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Reconstructing Population Law for Transsexual Status Change Based on Humanitarian Values

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ABSTRACT: Gender change regulations in Indonesia present complex legal and social challenges that require thorough examination to ensure protection and recognition of individual rights. This study aims to describe and analyse the ratio legis of the legal provisions regarding gender change from the perspective of Indonesian legislation, as well as to identify and analyse the relevance of these provisions to Werner Menski's legal pluralism triangle concept. The research employs normative legal methods using statutory, philosophical, and conceptual approaches. Data collection is conducted through literature studies on laws and regulations, legal literature, and court decisions related to gender change. The results indicate that the ratio legis of gender change provisions reflects the state's effort to protect and recognise the personal and legal status of every citizen. However, these provisions have not yet shown strong relevance to Werner Menski's legal pluralism triangle concept, particularly regarding the legal protection of transgender individuals whose petitions for gender status changes have been rejected by the courts. The conclusion emphasises the need to adjust national legal norms to better respond to the complex moral, social, and cultural issues arising in a globalised society.

KEYWORDS: Reconstruction; Civil Registration Law; Transsexual.

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I. INTRODUCTION

Legal issues, as a mismatch between ideals and reality, have become increasingly complex over time with the progress of the era.[1] In a world dominated by globalisation, progress and improvement are not always about modernity, effectiveness, efficiency, informativeness, and the distribution of technology. Often, the progress of the times even leads to a society with tendencies toward consumerism, liberalism, inefficiency, confusion in information, and even widening disparities.[2] One such issue is the provision of Article 56 paragraph (1) of Law Number 23 of 2006 on Population Administration (Civil Administration Law), which essentially requires that requests for a change of gender in population data must be submitted to the district court.[3]

According to Erman Rajagukguk, the first recorded case of a gender change application in the Indonesian district court occurred in 1973, when Iwan Rubianto (a man) petitioned to legally change his gender to Vivian Rubianti (a woman) at the Central Jakarta District Court. Prior to the petition, Iwan had undergone sex reassignment surgery in Singapore. Rajagukguk explains that Iwan's motivation stemmed from psychological distress, as he had shown feminine traits, behaviours, and sexual inclinations since childhood.[4]

The application of Article 56 paragraph (1) of the Population Administration Law in another case has also presented more complicated challenges. Unlike the previous explanation by Erman Rajagukguk, the decision of the Purwokerto District Court Number 30/Pdt.P/2022/PN Pwt actually rejected the application for a gender change, even though the

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1 Sugiyono, *Metode Penelitian Kualitatif: Untuk Penelitian yang Bersifat : Eksploratif, Enterpretif, Interaktif, dan Konstruktif*, 4th ed (Bandung: Alfabeta, 2021).

2 Ahmad Syafi'i Maarif, *Menerobos Kemelut: Refleksi Cendekiawan Muslim* (Yogyakarta: Grafindo Khazanah Ilmu, 2005).

3 Presiden Republik Indonesia, *Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan, Lembaran Negara Tahun 2006 Nomor 124* at 124.

4 Erman Rajagukguk, "Hakim Indonesia Mengesahkan Penggantian dan Penyempurnaan Kelamin" (2021) 1:1 Jurnal Magister Ilmu Hukum (Hukum dan Kesejahteraan) 42-48.

petitioner had undergone gender reassignment surgery. This situation brings up more complex issues.[5]

The judge, in examining the case, legally, based on the principle of *nomen non sufficit si res non sit de jure aut de facto* (something described or spoken without legal grounds or supporting legal facts), or as Achmad Ali also refers to it as pacta sunt potentiora verbis (laws are not just words), explained that the examination process of the petitioner's application was proper for rejection.[6]

Based on these two examples of decisions regarding gender change status applications above, which are contextualised as the implementation of the provisions of Article 56 paragraph (1) of the Population Administration Law, it becomes apparent that there is an inconsistency in the output of decisions. This situation at least shows that the district courts have not yet reflected the principle of similia similibus, namely uniformity of decisions, so that justice seekers can obtain certainty over a case or application that is the same as previous decisions.[7]

The legal status of gender change, which varies in its implementation, increasingly shows more complex problems when it comes to legal acts of marriage. Transgender individuals whose application for gender change has been approved will, on one hand, face the provisions of Article 2 paragraph (1) of Law Number 1 of 1974 on Marriage ('Marriage Law'), which states that a marriage is only valid if it is carried out according to the religion or belief of each prospective spouse.[8]

On the other hand, if a transgender individual's application for gender change is rejected, they will not be able to marry. This is based on the fact that the transgender individual has already undergone gender reassignment surgery, whereas the provisions of Article 1 of the Marriage Law state that marriage is a bond of body and soul between a man and a woman as

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5 *Decision of Purwokerto District Court Number 30/Pdt.P/2022/PN Pwt, 2022*.

6 Achmad Ali, *Menguak Tabir Hukum: Suatu Kajian Filosofis Dan Sosiologis* (Jakarta: Kencana, 2017).

7 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1988).

8 Presiden Republik Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1* at 1.

husband and wife. The point here is that the legal uncertainty resulting from the regulation of gender status changes will ultimately lead to injustice and the violation of citizens' civil rights.

This paper aims to analyse the issues related to district court decisions as stipulated in Article 56 paragraph (1) of the Population Administration Law, with a focus on future reconstruction based on the triangular concept of legal pluralism. Achmad Ali from Werner Menski mentions that the effectiveness of a law becomes more evident when it integrates three aspects: the state, society, and morality (religion).[9] The religious morality aspect here refers to how Islam (Islamic administrative law) views the registration of changes in population data related to transgender individuals.

A review of previous research shows that this study introduces novelty in the discussion of transgender issues within population administration law. Research by Rafli Tuada Yudha focuses on the legality of transgender marriages and their legal consequences,[10] while studies by Agustini Andriani and Rina Antasari focus on the legal status of transgender individuals post-court decisions from the perspective of *maqāṣīd al-sharīʿah* and the theory of existence.[11] Research by I Nyoman Satria Perwira, Ida Ayu Putu Widiati, and Diah Gayatri Sudibya highlights the procedures for gender change under Indonesian positive law.[12] These three studies centre on the status of transgender individuals from a positive law perspective but

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[9] Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, (Jakarta: Kencana, 2010).

[10] Rafli Tuada Yudha, Muhamad Rasyid, & Putu Samawati, *Status Hukum Perkawinan Transgender Ditinjau dari Undang-Undang Perkawinan,* (Universitas Sriwijaya, 2022).

[11] Agustini Andriyani & Rr Rina Antasari, "Kajian Teori Eksistensi Status Hukum Transeksual Terhadap Perubahan Jenis Kelamin Pasca Penetapan Pengadilan" (2020) 5:1 Muamalah 15–30.

[12] I Nyoman Satria Perwira, Ida Ayu Putu Widiati, & Diah Gayatri Sudibya, "Perubahan Status Jenis Kelamin dalam Perspektif Hukum Positif di Indonesia" (2021) 2:1 Jurnal Interpretasi Hukum 74–78.

have not yet attempted to reconstruct the legal norms of population administration as this study does.

Further, research by Roby Yansyah and Rahayu expands the discussion to global LGBT issues and their relation to human rights and religion in Indonesia, making the focus on transgender status change in population administration still macro in nature.[13] Similarly, research by Holyness Nurdin Singadimendja, Agus Mulya Karsona, and Afra Fathina Azzahra discusses changes in transgender identities and marriage status, but has not specifically examined proposals for legal reconstruction based on Islamic administrative law approaches.[14] Therefore, this study goes further by enriching the discourse through the integration of Islamic human rights values in the reform of the provisions of Article 56 of Law Number 23 of 2006 on Population Administration.

Based on this comparison, it can be emphasised that this research represents a new effort that not only describes and analyses the legal status of transgender individuals in population administration but also offers a legal reconstruction based on Islamic administrative law. Thus, this study serves as a deepening, complementing, and expanding of previous research, while providing theoretical and practical contributions to the development of a more just, humane, and Islamically aligned population administration system. The accountability of this paper explicitly signals the need to outline the scientific methods used by the author.

II. METHODS

The determination and elaboration of research methodology requirements are based on their suitability with the research problems, variables, hypotheses, and focus of the issues. This study uses a legal research approach based on legislation (statute approach), philosophically

[13] Roby Yansyah & Rahayu Rahayu, "Globalisasi Lesbian, Gay, Biseksual, dan Transgender (LGBT): Perspektif HAM dan Agama dalam Lingkup Hukum di Indonesia" (2018) 14:1 Law Reform 132-146.

[14] Holyness Nurdin Singadimedja, Agus Mulya Karsona, & Afra Fathina Azzahra, "Identitas Baru Transeksual dan Status Hukum Perkawinannya" (2019) 4:1 Jurnal Ilmiah Hukum De'Jure: Kajian Ilmiah Hukum 13–30.

(philosophical approach), and conceptually (conceptual approach). The type of research used in this paper is normative research or also known as juridical-normative research. As explained by Abdul Kadir Muhammad, normative research is part of legal research that is based on the conflict of norms, principles, theories, and legal rules.[15]

From the perspective of the contextual closeness between information and the object of regulation being studied, legal materials are classified into three categories: primary, secondary, and tertiary legal materials.[16] The collection of legal materials for this research is carried out as in non-field research in general, namely through library research. Yaniawati explains that library research is essentially a research method in itself, not a technique for collecting legal materials.[17] Along with the development of knowledge in the field of legal research, Amiruddin and Zainal Asikin explain that library research can be used as a technique for collecting legal materials.[18] The analytical technique determined is descriptive-evaluative and a legal syllogism.

III. RATIO LEGIS OF THE NORMATIVITY OF TRANSSEXUAL STATUS CHANGE IN LEGISLATION IN INDONESIA DISTRESS IN LAW NUMBER 37 OF 2004

The identification of regulations in Indonesia governing the change of gender in civil registration documents in the context of this writing has been found to occupy a central position, making it a starting point or 'test case' through which the policies of the Government of the Republic of Indonesia are indicated to face legal uncertainty, ultimately leading to inequality, and potentially resulting in injustice.

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[15] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).

[16] Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi*, 2nd ed (Jakarta: Kencana Prenada Media Grup, 2017).

[17] R Poppy Yaniawati, "Penelitian Studi Kepustakaan (Library Research)" (2020) Penyamaan Persepsi Penelitiaan Studi Kepustakaan 1–31.

[18] Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*, revisi ed (Depok: RajaGrafindo Persada, 2018) 10.

Throughout this investigation, it was discovered that the only regulation addressing the issue of gender change in the context of civil registration is Law Number 23 of 2006 on Civil Administration (Civil Administration Law). Through the provisions of Article 56 of this law, the term "gender change" in civil registration documents is classified as a recording of another important event. As also explained in the explanation of the articles:

> *"Yang dimaksud dengan "Peristiwa Penting lainnya" adalah peristiwa yang ditetapkan oleh pengadilan negeri untuk dicatatkan pada Instansi Pelaksana, antara lain perubahan jenis kelamin (Indonesian language)."*
>
> What is meant by 'Other Important Events' are events that are determined by the district court to be recorded by the Implementing Agency, including gender change (*Translate by Author*)

The provisions of Article 56 of the Civil Administration Law, when examined from a normative perspective, consist of three paragraphs, each of which explains the following: First, it relates to the administrative procedure for applying for the recording of a gender change, which indicates that before the civil registration officer can carry out the recording, the person concerned must first obtain permission from the local district court with a decision that has permanent legal force. Second, it relates to the time frame within which the civil registration officer must carry out the recording after the issuance of a decision from the district court that has become final. Third, it concerns the delegation of more specific regulations through a presidential regulation.

The provisions of Article 56 of the Population Administration Law, when examined closely, are part of the civil registration regime as regulated in Chapter V of the Civil Administration Law. Systematically, Article 1 number 15 of the Civil Administration Law defines civil registration as the recording of important events experienced by an Indonesian citizen in the civil registration register at the implementing agency. Meanwhile, the provisions of Article 1 number 17 of the Civil Administration Law explain that the term ‘important event’ refers to incidents experienced by an Indonesian citizen, which include birth; death; stillbirth; marriage; divorce; recognition of a child; legalisation of a child; adoption of a child; name change; and change of nationality status.

Based on the limitation of the meaning of the term 'important events' in the context of civil registration above, it is explicitly evident that the phrase 'other important events' as a counterpart for the registration of gender change seems to be excluded. However, the construction of the regulation in Chapter V of the Civil Registration Law actually includes it in Section Ten, after the regulations on the registration of name changes and changes in nationality status in Section Nine, and the regulations on the reporting of individuals unable to report themselves in Section Eleven. This suggests that there are two regulations outside the qualifications already mentioned in Article 1, paragraph 17 of the Civil Registration Law, which defines civil registration.

The issue of gender change and its legalisation under regulations in Indonesia requires examining the context of why Indonesia, as a country that lays its foundation on the belief in One God, acknowledges gender change, which is prohibited by all religions in Indonesia. Throughout the writer's exploration, it appears that the main regulation underlying this issue is the Civil Registration Law, which was amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 on Civil Registration (Amendment of the Civil Registration Law).

The scope of the ratio legis, as explained in the previous theoretical review, refers to the spirit or reason behind the creation of a law (the occasion of making a law). When contextualised in the formation of regulations as implied by Law Number 12 of 2011 on the Formation of Regulations, these reasons can be identified in three foundations: philosophically, sociologically, and juridically.

The search for these three foundations for the formation of regulations, in simple terms, without looking at the academic draft, according to Maria Farida, can be seen in the consideration section of each regulation after the phrase "With the Blessing of the Almighty God," systematically, with the point at the beginning representing the philosophical foundation, the middle representing the sociological foundation, and the end representing the juridical foundation.[19]

[19] Maria Farida Indrawati, *Ilmu Perundang-Undangan I, Jenis, Fungsi dan Materi Muatan*, revisi ed (Yogyakarta: Kanisius, 2007).

IV. IDENTIFICATION OF THE PHILOSOPHICAL FOUNDATION REGULATING GENDER STATUS CHANGE IN POSITIVE LAW IN INDONESIA

Philosophically, by reviewing the considerations of the Civil Administration Law, it is stated that the formation of the law in question is carried out based on the paradigm that the Unitary State of the Republic of Indonesia has the obligation to protect and recognise the determination of personal status and legal status of Indonesian citizens regarding every population event and other significant events.

Based on this philosophical foundation, it can be outlined that the ultimate goal of establishing personal status and legal status for Indonesian citizens is none other than protection and legal recognition. The term '*perlindungan*' is linguistically formed from the root word '*lindung*' with the affix *'per-an*,' indicating a connection or relationship with.[20] The core word "*lindung*" lexically reflects the act of protecting oneself by being underneath something, thereby ensuring safety.[21] Based on the grammatical and lexical interpretation of the term 'protection,' it can be explained that this term would not fully convey its meaning without an involved object. Therefore, placing the word 'law' after the word 'protection' implies that, at the very least, the meaning constructed here pertains to the effort to place oneself under the law to ensure that the legal subject feels secure.

One aspect that is included in the domain of legal protection is what is called 'legal safeguard,' identified by Amin Iskandar as an effort to preserve and protect, distinct from the concept of protection, which is more related to seeking a place of refuge.[22] The concept of legal protection can also be understood as actions taken by the government, in general, to ensure the

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[20] Any Novitasari & Yakub Nasucha, "Analisis Penggunaan Konfiks Pada Karangan Teks Deskripsi Siswa Kelas VII SMP Negeri 2 Pedan" (2021) 5:2 Literasi: Jurnal Penelitian Bahasa dan Sastra Indonesia Serta Pembelajarannya 207-216.

[21] Badan Pengembangan dan Pembinaan Bahasa, "Kamus Besar Bahasa Indonesia (KBBI): Kamus Versi Online/Daring (Dalam Jaringan)", online: <https://kbbi.web.id>.

[22] Amin Iskandar, "Undang-Undang Pelindungan atau Perlindungan?" (2022), online: <https://www.kompas.id/baca/opini/2022/11/17/pelindungan-dan-perlindungan>.

safety of specific legal subjects through legal regulations as its instrument.[23] One regulation that has attempted to define legal protection is Article 1, Number 1 of Law No. 8 of 1999 on Consumer Protection, which states that consumer protection is any action taken to ensure that the rights of consumers are legally protected.[24]

From Satjipto Rahardjo's perspective, legal protection is defined as the effort to ensure that every individual in society has the ability to enjoy rights that have already been regulated by law.[25] According to Philipus M. Hadjon, legal protection is the act of providing assistance and protection to legal subjects by utilising legal tools.[26] Kansil provides a definition similar to Hadjon's, describing legal protection as a series of actions based on law to provide a sense of security and protection to legal subjects from all parties.[27]

Maryam Mazaya, as cited by Muchsin, explains that legal protection can be divided into two forms, namely preventive and repressive. Preventive legal protection refers to a series of precautionary measures aimed at avoiding potential harm to the parties concerned. These preventive actions are usually regulated in legislation as anticipatory steps. Meanwhile, repressive legal protection occurs when an action has violated the rights of a particular legal subject, and in response to this violation, sanctions are imposed on the perpetrator who has infringed upon the legal rights of another legal subject.[28]

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[23] Tim Hukumonline, "Teori-Teori Perlindungan Hukum Menurut Para Ahli" (2022), online: <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc/>.

[24] Presiden Republik Indonesia, *Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Lembaran Negara Tahun 1999 Nomor 22, Tambahan Lembaran Negara Nomor 3821*.

[25] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2000).

[26] Philipus M Hadjon, *Tentang Wewenang Pemerintahan (Bestuursbevoegheid)*, (Bandung: Pro Justitia, 1998).

[27] CST Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989).

[28] Maryam Mazaya, "Perlindungan Hukum: Pengertian Serta Perbedaannya dengan Penegakan Hukum" (2023), online (detikEdu):

Regarding the recognition of the Unitary State of the Republic of Indonesia (NKRI) of personal status and legal status concerning specific events, the definition of recognition itself grammatically has the root word pengakuan,' which, according to KBBI, refers to a process, method, or specific act of acknowledging.[29] This context suggests that the meaning of the word 'recognition' refers to the state's guarantee to provide legality related to the personal status and legal status of a population event or other significant events.

Consideration letter (a) of the Civil Administration Law, besides elaborating on the intent of fulfilling the state's obligation in the form of protection and recognition of personal status and legal status, also explains that there is a determination term with the following wording:

> *"bahwa Negara Kesatuan Republik Indonesia berdasarkan Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 pada hakikatnya* ***berkewajiban memberikan perlindungan dan pengakuan terhadap penentuan status pribadi dan status hukum atas setiap Peristiwa Kependudukan dan Peristiwa Penting*** *yang dialami oleh Penduduk Indonesia yang berada di dalam dan/atau di luar wilayah Negara Kesatuan Republik Indonesia (Indonesian Language);*
>
> *That the Unitary State of the Republic of Indonesia, based on Pancasila and the 1945 Constitution of the Republic of Indonesia,* ***is essentially obligated to provide protection and recognition regarding the determination of personal status and legal status for every Population Event and Important Event*** *experienced by Indonesian citizens both within and/or outside the territory of the Unitary State of the Republic of Indonesia; (bold added and translate by Author)".*

The bolded explanation above indicates that the object targeted by the state's actions aiming to protect and recognize is the determination of the status itself. The determination of personal status and legal status for each civil registration event or vital event, as outlined by Basniwati and Galang

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<https://www.detik.com/edu/detikpedia/d-6716361/perlindungan-hukum-pengertian-serta-perbedaannya-dengan-penegakan-hukum>.

[29] Badan Pengembangan dan Pembinaan Bahasa, *supra* note 21.

Asmara, represents the government's effort to reconsider the regulation of society as a population alongside the resource-related problems in its surroundings.[30]

Shidarta, in an official publication of Binus University, explained that philosophically, the existence of the Civil Administration Law is to provide protection and recognition for the determination of personal status and legal status regarding every civil registration event and vital event experienced by Indonesian citizens. Regarding the purpose of this protection and recognition, Shidarta explained that based on the provisions of Article 58 paragraph (4) of the Amended Civil Administration Law, the objectives are the utilization for public services, development planning, budget allocation, democracy development, law enforcement, and the prevention of criminal acts.[31]

The context explained by Shidarta — although stated as an expert philosophical explanation in a judicial review application at the Constitutional Court regarding the blank space in the religion column of the National Identity Card (KTP) for believers of indigenous faiths — at the very least shows the macro-level legal politics concerning the causes and objectives behind the importance of conducting civil registration administration.

An interesting point that needs further research is the consistency of the nomenclature used as the target of the state's obligation to carry out the protection and recognition of citizens' legal status, which revolves around only two terms: civil registration events and vital events. Article 1 number 11 of the Amended Population Administration Law defines civil registration events as follows:

> *"... kejadian yang dialami Penduduk yang harus dilaporkan karena membawa akibat terhadap penerbitan atau perubahan Kartu Keluarga, Kartu Tanda Penduduk dan/atau surat keterangan kependudukan lainnya*

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[30] Basniwati & Galang Asmara, *Hukum Kependudukan* (Mataram: Pustaka Bangsa (Anggota IKAPI), 2020).

[31] Shidarta, "Hak Mengekspresikan Keyakinan dalam Dokumen Kependudukan" (2017), online: <business-law.binus.ac.id>.

> *meliputi pindah datang, perubahan alamat, serta status tinggal terbatas menjadi tinggal tetap."*
>
> ("... events experienced by the Population that must be reported because they result in the issuance or modification of the Family Card, Resident Identity Card, and/or other population-related certificates, including moving in, change of address, and the change from limited residence status to permanent residence status.")

Based on this definition, civil registration events can actually be simply identified through the indicator that if an event experienced by an Indonesian citizen implies or logically results in the issuance or amendment of the National Identity Card (KTP), Family Card (KK), and/or other civil registration documents. The interpretation here remains very general, and when linked to the nomenclature of vital events as outlined in Article 1 number 17, it becomes evident that the following events are also included within the scope of civil registration events Birth; Death; Stillbirth; Marriage; Divorce; Child acknowledgment; Child legalization; Child adoption; Name change; and Change of citizenship status.

The philosophical foundation as previously explained does not, in fact, address the term "other vital events" as it is presented as the legal basis for gender change. At first glance, based on the interpretation of civil registration events, the issue of "other vital events" can be considered part of civil registration events, since a gender change would certainly result in changes to personal data on both the National Identity Card (KTP) and the Family Card (KK), as well as other civil registration documents. However, when viewed from the nomenclature closely related to vital events, it becomes evident that the term has already been specifically limited to ten types of events—excluding gender change.

Regarding the philosophical foundation for the regulation of gender change as stipulated in Article 56 of the Amended Civil Administration Law, it is difficult to identify a clear and specific basis. Nevertheless, when examining the construction of a legal normativity, it can actually be analyzed through three methods of legal construction:

1. Argumentum per analogiam (argument by analogy), namely abstracting an issue not explicitly regulated by linking it to a similar case—sharing the same core problem—to determine the application of similar legal consequences;
2. Argumentum a contrario (argument by contrast). This issue carries two different perspectives between the civil law and common law systems; however, in the Indonesian context, which predominantly follows the civil law tradition — borrowing from the opinion of Achmad Ali[32] — a contrario means that if a norm's subject is fundamentally regulated in pairs, but only one is explicitly regulated, it does not imply that its counterpart is also regulated;[33] and
3. Rechtsvervijning (refinement of law), meaning the application of a different rule from the existing legislative provision due to the incomplete fulfillment of elements in a particular case.[34]

Based on the three legal construction methods mentioned above, the researcher considers that the most relevant approach is the use of argumentum per analogiam (analogy). This determination is primarily based on the characteristic cause behind the implementation of civil registration record-keeping, which fundamentally stems from changes in civil registration documents. The reason why 'other vital events' (gender change) are not analogized as vital events is because Article 1 number 17 of the Amended Population Administration Law has limited the meaning explicitly to what is clearly stated. This is also related to Appendix II of Law Number 12 of 2011 on the Formation of Laws and Regulations, which mentions that one of the functions of general provisions in

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[32] Achmad Ali, *supra* note 9.

[33] Shidarta, "Ratio Decidendi dan Kaidah Yurisprudensi" (2019), online: <business-law.binus.ac.id>.

[34] Juanda, HE, "Konstruksi Hukum dan Metode Intepretasi Hukum" (2016) 4:2 Galuh Justisi 154–166.

legislation is to limit definitions, thereby preventing multiple interpretations.[35]

Philosophically, it can thus be stated that the accommodation of gender change as another vital event under the Population Administration Law aims to provide protection and recognition of the legal status of individuals who amend their gender data so that they may utilize public service facilities, contribute to development planning, support budget allocation, promote democratic development, enforce the law, and aid in the prevention of crime.

V. IDENTIFICATION OF THE JURIDICAL FOUNDATION REGULATING GENDER STATUS CHANGE IN POSITIVE LAW IN INDONESIA

Not as deep or as complex as the effort to trace the philosophical foundation of gender change in the perspective of legislation as discussed above, the starting point of the juridical basis actually also lies in the "Considering" section of the Civil Administration Law. However, most of the references listed there generally relate only to the registration of personal status and legal status of civil events and vital events, including:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 1 of 1974 on Marriage;
3. Law Number 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women;
4. Law Number 9 of 1992 on Immigration;
5. Law Number 29 of 1999 on the Ratification of the ICCPR;
6. Law Number 39 of 1999 on Human Rights;
7. Law Number 23 of 2002 on Child Protection;

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[35] Presiden Republik Indonesia, *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan, Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82* at 82.

8. Law Number 32 of 2004 on Regional Government; and
9. Law Number 12 of 2006 on Citizenship of the Republic of Indonesia.

In identifying the juridical foundations for regulating gender status change in Indonesia, a number of key statutes form the normative framework underpinning the recognition and legal administration of such changes. First and foremost, the 1945 Constitution of the Republic of Indonesia serves as the supreme legal foundation. Article 28D (1) guarantees every individual the right to recognition, guarantees, protection, and certainty before the law. This constitutional guarantee serves as the basis for the state's responsibility to recognize changes in personal legal status, including gender identity, through civil registration.

The Marriage Law plays a significant role in the context of gender transition, as it defines marriage strictly as a union between a man and a woman. For transgender individuals, particularly those whose gender has been legally changed, this law directly affects their ability to engage in a legally recognized marriage. As such, accurate legal recognition of gender identity is essential to ensure the enforcement and legitimacy of marriage under Indonesian law.

Further, Law Number 7 of 1984, which ratifies the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), provides an international legal commitment to eliminate gender-based discrimination. Although CEDAW primarily focuses on women's rights, its principles of gender equality and non-discrimination extend to the recognition and protection of transgender women (transwomen), positioning gender recognition as a human rights issue aligned with Indonesia’s international obligations.

In relation to documentation and mobility, Law Number 9 of 1992 on Immigration becomes relevant because gender markers are a standard element of personal identification in travel documents. Legal recognition of gender change is essential to ensure consistency across civil and immigration documents, thereby preventing administrative discrepancies and barriers during cross-border travel.

Law Number 29 of 1999 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR) further strengthens the legal foundation for gender status recognition. The ICCPR affirms the right to legal personality, privacy, and protection from discrimination. The recognition of gender transition aligns with the covenant's guarantee of personal identity and dignity, obligating the Indonesian state to respect and uphold these rights.

The Human Rights Law (Law Number 39 of 1999) similarly affirms the state's obligation to recognize and protect the inherent dignity and rights of all individuals, including their legal identity. Articles within this law broadly define and protect individual liberties and the right to personal development—elements that are crucial to understanding the legal necessity of acknowledging gender transition.

The inclusion of Law Number 23 of 2002 on Child Protection reflects the state's obligation to protect the rights and welfare of children, including those born with intersex conditions or gender identity issues from an early age. This regulation is relevant when gender status change concerns minors or relates to family decisions involving gender identity, ensuring that their best interests are considered and protected under the law.

The role of local governments in implementing civil administration is supported by Law Number 32 of 2004 on Regional Government, which delegates the execution of population registration—including civil registration tasks such as gender data changes—to local Disdukcapil (Population and Civil Registration Offices). This legal basis ensures that regional authorities have the jurisdiction and responsibility to process gender-related administrative matters appropriately.

Lastly, Law Number 12 of 2006 on Citizenship of the Republic of Indonesia provides a further layer of legal context. Citizenship law becomes relevant when changes in gender status affect civil status or family relationships in cross-border situations. Moreover, this law acknowledges the identity of citizens as a matter of national concern, reinforcing the importance of accurate, updated civil documentation for the exercise of full civic rights.

Taken together, these nine legal instruments serve as an integrated juridical foundation for recognizing and managing gender status changes. They reflect the broader commitment of the Indonesian legal system to uphold justice, ensure non-discrimination, and harmonize national law with international human rights standards. These laws collectively legitimize and inform the implementation of Article 56 of the Population Administration Law, demonstrating that gender status recognition is not merely an administrative act but a fulfillment of constitutional and human rights obligations.

Article 56 of the Population Administration Law, which serves as the legal basis for gender data changes, essentially derives its postulate from various previous regulations, especially in the aspect of legal harmonization and synchronization. The author argues that it is insufficient to view only the legality variable of gender change; it must also be legally examined in relation to the variable of absolute competence of the courts—namely, the general district court (Pengadilan Negeri) and the religious court (Pengadilan Agama) in Islamic civil cases—in establishing the status of gender change.

Throughout history, regarding changes in personal status or civil registration status, such matters have long been regulated in the Burgerlijk Wetboek, now known as the Indonesian Civil Code (KUHPer). This normativity is reflected in Part 2 of the Civil Code concerning Names, Changes of Names, and Changes of Given Names, and Part 3 of the Civil Code concerning the Correction and Addition of Civil Registry Acts (Not Applicable to Foreign Orientals other than Chinese, and to Chinese Orientals), covering Articles 5a to 16 of the Civil Code.

More specifically, Article 6 of the Civil Code explains that changing one's birth name is essentially prohibited, except with presidential permission. Meanwhile, the addition or change of a given name—historically related to clan names—could only be carried out after obtaining permission from the district court.

Another regulation at the statutory level that can be examined in the context of name changes—especially changes to family names—is Law Number 4 of 1961 concerning Changes or Additions to Family Names.

The principles found there are similar to those in Parts 2 and 3 of the Civil Code, but in this case, the authority to grant permission was held by the Ministry of Justice (now independently separated under the judicial authority of the Supreme Court).[36]

These two legal foundations were formally repealed based on the transitional provisions of Article 106 of the Population Administration Law. Nevertheless, this indicates that in the context of changes to population data or civil documents, there has been a transfer of authority from the President (except for clan name changes) to the courts as part of the judiciary.

The state's interest in limiting (read: protecting and recognizing) a person's right to change their population data can actually be systematically interpreted by referring to the criminal provisions attached at the end of the Civil Administration Law. Article 94 of the Population Administration Law stipulates that any person who intentionally and without authorization alters, adds to, or reduces the contents of population data elements shall be subject to a minimum imprisonment of two years and/or a maximum fine of twenty-five million rupiah.

This aspect of criminal punishment indicates that there is a legal policy of criminalization intended to protect the interests of the nation and state at a macro level from the misuse of personal data or population documents. This is also justified based on the theory of punishment formulated at the National Symposium on the Reform of Criminal Law, which stated that one aspect of criminalization is that the object of criminalization must be something despised, disliked, and causing harm to society.[37] When an identity or personal data has been properly collected and organized, and then a citizen — even if it concerns only their own personal data — makes changes without reporting (read: applying for permission) first to the state, it can cause harm to society if a criminal act occurs later on.

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[36] M Yahya Harahap, *Hukum Acara Perdata*, 2nd ed (Jakarta: Sinar Grafika, 2017).

[37] Badan Pembinaan Hukum Nasional, *Simposium Pembaharuan Hukum Pidana Nasional* (Jakarta: Binacipta, 1980).

The applicability of Article 56 of the Population Administration Law also implies delegation to regulations under it, namely Presidential Regulations. Based on the author's search, the relevant regulation referred to here is Article 58 of Presidential Regulation Number 96 of 2018 concerning the Requirements and Procedures for Population Registration and Civil Registration. The administrative aspect of population management here appears more dominant than the civil aspect in the context of the right to request a change in gender status. Article 58 paragraph (1) of the said Presidential Regulation sets out the requirements for recording a gender change event, which consist of a copy of the district court ruling, an excerpt of the civil registration certificate, a Family Card (Kartu Keluarga), and an electronic ID card (KTP-el). Meanwhile, paragraph (2) of the same article states that technically, the result of the recording shall be documented by adding a marginal note in the register and in the excerpt of the birth certificate.

VI. IDENTIFICATION OF THE SOCIOLOGICAL FOUNDATION REGULATING GENDER STATUS CHANGE IN POSITIVE LAW IN INDONESIA

In relation to the identification or tracing of the sociological foundation for the regulation of the recording of other important events (such as gender change), it is fundamentally difficult to find. Unlike regulations enacted after the promulgation of Law Number 12 of 2011 on the Formation of Laws and Regulations, and also due to the digitalization era, academic manuscripts directly related to the issue of gender change are truly difficult to identify.

The only document related to this matter is the academic manuscript for the Amendment to the Civil Administration Law which unfortunately does not discuss the sociological background regarding changes in gender status at the district court at all. Referring to the explanation by Danang and Erwin, it can be seen that the accommodation of provisions for gender change petitions at the district court level, from a historical perspective, was

based on the increasing number of similar cases, yet there was no legal certainty for the community due to a legal vacuum.[38]

The issue of petitions for changes in gender status, as illustrated in the background example, had actually already emerged since 1973. However, regulations specifically governing this matter only appeared in 2006 through the Population Administration Law. Danang and Erwin identified that the reasons for choosing the district court as the venue for filing such petitions are:

1. The District Court operates within the realm of general justice and works daily within the scope of community life;
2. Gender change falls within the civil law domain, which in turn affects the wider community;
3. It is a sociological reality that there exists a group of people in society who live with a gender status different from the sexual organs they possess.[39]

This sociological reality carries the consequence that the law, as a guideline to negate ambiguity within society, must be upheld. Therefore, judges, based on the principle of ius curia novit (the judge is deemed to know the law), must accept these cases.[40] In connection with this, it is difficult to imagine how individuals who have undergone gender changes could interact within society while still officially retaining their previous legal gender status. Many civil aspects would become skewed and even tend toward discrimination, considering that gender changes are not merely based on psychological aspects, but in many cases, are also based on the need to affirm sexual organs that have long differed from their original form.

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[38] R Danang Noor Kusumo & Erwin Susilo, *Hukum Perubahan Jenis Kelamin* (Bandung: PT Citra Aditya Bakti, 2020).

[39] *Ibid*.

[40] Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Cahaya Atma Pustaka, 2014).

VII. FUTURE LEGAL RECONSTRUCTION OF THE REGULATION OF TRANSSEXUAL STATUS CHANGE IN CIVIL REGISTRATION DOCUMENTS

Following the conceptual review of the Triangle of Legal Pluralism theory by Werner Menski, this study does not merely stop at exploration and explanation but also seeks to provide practical contributions through normative recommendations. One of the steps taken is the reconstruction of provisions in the field of civil registration law.

To support this reconstruction, the study outlines four main issues. First, there is no clear definition of the term "other important events" in the general provisions of the Civil Administration Law. This ambiguity makes it difficult to identify which events can legally be categorized as important events beyond those explicitly mentioned. Second, there is inconsistency in the scope of civil registration events. Although structurally gender transition should fall under civil registration, Article 56 of the Population Administration Law does not explicitly include it as part of the definition of important events.

Third, the legal status of petitions submitted to the district court regarding gender transition remains unclear. Article 56 paragraph (1) does not specify whether such petitions are meant to seek approval or merely serve as an administrative registration. In practice, most petitions are filed after gender transition surgeries have been performed. Fourth, there are significant social consequences when a petition for gender transition is rejected. Such rejection may lead to difficulties in accessing public services, city planning, budget allocations, participation in democratic processes, law enforcement, and crime prevention. A concrete example is the case of Lucinta Luna, who faced complications within the prison system due to her unclear legal status.

Based on these four issues, and through analysis using Werner Menski's Triangle of Legal Pluralism theory, this study recommends the reformulation of two articles in the Population Administration Law: Article 1 point (17) and Article 56. The author proposes a strengthened definition of important events as follows: "An important event is an event experienced by an individual, including birth, death, stillbirth, marriage,

divorce, acknowledgment of a child, legalization of a child, adoption, name change, change in nationality status, and other important events."

In this proposal, other important events are conceptually understood as part of the civil registration process related to changes in the legal status of civil documents, based on the authentic interpretation of Article 56 of the Civil Registration Law.

The study also recommends reinforcing the role of the district court as the authority that grants formal permission for gender transitions, rather than treating it merely as an administrative registration body. This change emphasizes the necessity of a legal process that must be fulfilled before a gender transition is officially recognized. By doing so, the regulation ensures that gender transition is not simply a bureaucratic matter but a legal procedure with due judicial consideration.

The proposed formulation suggests that any resident intending to undergo a gender transition must first petition the local district court for permission. If the court approves the petition, it will issue a formal ruling granting the legal change. Once this ruling is received, the registration of the gender transition must be completed within thirty days. The procedural and substantive requirements for this registration will later be governed by a presidential regulation to provide consistency and clarity.

Through this reformulation, it is expected that the regulation of gender transition in civil registration will offer stronger legal certainty, reduce the potential for discrimination, and enhance the legal recognition of every citizen's civil rights. This initiative reflects an effort to align administrative practices with the principles of justice and inclusivity within Indonesia's national legal framework.

VIII. CONCLUSION

The entire discussion of this research ultimately leads to the conclusion section, which seeks to briefly revisit the two main focal points mentioned above. First, the ratio legis of the provision on gender change in the perspective of the legal regulations in Indonesia is the state's effort to protect and recognize the determination of personal status and legal status

of every individual within the scope of population events, important events, and other important events, namely the change of gender status in population data and documents, with the aim of ensuring that it can be optimally utilized, particularly for public services; and second, that there is a lack of strong relevance between the provision on gender change in Indonesian legal regulations and Werner Menski's concept of the triangle of legal pluralism in achieving protection and recognition of the legal status of transsexual individuals whose petition for gender status change has been rejected by the district court. This research notes the necessity for revisions or improvements to two provisions, Article 1 number 17, and Article 56 of the Civil Administration Law.

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