays an important role in determining inheritance rights. Boys

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<sup>40</sup> Fanhar, Zuhdi, and Fitriyati.

<sup>41</sup> RM Sembiring, Transsexuals in the Perspective of the Qur'an According to Tafsir Al-Misbah, 1st ed. (Meda: UIN North Sumatra, 2021).

<sup>42</sup> Nn, "An-Nisa' · Ayat 11."

<sup>43</sup> Sembiring, *Transgender Dalam Perspektif Alquran Menurut Tafsir Al-Misbah*.

get a different share from girls. Thus, if a child changes sex from male to female or vice versa, the inheritance law still refers to their original sex. Some scholars argue that in inheritance succession, the original sex at birth is preferred, not the sex after the change. This is based on Surah An-Nisa' verse 119, which mentions the prohibition against changing Allah's creation, because it is considered a form of effort to change Allah's original creation. In the context of inheritance, this means that sex change does not change a person's legal status for inheritance purposes, because sex change is considered invalid in Islamic law.<sup>44</sup>

Furthermore, do transsexual children still have inheritance rights? In this regard, Surah An-Nisa' verse 58 states, "Indeed, Allah commands you to convey a message to those who are entitled to receive it, and when you establish a law between humans, you must determine it fairly." Principle of justice This can be a reference, that the decision taken must be fair and in accordance with the provisions of Allah, especially in terms of inheritance. Although a transsexual child may have a different gender after the change, the determination of the inheritance portion is still based on the principle of sharia justice, which applies to the original gender.<sup>45</sup>

#### c. Fatwa and Views of Contemporary Ulama Regarding Inheritance Rights for Transsexual Children.

The Indonesian Ulema Council, which is a social institution that operates in the religious field and as the highest authority, has the task of providing fatwas and assisting the government in matters relating to the welfare of Muslims in Indonesia.<sup>46</sup> Provides a determination that:

- a. Sex change operations from male to female or vice versa are prohibited because they are considered to be contrary to the principles of Sharia, especially the prohibition on changing Allah's creation as stated in verse 119 of Surah An-Nisa' 119.
- b. A person who undergoes sex change surgery retains the legal status of their original sex before the surgery.
- c. Corrective or gender-corrective surgery is permitted for khunsa (people with multiple sexes or gender abnormalities). In this case, the legal status of gender may follow the results of the surgery if the purpose is to correct the abnormal sex.<sup>47</sup>

According to the MUI fatwa above, the inheritance rights of a person who has undergone sex change surgery do not change after the operation. For example,

<sup>44</sup> Syaddan Dintara Lubis, "The Position of Transsexuals Regarding Inheritance Rights Seen from the Fiqh of Mawaris," *Journal Analytica Islamica* 12, no. 1 (2023): 41.

<sup>45</sup> Fanhar, Zuhdi, and Fitriyati, "Analisis Kedudukan Ahli Waris Yang Melakukan Operasi Penyesuaian Kelamin Ganda Menurut Hukum Islam Dan Hukum Perdata."

<sup>46</sup> Lina Nur Anisa, "Kedudukan Fatwa Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia," *E-Journal.Iainngawi*, 2015, 6.

<sup>47</sup> Ridwan, Kasjim Salenda, and Rahmatiah, "Implementasi Fatwa Mui Tentang Perubahan Dan Penyempurnaan Kelamin/LGBT," *AL-Mustla : Jurnal Ilmu-Ilmu Keislaman Dan Kemasyarakatan* 6 (2024): 181–98, <https://doi.org/10.46870/jstain.v6i1.1020>.

someone who was born male but then underwent surgery to become female is still considered male for inheritance purposes. Unless he is a khunsa (hermaphrodite) who undergoes sex change surgery or corrective surgery will have inheritance rights according to their gender after the operation. For example, if a khunsa undergoes surgery to clarify his male identity, he is considered a man for inheritance purposes.

This is based on the Qur'an, Surah Al-Hujurat, verse 13, which states that Allah created humans as male and female, which is the basis for recognizing two genders in Islam. This fatwa emphasizes the importance of accepting the gender that has been determined by Allah, without making any changes that can be considered to change His creation. Furthermore, the Qur'an, Surah An-Nisa', verse 119, is the basis for the view that changing Allah's creation, including surgery on the genitals that is not based on medical needs (such as genital deformities), is considered an act that is contrary to the principles of Sharia.<sup>48</sup>

In addition, contemporary scholars make a distinction between khunsa (people who have two sexes or abnormalities) and transsexuals (people who change sex without physical abnormalities). Transsexual sex change surgery is forbidden because it is considered a form of deviation from nature. Sex change surgery is permissible for khunsa because its main purpose is to clarify an unclear sex. If, for example, a person has two sex organs, his legal status can be determined based on the more dominant physical characteristics, such as the way of defecating or signs of sexual maturity.<sup>49</sup>

Therefore, the implication of this fatwa is that transsexuals who have undergone sex change surgery are considered to have violated Sharia law, so their legal status remains their original sex for inheritance, marriage, and other legal aspects. In the case of khunsa, after sex change surgery based on medical needs, the new legal status can be recognized in Islamic law, including in terms of inheritance.<sup>50</sup> The legal status of transsexuals who have undergone sex reassignment surgery remains unchanged for inheritance purposes, so their rights will continue to apply according to their original sex in terms of the distribution of inherited assets.

## VI. CONCLUSION

In the context of inheritance rights, the Civil Code (KUHPerdata) stipulates that a gender change does not affect a child's status as an heir. Inheritance rights are determined by blood relations and legal status as a legitimate child, with gender-neutral distribution principles ensuring equality among heirs in a straight line. In contrast, Islamic inheritance law considers gender essential in determining inheritance shares, with men receiving twice the share of women. For transsexual

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<sup>48</sup> Ridwan, Salenda, and Rahmatiah.

<sup>49</sup> Lubis, "The Position of Transsexuals Regarding Inheritance Rights Reviewed from the perspective of Mawaris Fiqh."

<sup>50</sup> Lubis.

individuals, inheritance rights are generally based on their gender at birth, except in cases of medical necessity for gender changes, such as “khunsa musykil,” which can alter inheritance status. To address these complexities, the government should establish explicit regulations regarding the inheritance rights of transsexual individuals to ensure legal certainty. Religious institutions are encouraged to expand discussions and ijтиhad on the topic to provide more inclusive interpretations in Islamic law. Families and communities should be educated about the legal frameworks to prevent conflicts, and transsexual individuals are advised to ensure their gender identity is legally recognized to simplify inheritance processes.

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