



## Fiqh of Intersex Persons in Muslim-Majority Countries: Jordan and Indonesia in Comparative Perspective

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### Abstract

The legal status of intersex persons (*khunthā*) poses a significant challenge to the foundational reliance on binary gender classifications within Islamic inheritance law across Muslim-majority countries. Employing a juridical-comparative methodology, this study analyzes Jordan's Personal Status Law No. 15 of 2019 and Indonesia's Compilation of Islamic Law (KHI) to illustrate how different legal systems navigate the epistemological tensions among classical Islamic jurisprudence, biological considerations, and normative certainty concerning the legal status of *khunthā* in contemporary Muslim societies. The findings reveal that Jordan exemplifies a regime of rigid legal formalism, adhering to the Hanafi madhhab's doctrine of *al-aqall* (the least part) to preserve procedural certainty, while largely disregarding contemporary medical evidence. In contrast, although Indonesia's KHI is commonly regarded as grounded in the Shafi'i madhhab, it neither contains explicit provisions governing the inheritance rights of *khunthā* nor mandates judges to refer to the Shafi'i madhhab in cases of regulatory vacuum, permitting extensive judicial discretion through *rechtsvinding* (judicial law-finding), resulting in fragmented and unpredictable outcomes. The comparative analysis indicates that Jordan provides certainty that may be medically unjust, whereas Indonesia offers the potential for medical justice that remains legally uncertain. This article advocates for bio-juridical reform in Muslim-majority countries to realign Islamic law with scientifically informed and distributive justice frameworks that better address the needs of marginalized bodies.

### Keywords

Intersex Persons (*Khunthā*); Islamic Inheritance Law; Comparative Law; Jordan and Indonesia; Muslim-Majority Countries

### Introduction

The biological reality of human beings does not always correspond to the binary gender dichotomy that underpins the legal frameworks of many countries.<sup>1</sup> The phenomenon of intersex persons, referred to in fiqh terminology as *khunthā*, poses a significant challenge to legal systems that categorically assign rights and obligations based solely on the binary classification of male or female.<sup>2</sup> Within the domain of distributive justice, this ambiguity in gender status has profound implications for inheritance rights, where differential shares between male and female heirs

<sup>1</sup> Muhammad Hasan, "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (May 9, 2023): 650–68.

<sup>2</sup> Hani Sholihah, Nani Widiawati, and Mohd Khairul Nazif Bin Hj Awang Damit, "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender," *Al-'Adalah* 21, no. 1 (2024): 101–24.



constitute a fundamental principle in Islamic law.<sup>3</sup> This issue transcends theological discourse, representing a critical human rights concern and a matter of legal certainty that necessitates a definitive resolution, particularly in light of advancements in medical technology that now enable precise genetic identification.<sup>4</sup>

In classical Islamic legal discourse, Muslim jurists (*fuqahā*) have historically developed the concepts of *khunthā mushkil* (indeterminate intersex person) and *khunthā ghair mushkil* (determinate intersex person) to address this legal lacuna.<sup>5</sup> Traditional jurisprudence predominantly relies on superficial physiological indicators, such as the anatomy of reproductive organs or signs of puberty, to ascertain an individual's legal status.<sup>6</sup> However, in the contemporary context, this conventional methodology frequently conflicts with modern medical standards, which employ chromosomal and hormonal analyses. The resulting tension between classical fiqh texts and contemporary medical findings underscores the imperative for Muslim-majority countries to codify laws that accommodate gender ambiguity in a manner that is both equitable and scientifically informed, while remaining consistent with Sharia principles.<sup>7</sup>

Indonesia, as one of the countries with the largest Muslim populations globally, incorporates Islamic inheritance law through the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI).<sup>8</sup> Although the KHI serves as a reference for judges in Religious Courts, it lacks detailed provisions regarding the technical distribution of inheritance for individuals identified as *khunthā*. Consequently, dispute resolution often depends on judicial discretion, with judges referring to classical jurisprudential texts or prior case law. The absence of explicit technical regulations within national legislation creates legal uncertainty, potentially disadvantaging individuals experiencing gender ambiguity in asserting their inheritance rights.<sup>9</sup>

In contrast, Jordan presents a distinct legal framework through its recent codification. The country enacted the Jordanian Personal Status Law (*Qanūn al-Aḥwāl al-Shakhṣiyyah al-Urdunī*) Number 15 of 2019, which serves as the substantive law in Sharia Courts. According to official sources from the General Iftaa' Department of the Kingdom of Jordan, this legislation comprehensively addresses inheritance matters within a dedicated chapter. Despite being the product of detailed modern legislation, challenges persist in applying inheritance provisions to *khunthā* cases that require medical evidence. In practice, when the law does not explicitly address specific circumstances, the Jordanian legal system typically defers to the predominant opinion (*rājiḥ*) within the Hanafi madhhab, as stipulated in the law's closing provisions.

<sup>3</sup> Ashnie Mahadew and Dipane Hlalele, "Challenging Gender Certainties in Early Childhood Care and Education: A Participatory Action Learning and Action Research Study," *Educational Research for Social Change* 11, no. 1 (May 3, 2022): 10–25.

<sup>4</sup> Julian Applebaum, "Transgender in Court: Judicial Interpretations of Gender Identity from 1966 to 2022," *Bulletin of Applied Transgender Studies* 2, no. 3 (2023): 129–50.

<sup>5</sup> Azalia Rahma Utami, Djanuardi Djanuardi, and Linda Rachmainy, "Sex Change in Multiple Gender Sufferers Is Associated with Islamic Law and the Population Administration Law," *Enrichment: Journal of Multidisciplinary Research and Development* 1, no. 6 (September 25, 2023): 322–28.

<sup>6</sup> Mochammad Luthfan Adilin Luthfan and Kafani Safrul Mufarid, "Konsep Adil dalam Perspektif Hukum Waris Islam," *Justicia Journal* 11, no. 1 (2022): 127–38.

<sup>7</sup> Indira Falk Gesink, "Intersex Bodies in Premodern Islamic Discourse," *Journal of Middle East Women's Studies* 14, no. 2 (July 1, 2018): 152–73.

<sup>8</sup> See in Republik Indonesia, *The Compilation of Islamic Law (Kompilasi Hukum Islam), No. 1 of 1991* (Presidential Instruction of the Republic of Indonesia No. 1/1991), Book II (Hukum Kewarisan).

<sup>9</sup> Ani Amelia Zainuddin and Zaleha Abdullah Mahdy, "The Islamic Perspectives of Gender-Related Issues in the Management of Patients with Disorders of Sex Development," *Archives of Sexual Behavior* 46, no. 2 (February 21, 2017): 353–60.



Previous research has predominantly been confined to normative analyses of classical jurisprudence or isolated medical reviews, without integrating these perspectives within the comparative framework of contemporary state legislation.<sup>10</sup> There exists a paucity of scholarly literature examining how positive laws in Indonesia and Jordan address intersexuality in the context of inheritance, particularly following the enactment of Law No. 15 of 2019 in Jordan. Addressing this academic gap is crucial for understanding how two jurisdictions—characterized by differing madhhab influences, namely the predominance of the Shafi'i madhhab in Indonesia and the significant Hanafi influence in Jordanian legislation—incorporate modern scientific evidence into heirship determination procedures.<sup>11</sup> This article aims to conduct a comparative analysis of the legal status and inheritance distribution mechanisms for *khunthā* within the Indonesian and Jordanian legal systems. The analysis centers on the alignment between statutory provisions, including Jordan's Law No. 15 of 2019 and the Indonesia's Compilation of Islamic Law (KHI), and contemporary medical findings. This study aspires to contribute a novel perspective on how modern legal states might reconstruct Islamic inheritance regulations to be more adaptive, thereby ensuring legal certainty and distributive justice for marginalized groups within binary legal frameworks.

## Literature Review

The discourse concerning the status of *khunthā* within classical Islamic jurisprudence has traditionally been characterized by a rigid binary framework, wherein the determination of inheritance rights relies predominantly on observable biological indicators.<sup>12</sup> Classical fiqh literature, as preserved in the *turāth* of various sects, typically categorizes *khunthā* into two groups: *mushkil* and *ghair mushkil*.<sup>13</sup> The majority of classical scholars, including those from the Shafi'i and Hanafi schools, employ the method of *al-bala* (urine tests) alongside secondary signs emerging post-puberty as principal legal criteria.<sup>14</sup> Nevertheless, contemporary academic discourse underscores the inherent limitations of this approach when addressing complex cases involving Disorders of Sex Development (DSD),<sup>15</sup> wherein external anatomical features frequently do not correspond with internal genetic configurations.<sup>16</sup> This discrepancy has elicited criticism from modern legal scholars, who argue that exclusive reliance on physical observation is insufficient to satisfy the principle of *taḥqīq al-manāṭ* (verification of legal facts) in the context of advances in precision medicine.<sup>17</sup>

<sup>10</sup> See Jens M. Scherpe, Anatol Dutta, and Tobias Helms, eds., *The Legal Status of Intersex Persons* (New York: Intersentia, 2018).

<sup>11</sup> Nurul Fikri Ilham Pratama, "Exploring the Influence of Shafi'i School and Its Correlation in the Practice of Tahliil Marriage in Indonesia," *Hukum Islam* 24, no. 2 (December 20, 2024): 154–77.

<sup>12</sup> Taqwa Zabidi, "Analytical Review of Contemporary Fatwas in Resolving Biomedical Issues Over Gender Ambiguity," *Journal of Religion and Health* 58, no. 1 (February 21, 2019): 153–67.

<sup>13</sup> Alan R. Felthous and Chanchal Kahlon, "The Development of Legal Rights for Intersex Persons: Part I: The Diversity of Intersex Conditions," *Behavioral Sciences & the Law* 43, no. 2 (April 22, 2025): 248–60.

<sup>14</sup> Melanie Newbould, "When Parents Choose Gender: Intersex, Children, and the Law," *Medical Law Review* 24, no. 4 (January 5, 2016): 474–96.

<sup>15</sup> Selma Feldman Witchel, "Disorders of Sex Development," *Best Practice & Research. Clinical Obstetrics & Gynaecology* 48 (April 2018): 90–102.

<sup>16</sup> Taqwa Zabidi, *Evaluation of Islamic Perspectives Regarding a Medical Condition Known as Disorders of Sex Development (DSD)* (Wales: Doctoral Thesis, University of Wales Trinity Saint David, 2021).

<sup>17</sup> A. Kumedi Ja'far, Edi Susilo, and Mursyid Al Haq, "Construction of Contemporary Fiqh in the Disorders of Sexual Development Problems Through the Integration of Maqâshid Al-Shari'a and Medical Science," *Al-'Adalah* 22, no. 1 (June 15, 2025): 63–90.

The advancement of biomedical technology has transformed the evidentiary framework within Islamic family law, shifting the basis of proof from traditional empirical observation to scientific evidence.<sup>18</sup> Recent studies in Islamic bioethics have demonstrated that karyotype testing (chromosomal analysis) and hormonal profiling provide significantly greater certainty compared to conventional methods.<sup>19</sup> However, the existing scholarship reveals resistance or reluctance to incorporate these medical technologies into religious judicial procedures.<sup>20</sup> Some scholars advocate for medical technology to serve as the primary *qarīnah* (indicator) guiding judicial decisions,<sup>21</sup> whereas conservative groups maintain that classical fiqh texts should remain the authoritative reference when conflicts arise between medical findings and physical appearance.<sup>22</sup> This epistemological tension between established doctrinal texts and the legitimacy of scientific evidence generates a legal ambiguity in the adjudication of inheritance cases, often to the detriment of the *khunthā*, due to the uncertainty surrounding the determination of their inheritance share.<sup>23</sup>

In the context of legal positivization in Indonesia, the KHI, ratified through Presidential Instruction Number 1 of 1991, functions as a substantive guideline for judges of the Religious Courts.<sup>24</sup> However, a juridical review of Articles 171 to 193 of the KHI, which govern inheritance law, reveals a normative gap concerning specific provisions for *khunthā* heirs.<sup>25</sup> While the KHI provides detailed regulations for heirs classified as *zawī al-furūd* and *‘aşabah* based on clearly defined male and female genders, it lacks an explicit mathematical formula or framework for individuals with multiple sexes.<sup>26</sup> Consequently, as observed in various judicial decisions, Indonesian judges frequently exercise judicial discretion by invoking Article 229 of the KHI, thereby reverting to unwritten customary law or the doctrine of Shaf’i jurisprudence as living law. This practice often disadvantages *khunthā* heirs or results in delays in inheritance distribution until their status is definitively established.<sup>27</sup>

In contrast, the legal framework in Jordan exhibits a distinct codification approach, as exemplified by Jordan’s Personal Status Law No. 15 of 2019. According to the official text

<sup>18</sup> Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Utrecht: PhD Dissertation, Utrecht University, 2007).

<sup>19</sup> Kelsey Cherland, *The Development of Personal Status Law in Jordan and Iraq* (Claremont: Claremont McKenna College, 2014).

<sup>20</sup> Myriam Ababsa, “Exclusion and Norms: Enforcing Women’s Rights to Property in Jordan,” in *Rules on Paper, Rules in Practice: Enforcing Laws and Policies in the Middle East and North Africa* (World Bank Group, 2018), 93–117; Dina Kartikasari and Saiful Risky, “The Idea of Independent Judicial Ethics Courts in Indonesia,” *JAPHTN-HAN* 4, no. 1 (2025): 65–85.

<sup>21</sup> Mohammad Hashim Kamali, “Sadd Al-Dhara’ī (Blocking the Means),” in *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 73–74.

<sup>22</sup> Morgan Carpenter, “The Human Rights of Intersex People: Addressing Harmful Practices and Rhetoric of Change,” *Reproductive Health Matters* 24, no. 47 (January 12, 2016): 74–84.

<sup>23</sup> Ahmad Imam Mawardi and A. Kemal Riza, “Why Did Kompilasi Hukum Islam Succeed While Its Counter Legal Draft Failed? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia,” *Journal of Indonesia Islam* 13, no. 2 (December 1, 2019): 421–53.

<sup>24</sup> Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam (Presidential Instruction No. 1 of 1991).

<sup>25</sup> Rizky Dwi Pradana, “Kritik Terhadap Kompilasi Hukum Islam Mengenai Status Ahli Waris Khunthā,” *Pamulang Law Review* 1, no. 1 (July 15, 2019): 31–42.

<sup>26</sup> Putri Wartina Lestari, Sonny Dewi Judiasih, and Bambang Daru Nugroho, “Inheritance Rights of Extramarital-Children after the Constitutional Court Decision of 2010,” *Indonesian Comparative Law Review* 6, no. 1 (January 5, 2024): 46–61.

<sup>27</sup> Masyithah Umar and Anwar Hafidzi, “Examination by Deoxyribonucleic Acid (DNA) Test of Children Privileges as Legitimate Evidence in Indonesia Marriage Law,” *Revista Argentina de Clínica Psicológica* 29, no. 3 (2020): 551–58.



published by the Fatwa Department of the Kingdom of Jordan, this legislation does not include a specific provision detailing the distribution table for *khunthā* inheritance.<sup>28</sup> Nevertheless, Jordan's legal system incorporates a stringent and binding gap-filling mechanism. This is explicitly articulated in Article 325 of Law No. 15 of 2019, which stipulates: "What is not stipulated in this Law, then the strongest opinion (*arjah*) in the Hanafi madhhab is enforced."<sup>29</sup> The presence of Article 325 ensures procedural legal certainty by mandating that, in cases involving *khunthā*, Sharia courts in Jordan are legally obligated to apply the Hanafi doctrine. This doctrine prescribes a particular method of calculation—characterized by a tendency to allocate fewer shares as a precautionary measure—thereby limiting judicial discretion and precluding unrestricted *ijtihad*.

Existing comparative studies in this field tend to be polarized. Most analyses either focus exclusively on classical jurisprudence from a theoretical perspective without addressing the positive laws of the state, or they concentrate on the medical aspects of intersex conditions without thoroughly examining their legal implications in the context of hereditary law.<sup>30</sup> There remains a significant gap in the literature specifically comparing the juridical consequences arising from the absence of explicit provisions in KHI with the mandatory referral mechanism to the Hanafi School as stipulated in Article 325 of Jordan's Personal Status Law No. 15 of 2019. Furthermore, the majority of research has yet to investigate how these two legal systems respond to contemporary medical evidence, such as DNA and chromosomal analysis, given that their respective laws—either implicitly silent (Indonesia) or sectarian in referral (Jordan)—do not explicitly regulate genetically based sex verification procedures for inheritance purposes. This research aims to address the existing gap by providing a comparative socio-legal analysis. The study not only examines legal texts (law in books) but also explores how legal frameworks in Indonesia and Jordan respond to gender ambiguity. Furthermore, it seeks to propose how medical evidence can be recognized as primary evidence within the context of contemporary Islamic inheritance law to safeguard the rights of marginalized groups.

## Method

This study constitutes a normative legal investigation employing both comparative legal and statutory approaches.<sup>31</sup> This methodology was selected to critically analyze the legal norms and principles governing the status of *khunthā* inheritance within two distinct jurisdictions: Indonesia and Jordan. The research extends beyond conventional textual analysis by incorporating perspectives from medical bioethics, thereby addressing the divergence between classical *fiqh* interpretations and contemporary biological realities.<sup>32</sup> The primary focus centers on the harmonization between positive legal texts and the validity of scientific evidence—specifically genetic and hormonal data—in determining the gender status of ambiguous heirs, with the aim of formulating legal provisions that uphold the principles of justice and legal certainty.

<sup>28</sup> Manar Hafeth Ismail, "Trans Coverage in Jordan: Western Fad, or Missing Narrative?," *Journalist Fellowship Paper*, no. 6 (2023): 7.

<sup>29</sup> Jan Michiel Otto, "Analyzing Jordan as a Model of Islamic Law Codification Transforming *Fiqh* into Enforceable Legislation," in *A Comparative Overview of the Legal Systems of Twelve Muslim Countries* (Leiden, 2010), 178–185.

<sup>30</sup> See Wael B. Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press, 1997).

<sup>31</sup> Cekli Setya Pratiwi, *Metodologi Penelitian Hukum Kontemporer dan Teknis Penulisan Jurnal Ilmiah Hukum* (Malang: UMM Press, 2025), 23.

<sup>32</sup> Tunggal Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1–9.

The primary data sources utilized in this study comprise authentic legal materials applicable in both Jordan and Indonesia. In the Jordanian context, the principal reference is the official text of the Jordanian Personal Status Law No. 15 of 2019, with particular emphasis on Article 325, which governs the legal reference mechanism to the Hanafi School in the absence of explicit statutory provisions. Conversely, in the Indonesian context, the primary source is Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). These primary data are supplemented by secondary sources, including authoritative jurisprudential literature from the Shafi'i and Hanafi schools, pertinent court rulings, and reputable international medical journals addressing Disorders of Sex Development (DSD) and forensic genetics.<sup>33</sup> Data collection was conducted through comprehensive library research, involving systematic examination of official government documents and verified legal databases to ensure the validity and accuracy of the references.<sup>34</sup>

The data analysis was conducted using descriptive-analytical methods, employing systematic and comparative interpretation techniques.<sup>35</sup> The classified legal data were analyzed to identify similarities (convergences) and differences (divergences) between the construction of Indonesian law influenced by the Shafi'i school and the Jordanian legal framework based on the Hanafi school, particularly in addressing normative gaps concerning *khunthā*. This analysis extended beyond textual comparison to assess the juridical implications of applying Article 325 of Law No. 15 of 2019 in Jordan in contrast to judicial discretion exercised in Indonesia. The findings were subsequently synthesized to develop a concept of adaptive inheritance law reconstruction capable of incorporating modern medical evidence as primary proof in intersex inheritance disputes.

## Result

### **The Legal Status of Intersex Persons as Heirs**

The classification of gender within Islamic law is fundamentally predicated on a binary framework distinguishing men and women, which serves as the foundation for determining *furūd* (fixed shares) and *ʿaṣabah* (residual inheritance). Within the corpus of fiqh, the term *khunthā* refers to an individual possessing ambiguous genitalia, characterized by either dual or imperfect genital structures, thereby engendering uncertainty (*shubhat*) regarding their legal status.<sup>36</sup> Islamic jurisprudential literature typologically categorizes *khunthā* into two legal classifications: *khunthā ghair mushkil*, whose status can be ascertained through predominant biological indicators such as the urinary tract or secondary sexual characteristics manifesting post-puberty; and *khunthā mushkil*, whose status remains indeterminate due to the absence of definitive signs or the presence of conflicting indicators. The determination of this status transcends a purely medical inquiry and constitutes an essential prerequisite (*conditio sine qua non*) for establishing whether the individual is to be accorded the male or the female, the principle whereby male heirs receive a double share compared to female heirs (2:1 ratio), under Islamic inheritance law.

<sup>33</sup> Edi Susilo et al., "Gender Decision Dilemma of Disorders of Sex Development (Khunsa) in Islamic Law with Medical Approach," *International Journal of Islamic Thought* 6 (June 1, 2022): 46–53.

<sup>34</sup> See Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method, An Introduction to Comparative Law Theory and Method* (London: Hart Publishing, 2014).

<sup>35</sup> Adams Maurice and Bomhoff Jacco, *Practice and Theory in Comparative Law, Practice and Theory in Comparative Law*, 2012.

<sup>36</sup> Muhammad Hafidz Abizar and Habibi Al Amin, "Inheritance Distribution of Khunthā Musykil (Effeminate)," *Shakhsyah Burhaniyah: Jurnal Penelitian Hukum Islam* 6, no. 2 (2021): 177–94.



The advancement of contemporary medical science has redefined traditional conceptions through the terminology of Disorders of Sex Development (DSD) or intersexuality,<sup>37</sup> which considers sex not solely based on external anatomy but also on chromosomal composition, gonadal structure, and hormonal profiles.<sup>38</sup> This medical perspective frequently extends beyond the physical criteria employed in classical fiqh. An individual may present a female phenotype while possessing a male genetic karyotype (XY), or conversely. This discrepancy between physical appearance and genetics necessitates that the legal system undertakes more rigorous verification processes beyond mere visual assessment to ensure that inheritance rights are allocated correctly in accordance with Sharia law.<sup>39</sup> Within the framework of positive law in Jordan, Personal Status Law No. 15 of 2019 does not provide an explicit definition or article delineating the typology of *khunthā*. A textual analysis of Articles 273 to 319, which govern inheritance, reveals that the law references heirs solely in categories such as son (*ibn*), daughter (*bin*), and brother (*akh*), among others. The absence of a specific classification for *khunthā* within this legislation indicates that Jordanian lawmakers have delegated the determination of this status to traditional Islamic jurisprudence.<sup>40</sup> This interpretation is further supported by Article 325, which mandates that judges consult the prevailing opinion within the Hanafi madhhab. According to Hanafi jurisprudence, the identification of *khunthā* primarily depends on physical indicators observed during urination (*mabhal*) prior to puberty, as well as secondary sexual characteristics, such as the development of a beard or breasts, after puberty.<sup>41</sup>

**Table 1.** Legal Comparison of Typologies Concerning Intersex Persons.

Variable	Jordanian Family Law	Indonesian Family Law
Legal framework	Law No. 15 of 2019, Article 325	Compilation of Islamic Law, 1991, Article 229
Primary methods of verification	Physiological observations and indicators of puberty	Physiological observation and judicial discretion
Ambiguous legal status	Classified as a distinct category when the physical signs are ambiguous or not clearly defined	Not explicitly regulated and is typically categorized into one of two binary classifications
Evidence in judicial proceedings	Evidence pertaining to physical signs or expert medical opinions	Medical expert testimony and judicial conviction

*Source: Authors' elaboration*

Table 1 delineates the fundamental differences in legal formalization between the two countries. In Indonesia, the KHI similarly exhibits a normative gap concerning the typology of *khunthā*. Article 171, letters b and c, of the KHI defines heirs exclusively based on blood relations or marital ties, presuming a clear binary gender classification. Notably, none of the provisions from Articles

<sup>37</sup> Nasir Am Al Jurayyan, "Disorders of Sex Development: Diagnostic Approaches and Management Options-an Islamic Perspective," *The Malaysian Journal of Medical Sciences: MJMS* 18, no. 3 (July 2011): 4–12.

<sup>38</sup> Nora Noralla, "A Blind Justice? Investigating Judicial Discourses on Legal Gender Recognition in the Middle East and North Africa," *Oxford Journal of Law and Religion* 14, no. 1 (February 1, 2025): 126–51.

<sup>39</sup> Peter A. Lee et al., "Consensus Statement on Management of Intersex Disorders," *Pediatrics* 118, no. 2 (August 1, 2006): e488–500.

<sup>40</sup> Chaula Luthfia, "Status Khuntsa Musykil Sebagai Ahli Waris (Studi Pemikiran Imam Abu Hanifah)," *Khuluqiyya: Jurnal Kajian Hukum dan Studi Islam* 1, no. 1 (August 4, 2019): 1–31.

<sup>41</sup> Susilo et al., 46-53.

176 to 193 of the KHI reference the terms *khunthā*. Consequently, the verification of the status of intersex heirs in the Religious Court heavily relies on evidentiary procedures. Judicial practice indicates that Indonesian judges exercise their authority under civil procedural rules to solicit expert testimony (*visum et repertum*) to ascertain the predominant gender characteristics of the individual in question, which is then legally recognized as either male or female.

In Jordan, Article 325 of Law No. 15 of 2019 mandates that judges adhere to the Hanafi madhhab, resulting in the continued authoritative reliance on traditional verification methods—such as assessing the direction of urine discharge—despite the gradual acceptance of DNA test results as significant *qarīnah* (evidentiary clues) in modern courts.<sup>42</sup> Conversely, in Indonesia, the KHI does not explicitly bind judges to a specific madhhab, referencing Islamic law more generally in Article 229. This affords judges greater discretion to prioritize chromosomal medical test results as primary evidence, without being constrained by rigid traditional physical verification procedures. The verification of *khunthā* status within these two legal frameworks fundamentally aims to establish legal gender for the purpose of property distribution. Notably, neither Jordanian nor Indonesian law provides for a third gender—both *mushkil* or *ghair mushkil*—must ultimately be legally classified as male or female through a court determination (*ithbāt*) prior to the execution of inheritance distribution. Absent such legally verified status—whether through fiqh-based methods in Jordan or medical evidence in Indonesia—the process of inheritance distribution encounters an executory impasse.

### **The Inheritance Rights of Intersex Persons**

The central juridical issue in the distribution of inheritance for *khunthā* individuals arises from the nominal fluctuations in asset allocation caused by the uncertainty of their gender status. Within the framework of Islamic inheritance law (*farā'id*), gender functions as a critical determinant that influences both the proportion of shares (*furūḍ*) and the entitlement to residual assets (*ta'ṣīb*). When this variable is ambiguous, the legal basis for inheritance distribution shifts from the principle of certainty (*yaqīn*) to that of prudence (*iḥtiyā*).<sup>43</sup> Theoretically, the calculation of inheritance for *khunthā* involves conducting two separate simulations: one assuming the individual is male, and the other assuming female.<sup>44</sup> The discrepancies between these two calculations constitute the core of legal disputes. In this context, positive law must establish a resolution mechanism that safeguards the rights of other heirs with clearly defined statuses, while simultaneously protecting the potential rights of the intersex persons.<sup>45</sup>

In Jordan, the distribution of inheritance is indirectly yet bindingly regulated by the Personal Status Law No. 15 of 2019. Notably, this law does not provide a specific quantitative table for the distribution of inheritance pertaining to *khunthā*. Consequently, pursuant to Article 325, judges of the Sharia Court are mandated to apply the Hanafi's doctrine. According to the Hanafi approach to distributing the inheritance share of *khunthā mushkil*, the principle of *al-aqall* (the lesser share) is followed.<sup>46</sup> Under this mechanism, the judge calculates the inheritance share twice—once as if

<sup>42</sup> Felthous and Kahlon, 260.

<sup>43</sup> Aḥmad 'Alī 'Abdallāh, *Al-Ahliyyah: Or, Legal Capacity in Islamic Law* (Kuala Lumpur: Centre for Islamic Legal Studies, 1978).

<sup>44</sup> Mohaddeseh Moeinifar and Faezeh Azimzadeh Ardebeli, "Lineage and the Rights of Cloned Child in the Islamic Jurisprudence," *Journal of Reproduction & Infertility* 13, no. 4 (October 2012): 183–92.

<sup>45</sup> Mariam Sheibani, "Marriage, Divorce, and Inheritance in Classical Islamic Law and Premodern Practice," in *The Oxford Handbook of Islam and Women* (Oxford University Press, 2023), 155–80.

<sup>46</sup> Mariam Sheibani, 169.



the individual were male and once as if female—and then awards the *khunthā* the smaller of the two amounts.<sup>47</sup> The legal rationale underlying this approach is that the lesser share constitutes a definite right (*mutayaqqan*), whereas any excess represents a doubtful right (*mashkūk fīh*). In Islamic jurisprudence, certainty cannot be overridden by doubt.

The application of the Hanafi madhhab carries specific implications for other heirs. Within the Hanafi framework, as adopted in Jordan, the treatment of other heirs emphasizes the principle of certainty.<sup>48</sup> If the presence of a *khunthā* is presumed to be male or female, potentially reducing the shares of other heirs or even excluding them (*hijāb*), the other heirs are consequently allocated the minimum share to safeguard the estate. However, in cases where divergent opinions exist within the Hanafi madhhab—such as those of Abu Yusuf and Muhammad bin Hasan—regarding the disposition of the remaining property, the Jordanian judiciary possesses the discretion to select the opinion that best serves the interests involved. Nonetheless, prevailing practice generally entails retaining the remaining property (*mawqūf*) until the *khunthā* status is medically determined or until a settlement (*ṣullh*) is reached among the heirs.<sup>49</sup>

In contrast, the juridical framework governing inheritance distribution in Indonesia encounters challenges due to the absence of explicit norms within the KHI. Specifically, the lack of provisions addressing the “smallest part” or “largest part” allocation compels judges in the Religious Courts to engage in legal interpretation (*rechtsvinding*).<sup>50</sup> In practice, given that the majority of Indonesian Muslims adhere to the Shafi'i madhhab, judges frequently rely on the Shafi'i madhhab's more stringent principles compared to the Hanafi's.<sup>51</sup> According to the Shafi'i interpretation, the *khunthā* and other heirs receive the smallest shares, while the remaining disputed assets are held in abeyance (*status quo*) pending verification of the *khunthā*'s gender status. Nonetheless, this practice of asset suspension is regarded as inefficient within the context of the contemporary economy.<sup>52</sup> Consequently, some judicial decisions in Indonesia demonstrate a preference for requiring medical evidence at the outset of the trial to definitively establish gender status, thereby enabling the final distribution of inheritance without the necessity of withholding property.

In comparison, the legal framework in Jordan provides greater procedural certainty by exclusively referencing the Hanafi madhhab. This approach inherently grants the *khunthā* a minimum level of acceptance, thereby reducing potential disputes. Conversely, the system in Indonesia, governed by the KHI, is more flexible but may lead to inconsistencies in judicial decisions. The lack of standardized rules within the KHI allows judges to move beyond strict adherence to the doctrine of the smallest part, that decisions are supported by robust scientific evidence. This indicates a shift in the juridical construction of inheritance distribution in both countries—from a dogmatic-classical approach, which emphasizes property retention or minimal shares, toward a material evidence-based approach, wherein medical certainty plays a pivotal role in determining full inheritance rights rather than partial entitlement.

<sup>47</sup> Mohi Uddin, “Inheritance of Hermaphrodite (Khuntha) under the Muslim Law: An Overview,” *Beijing Law Review* 08, no. 02 (2017): 226–37.

<sup>48</sup> Myriam Ababsa, 75.

<sup>49</sup> Moeinifar and Ardebeli, 187.

<sup>50</sup> Fitria Agustin, Hasuri Hasuri, and Najmudin Najmudin, “Kedudukan Hukum Islam dalam Pelaksanaan Waris di Indonesia,” *Mizan: Journal of Islamic Law* 6, no. 1 (April 17, 2022): 109–29.

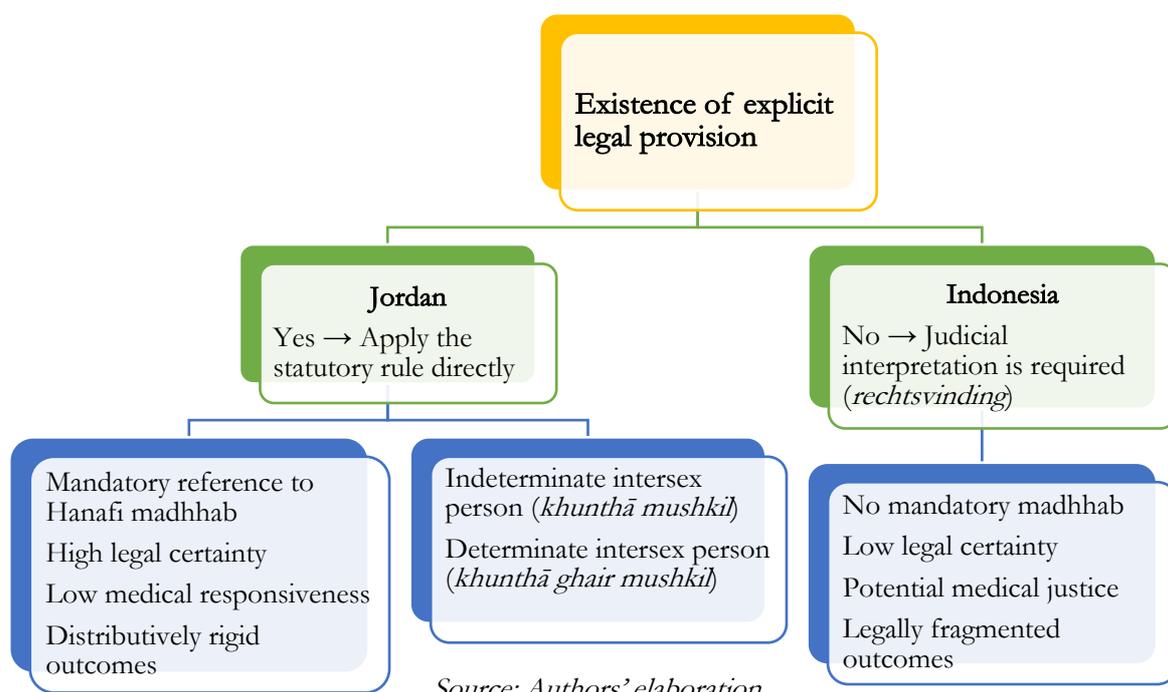
<sup>51</sup> R. Hari Purwanto and Eddy Herwanto, “Pembagian Hak Waris Atas Pengantian Jenis Kelamin,” *Jurnal Pro Hukum: Jurnal Penelitian Bidang Hukum Universitas Gresik* 9, no. 1 (2020): 1–17.

<sup>52</sup> Zahrotusani Aulia Nurrubiyanti and Azis Muslim, “Transisi, Eksistensi, dan Spiritualitas Transpria: Pengalaman dan Argumen Amar Alfikar,” *Musawa Jurnal Studi Gender dan Islam* 21, no. 2 (2023): 187–200.

### The Legal Standing of Intersex Persons as Heirs

The legal standing, or *persona standi in iudicio*, of a *khunthā* in inheritance disputes is derived from the concept of legal competence (*al-ahliyah*) in Islamic jurisprudence.<sup>53</sup> Fundamentally, every human being born alive, irrespective of ambiguous genitalia, possesses *ahliyah al-wujūb* (the capacity to acquire rights), including the right to inherit (*tirkah*).<sup>54</sup> Nevertheless, challenges emerge concerning *ahliyah al-adā'* (the capacity to exercise rights) and the implementation of these rights. From the perspective of Islamic law, the legal standing of a *khunthā* heir is distinctive due to their gender clarity; although legally recognized as a legal subject, their gender identity—which determines the extent of their rights—is provisional. Figure 1 constitutes that the legal status of a *khunthā* cannot be fully equated with that of typical heirs who possess fixed legal standing; rather, it occupies a *prima facie* position that necessitates further verification to secure full rights.

**Figure 1.** Determining the Legal Standing of Intersex Persons' Inheritance Rights.



Within the jurisdiction of Jordan, the legitimacy of the *khunthā* as a claimant to inheritance rights is affirmed by the provisions of the Personal Status Law No. 15 of 2019. Although this legislation does not provide a detailed operational definition of *khunthā*, the inclusion of Article 325, which references the Hanafi madhhab, offers a substantive legal basis for their recognition. Under the Hanafi doctrine applied by Jordanian courts, *khunthā* is entitled to claim a share in the division of inheritance; however, their capacity to *hijāb* (i.e., to exclude or diminish the shares of other heirs) is constrained by the principle of doubt. This principle acknowledges the *khunthā* as a legitimate heir but limits their authority to reduce or eliminate the inheritance rights of other claimants, such as uncles or brothers, until their status is definitively established. Sharia judges in Jordan exercise full discretion in determining this status, guided by the maxim *al-yaqīn lā yuzāl bi al-shakk* (certainty is not overruled by doubt).

<sup>53</sup> Sri Khayati, "Pembagian Harta Warisan Berdasarkan Metode Hukum Waris Islam dan Kompilasi Hukum Islam," *Arus Jurnal Sosial dan Humaniora* 3, no. 1 (2023): 15–24.

<sup>54</sup> Tinuk Dwi Cahyani, *Hukum Waris dalam Islam: Dilengkapi Contoh Kasus dan Penyelesaiannya* (Malang: UMM, 2018), 67.

In Indonesia, the legal recognition of *khunthā* within religious courts frequently conflicts with administrative procedures. The KHI does not explicitly address this issue; consequently, *khunthā* seeking to initiate inheritance claims generally must either voluntarily apply for a formal determination of their status or obtain *ithbāt* (legal affirmation) for gender clarity. In the absence of a court ruling that definitively establishes their status as male or female, intersex persons face challenges in being acknowledged as legal subjects in the Certificate of Heirs (SKAW). Nonetheless, jurisprudence in Religious Courts exhibits a degree of flexibility, as judges may grant legal standing to *khunthā* based on medical evidence—such as a physician’s certificate or chromosomal analysis—submitted during the proceedings. This practice circumvents the necessity for a burdensome dual application process and is consistent with judicial principles emphasizing simplicity, expediency, and cost-effectiveness.<sup>55</sup>

The most significant implication of *khunthā* legal status pertains to the doctrine of *ḥijāb ḥirmān* (total barrier). In Jordan, under Article 325 of Law 15/2019, a *khunthā* whose male status remains uncertain (*mushkil*) lacks the legal capacity to fully exercise the inheritance rights of male siblings. The law safeguards the “definite rights” of the siblings. Conversely, in Indonesia, if medical evidence (such as DNA or XY chromosome analysis) is accepted by the court as valid, the *khunthā*’s legal status as male becomes definitive. Consequently, the individual acquires full legal authority to exercise inheritance rights, thereby excluding other heirs. This transition from jurisprudential uncertainty to medical certainty enhances the bargaining position of *khunthā* heirs under modern legal systems.<sup>56</sup> In summary, the legal status of *khunthā* heirs in both countries has evolved distinctly. In Jordan, the position is shaped by the law’s hierarchical adherence to Hanafi madhhab doctrine (Article 325), which designates the *khunthā* as a subject with limited rights as a precautionary measure. In contrast, in Indonesia, legal status is heavily contingent upon material evidence presented at trial. The absence of rigid provisions in the KHI creates a constructive gap that permits medical science to serve as the primary determinant, thereby transforming the *khunthā* from a legally ambiguous subject into a full legal entity entitled to equal inheritance, provided that biological validity is clinically established.

## Discussion

The legal status of intersex person in Indonesia and Jordan demonstrates a notable convergence between classical doctrine and contemporary legislation. The primary distinction lies in the formalization of legal norms: Jordan codifies explicit instructions for judges through *Qanūn al-Aḥwāl al-Shakhṣiyyah al-Urdunī*, whereas Indonesia relies on judicial *ijtihad* as articulated in Article 229 of the KHI. This analysis reveals that, notwithstanding divergent formal mechanisms, both countries are committed to the equitable distribution of inheritance. This underscores the capacity of Islamic law to adapt to human complexity while remaining faithful to established Sharia principles, as articulated in authoritative texts, in a logical, systematic, and accountable manner aimed at achieving distributive justice for heirs.<sup>57</sup> Islamic inheritance law is fundamentally

<sup>55</sup> Melanie Newbould.

<sup>56</sup> Sayed Sikandar Shah Haneef and Mahmood Zuhdi Haji Abd Majid, “Medical Management of Infant Intersex: The Juridico-Ethical Dilemma of Contemporary Islamic Legal Response,” *Zygon: Journal of Religion and Science* 50, no. 4 (December 2, 2015): 809–829.

<sup>57</sup> Ahmed Fouad, “Legalizing Bequests to Heirs in Egypt as a Legislative Application of Talfiq: Towards a Purposive Interpretation of Article 37 of Law No. 71/1946,” *Yearbook of Islamic and Middle Eastern Law Online* 23, no. 1 (October 4, 2024): 204–32.

predicated on a rigid binary gender framework, wherein gender distinctions primarily determine the allocation of property rights. The findings highlight an epistemological tension between the legal certainty sought by the state and the biological ambiguity experienced by intersex persons. When confronted with cases of intersexuality, Jordan's Personal Status Law Number 15 of 2019 and Indonesia's KHI adopted markedly different approaches. Jordan pursued a dogmatic formalism approach, adhering strictly to madhhab interpretations, whereas Indonesia, confronted with a normative vacuum, implicitly embraced a judicial flexibility approach. These differences transcend procedural variation, reflecting broader challenges within contemporary Islamic law as it seeks to reconcile sacred texts with evolving medical realities.

Article 325 of Law No. 15 of 2019 in Jordanian family law demonstrates the legislators' prioritization of systemic stability over individualized notions of justice. By mandating that judges adhere to the *rājiḥ* opinion within the Hanafi madhhab, the law effectively eliminates the possibility of arbitrary interpretation. This provision ensures a high degree of legal certainty, as disputes concerning *khunthā* are resolved predictably through the application of the *al-aqall* (the smallest part) rule. Nonetheless, this approach has been subject to significant criticism. By confining the resolution to the framework of classical medieval jurisprudence—which was formulated based on external anatomical observations, such as urination—the Jordanian legal system risks disregarding empirical evidence provided by modern scientific advancements. The formalism embedded in Article 325 may perpetuate a form of procedural discrimination, *khunthā* are assigned a minimal legal status solely because the law refuses to acknowledge the validity of DNA testing as a primary determinant over physical indicators.<sup>58</sup>

Contrary to the common critique that the absence of specific norms in the KHI in Indonesia constitutes a legislative deficiency, this gap actually creates a “breathing space” for the incorporation of scientific evidence in inheritance law. The lack of explicit provisions concerning *khunthā* compels judges in the Religious Courts to engage in progressive *rechtsvinding* (judicial law-finding). In contemporary legal discourse, the absence of rigid statutory rules permits judges to consider medical evidence—such as karyotype and hormonal analyses—as primary proof. Unlike their Jordanian counterparts, who are bound by Article 325 to adhere to Hanafi madhhab, Indonesian judges possess the autonomy to interpret the *maqāṣid al-sharī'ah* (the higher objectives of Islamic law) in a contextual manner. If a judge determines that a *khunthā* is genetically male (XY), the judge may grant a full 2:1 inheritance right, an outcome that better aligns with principles of distributive justice than merely allocating a minimal secure portion.<sup>59</sup> However, the uncertainty within the Indonesian legal system entails certain risks. In the absence of codified guidelines comparable to those in Jordan, the fate of *khunthā* heirs in Indonesia largely depends on judicial activism or the individual perspectives of presiding judges.<sup>60</sup> This variability poses a significant risk of inconsistent verdicts; some judges may accept medical evidence, whereas more conservative judges might reject it and revert to classical Shafi'i madhhab principles, effectively freezing the inheritance. Such disparities generate legal uncertainty. From the perspective of legal sociology,

<sup>58</sup> Felthous and Kahlon, 248.

<sup>59</sup> Riana Kesuma Ayu, “Kedudukan Pembagian Harta Warisan Bagi Ahli Waris Khunthā dalam Perspektif Kemajuan Teknologi,” *Lambung Mangkurat Law Journal* 5, no. 2 (2020): 190–202.

<sup>60</sup> Ahmad Asrof Fitri and Sansan Ziaul Haq, “Transgender dan Redefinisi Khunthā dalam Kajian Medis dan Fiqih Kontemporer: Studi Kasus Aprilio Manganang-Amar Alfikar,” *Asy-Syari'ah* 24, no. 1 (2022): 73–90.



Jordan provides certainty that may be medically unjust, whereas Indonesia offers the potential for medical justice that remains legally uncertain.<sup>61</sup>

This discussion underscores a paradigmatic shift in evidentiary standards from visual-empirical methods to biomedical-molecular approaches. Classical jurisprudence, as adopted in Jordanian law through the Hanafi madhhab, predominantly relies on outward appearance. This reliance was appropriate in an era when technological capabilities did not extend to genetic analysis.<sup>62</sup> However, the continued use of the urine test as the legal standard in the genomic era constitutes an anachronism. The findings presented here contend that persisting with such archaic methods, despite the availability of more precise techniques such as DNA analysis, contravenes the maxim *al-ḥukm yadūr ma‘a ‘illatih wujūdān wa ‘adaman* (legal ruling exists or ceases to exist in accordance with the presence or absence of its effective cause). If the underlying cause (*‘illat*) of gender ambiguity can now be resolved through electron microscopy, then legal classifications that treat affected individuals as intersex persons should be reconsidered.<sup>63</sup> From a human rights perspective, the smallest part approach, derived from Article 325 of Jordanian law, may function to protect the interests of large families but does so at the expense of vulnerable individuals. Allocating the smallest share to the *khunthā* under the guise of prudence effectively places the entire burden of uncertainty on intersex persons. According to John Rawls's theory of justice, the law ought to safeguard the most disadvantaged. Compelling the *khunthā* to accept minimal entitlements when scientific evidence can substantiate their full rights constitutes a form of systemic injustice institutionalized through legal codification.

Conversely, the practice in Indonesia of requiring or awaiting sex reassignment surgery prior to the distribution of inheritance raises significant bioethical concerns. Not all intersex conditions necessitate or permit surgical intervention. Insisting on physical clarity as an absolute prerequisite for inheritance, as implicitly reflected in legal practice, may incentivize unnecessary medical procedures solely to secure economic rights.<sup>64</sup> The law should recognize genotype (chromosomal composition) as the legal basis for inheritance, rather than compelling individuals to alter their phenotype to conform to existing legal categories. A synthesis of these considerations suggests a hybrid legal model: Jordan benefits from a well-structured codification system, whereas Indonesia offers greater substantive flexibility. The optimal model for future Islamic inheritance law would adopt a robust structural framework akin to Law No. 15 of 2019, while revising its substantive references. Rather than relying on the opinions of ancient jurisprudential schools (as in Article 325), modern legislation should defer to qualified medical experts to determine legal status. Furthermore, inheritance law codification should incorporate an exclusive clause stipulating that, in cases of sex ambiguity, legal status shall be determined based on valid genetic medical evidence.<sup>65</sup>

It is important to recognize that resistance to the incorporation of scientific knowledge in family law often stems from concerns about the potential disruption of the patrilineal social order.

<sup>61</sup> Juan Carlos Jorge et al., “Intersex Care in the United States and International Standards of Human Rights,” *Global Public Health* 16, no. 5 (May 4, 2021): 679–91.

<sup>62</sup> Tarmizi Tarmizi et al., “Inheritance Distribution and Conflict Resolution in Bone Regency: Upholding Women’s Rights and Islamic Law Objectives,” *De Jure: Jurnal Hukum dan Syar’iah* 16, no. 2 (2024): 255–77.

<sup>63</sup> Ilham Ghoffar Solekhan and Maulidi Dhuha Yaum Mubarok, “Khuntsa dan Penetapan Statusnya dalam Pandangan Fiqh Kontemporer,” *Al-Hurriyah: Jurnal Hukum Islam* 5, no. 2 (2020): 160–71.

<sup>64</sup> Dede Hilman Rasyid and Winda Fitri, “Telaah Fenomena Operasi Penggantian Kelamin Bagi Khuntsa (Studi Komprehensif Hukum Islam dan Hukum Positif),” *Jurnal Risalah Kenotariatan* 4, no. 2 (2023): 773–85.

<sup>65</sup> Mohammad Syifa Urrosyidin, Mohammad Syamsul Arifin, and Devid Frastiawan Amir Sup, “Esensi Keadilan dalam Ilmu Waris Islam,” *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 15, no. 2 (2022): 257–81.

Nevertheless, this analysis demonstrates that the integration of medical science actually reinforces the higher objectives of Sharia, specifically the preservation of lineage (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*). By employing scientific methods to accurately determine an individual's gender, the proper allocation of inheritance shares is ensured, thereby preventing the misallocation of assets—such as awarding a male share to a genetically female individual, or vice versa. Consequently, medical precision represents the highest form of adherence to divine injunctions regarding inheritance distribution, rather than a deviation from them. In conclusion, this study asserts that the concept of *khunthā* should no longer be regarded merely as a biological anomaly warranting concealment and minimal inheritance rights; rather, it must be recognized as a legitimate legal subject entitled to authentic identity acknowledgment. Both Jordan and Indonesia are urged to pursue progressive legal reforms: Jordan should reconsider the rigid application of Article 325, which is heavily reliant on classical texts, to better accommodate scientific advancements, while Indonesia must promptly address the existing normative gap by revising the KHI to provide clear legal certainty. In the twenty-first century, justice in the inheritance rights of intersex persons depends not on archaic interpretations of physiological functions, but on the legal system's willingness to accept genetic evidence as a manifestation of divine will inscribed within the human body.

## Conclusion

The study concludes that the construction of inheritance law concerning intersex persons (*khunthā*) in Jordan and Indonesia reflects a dichotomy between dogmatic certainty and judicial flexibility. The divergent legal frameworks in Jordan and Indonesia have profound implications for distributive justice within the context of Islamic inheritance law. In Jordan, Article 325 of Law No. 15 of 2019 mandates adherence to the Hanafi madhhab, thereby promoting legal certainty and predictability; however, this approach risks marginalizing scientific evidence. By privileging traditional biological indicators over genetic data, the current framework systematically disadvantages *khunthā* individuals in the allocation of inheritance rights. Conversely, Indonesia's KHI of 1991 more flexible legal practice permits the integration of scientific evidence, including chromosomal and hormonal testing, which facilitates the recognition of *khunthā* inheritance rights consistent with their genetic identity. Nonetheless, the absence of explicit provisions within the KHI renders this approach reliant on judicial discretion, resulting in inconsistency and undermining legal certainty. Therefore, urgent reform is necessary in both jurisdictions. Jordan should amend its regulations to prioritize forensic medical evidence in cases involving gender ambiguity, while Indonesia must undertake a formal revision of the Compilation of Islamic Law to codify the legal status and inheritance rights of *khunthā* individuals. Such bio-juridical harmonization is imperative to ensure that Islamic inheritance law remains both theologically just and scientifically informed.

This study presents several limitations that warrant acknowledgment. Firstly, the analysis is predominantly doctrinal and normative, relying on statutory texts, judicial decisions, and classical fiqh doctrines, without incorporating empirical data derived from judicial practice or the lived experiences of *khunthā* individuals. Consequently, the findings may not fully reflect the practical implementation of legal norms in everyday adjudication. Secondly, the comparative scope is confined to Jordan and Indonesia, thereby limiting the generalizability of the conclusions to other Muslim-majority jurisdictions with differing legal traditions. Thirdly, the study primarily addresses inheritance law and does not consider related legal domains such as marriage, guardianship, or civil



registration, which may substantially influence the legal status of *khunthā*. Future research is thus encouraged to employ interdisciplinary and empirical methodologies, including socio-legal fieldwork and comparative analyses across a broader range of jurisdictions, to more comprehensively examine the practical implications of bio-juridical integration within Islamic family law.

## Acknowledgement

The authors wish to extend their sincere gratitude to the anonymous reviewers for their thorough evaluation of the manuscript and for providing insightful, constructive, and detailed feedback. The reviewers' critiques and recommendations have been instrumental in strengthening the theoretical framework, enhancing analytical clarity, and improving the overall quality of this study. Their engagement has fostered deeper reflection and prompted substantial revisions that have increased both the rigor and coherence of the argument. Any remaining limitations are the sole responsibility of the authors; nevertheless, this article has greatly benefited from the reviewers' expertise and scholarly generosity.

## Disclosure Statement

During the research and composition of this article, the authors guarantee that no potential conflicts of interest exist, including financial, institutional, or personal relationships, nor the involvement of any party that could influence or be perceived to influence the objectivity of the research.

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