



## **Religious Differences as a Barrier to Inheritance According to Civil Law**

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### **Abstract**

This study discusses problems related to religious differences as an obstacle to inheritance according to Indonesian civil law. In the context of civil law, inheritance is regulated by the Civil Code (KUHPerdara) which includes inheritance rights, how inheritance is distributed, and other provisions. This study uses a normative research method with a focus on three main sub-discussions. First, inheritance law in Indonesian civil law which regulates who is entitled to inheritance after someone dies. Second, how to distribute inheritance according to civil law based on descent or family. Third, religious differences as a barrier to inheritance, which refers to a situation where the heirs who have a religion are different from the deceased. This research aims to explore how Indonesian civil law regulates inheritance in the context of religious differences. The results of this study are expected to contribute to understanding the complexity of inheritance involving religious differences and provide recommendations for relevant legal solutions.

**Keywords:** *Different Religions; Barriers; Inheritance; Civil Law*

### **Abstrak**

Penelitian ini membahas permasalahan terkait perbedaan agama sebagai penghalang dalam kewarisan menurut hukum perdata Indonesia. Dalam konteks hukum perdata, pewarisan diatur oleh Kitab Undang-Undang Hukum Perdata (KUHPerdara) yang mencakup hak waris, cara pembagian harta warisan, dan ketentuan-ketentuan lainnya. Penelitian ini menggunakan metode penelitian normatif dengan fokus pada tiga sub pembahasan utama. Pertama, hukum kewarisan dalam hukum perdata Indonesia yang mengatur siapa saja yang berhak atas harta warisan setelah seseorang meninggal. Kedua, cara pembagian harta warisan menurut hukum perdata berdasarkan keturunan atau keluarga. Ketiga, perbedaan agama sebagai penghalang kewarisan, yang mengacu pada situasi di mana ahli waris yang memiliki agama berbeda dengan almarhum. Penelitian ini bertujuan untuk menggali bagaimana hukum perdata Indonesia mengatur kewarisan dalam konteks perbedaan agama. Hasil penelitian ini diharapkan dapat memberikan kontribusi dalam memahami kompleksitas pewarisan yang melibatkan perbedaan agama dan memberikan rekomendasi solusi hukum yang relevan.

**Kata Kunci:** *Beda Agama; Penghalang; Kewarisan; Hukum Perdata*

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## Introduction

Religious differences often cause problems in the distribution of inheritance. For example, when a Muslim father dies and leaves a child who has converted to Christianity, confusion arises about the child's inheritance rights.<sup>1</sup> According to civil law in Indonesia, especially in judicial practice, religious differences can be a barrier for a person to receive an inheritance from an heir of another religion.<sup>2</sup> This creates conflict in the family, where some parties consider that children still have rights as biological descendants, while others adhere to legal provisions that prohibit interreligious inheritance.<sup>3</sup> In the field, this problem also often leads to a conflict between positive legal norms and a sense of justice in society. There are families who choose to settle in a peaceful way through grants or wills so that children of different religions still get a share. However, many cases also end up in court because other heirs refuse to share on the grounds of religious differences. This condition not only creates family disharmony, but also creates legal uncertainty because judicial practices sometimes differ in interpreting rules related to interfaith inheritance.

Inheritance law is a law that regulates the transfer of the right of ownership of inherited property (*tirkah*), determining who is entitled to be an heir and how much of each of them is.<sup>4</sup> Inheritance is one of the important aspects of the law that regulates the transfer of rights to property from a deceased person to a rightful heir. In the Indonesian legal system, inheritance is regulated by the Civil Code (KUHPerdata) which provides guidelines on who is entitled to receive inheritance and how the process of distributing the property is carried out.<sup>5</sup> This inheritance process can run smoothly if all parties involved

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<sup>1</sup> Indah Paramita, "Juridical Analysis Of The Rights Of Adopted Children To The Inheritance Of A Husband And Wife Couple Who Have No Descendants Based On Islamic Inheritance Law And Ruling In Case Number 233/Pdt. P/2021/Pa. Msa," *International Significance of Notary* 6, no. 1 (2024): 73–88.

<sup>2</sup> Auliya Khasanofa dan Silvia Larasati, "Comparative analysis of inheritance rights of children with different religions from their heirs according to Islamic law and civil law," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 10, no. 2 (2024): 825–34.

<sup>3</sup> Icha Choerunnisa dan Tjempaka Tjempaka, "The Distribution of Inheritance Rights To Heirs of Different Religions: Study of Court Decision Number 0554/PDT. P/2023/PA. SBY," *Journal of Law, Politic and Humanities* 4, no. 4 (2024): 920–29.

<sup>4</sup> Yayat Dimyati, "Inheritance in the Perspective of Customary Law and the Compilation of Islamic Law," *VRISPRAAK: International Journal of Law* 9, no. 1 (2025): 58–79.

<sup>5</sup> I. Nengah Pasek Suryawan dan Rineke Sara, "Legal certainty regarding pluralism of inheritance law in Indonesia in the transfer of inheritance rights in Indonesia," *Indonesian Journal of Multidisciplinary Science* 4, no. 3 (2024): 145–54.

understand their rights and obligations.<sup>6</sup> However, in practice, legal problems can arise, especially when there are religious differences between the deceased and his or her heirs.

Indonesia, as a country with a multireligious society, faces special challenges in terms of heritage. In the context of civil law, religious differences are often a barrier for heirs to inherit property, even if they are bound by a legal family relationship.<sup>7</sup> This is because Indonesia's civil law recognizes certain restrictions on inheritance rights based on religion, which are not always in line with the more universal principle of inheritance rights in the family. For example, inheritance according to a particular religion regulates inheritance rights differently compared to the more secular provisions of civil law.

Previous research on religious differences as a barrier to inheritance has been extensively conducted, both from the perspective of Islamic law and civil law. Research conducted by Yusuf shows that in Islamic law, religious differences expressly hinder inheritance, based on the hadith of the Prophet which states that "a Muslim does not inherit a disbeliever and a disbeliever does not inherit a Muslim."<sup>8</sup> Meanwhile, another study by Katili highlights that Indonesian civil law, particularly in judicial practice, tends to follow a similar principle of rejecting interfaith inheritance, although there is no explicit rule in the Civil Code governing it.<sup>9</sup> In addition, research by Halim explains that there are practical problems in society, because many families experience conflicts due to children or heirs of different religions. He found that in court practice, judges often use Supreme Court jurisprudence that affirms religious differences as an obstacle to inheritance.<sup>10</sup> However, research by Nugraha proposes a different perspective, namely the need to reinterpret inheritance law by emphasizing the values of justice and human rights, so that religious differences are not necessarily used as a barrier in the distribution of inheritance.<sup>11</sup>

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<sup>6</sup> I. Gusti Ayu Ketut Rachmi Handayani dan Burhanuddin Harahap, "Legislative Legal Politics of Inheritance Law in Indonesia," *Journal of Ecohumanism* 3, no. 6 (2024): 910–16.

<sup>7</sup> Abdul Rahman dkk., "Compulsory Testament: State Intervention in the Protection and Fulfillment of Human Rights of Non-Muslim Heirs," *Law Reform: Jurnal Pembaharuan Hukum* 20, no. 2 (2024): 301–28.

<sup>8</sup> Andi Asdar Yusuf, "Controversy of Islamic law on the distribution of inheritance to the heirs of different religion," *HUNAFA Jurnal Studia Islamika* 14, no. 2 (2017): 377–403.

<sup>9</sup> Fitri Yanti Katili dkk., "Harmonization of Interfaith Marriage Law in Indonesian Legal System: Between Social Reality and Legal Certainty," *International Journal of Social Welfare and Family Law* 2, no. 1 (2025): 22–32.

<sup>10</sup> Abdul Halim, "Disparities of the Supreme Court Judge's Decisions on the Non-Muslim Inheritance: Indonesian Case," *J. Legal Ethical & Regul. Issues* 24 (2021): 1.

<sup>11</sup> Iqbal Subhan Nugraha, "Justice in Inheritance Distribution: Comparative Study of Islamic and Customary Law on Equal Distribution," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 4 (2024): 1815–29.

A number of contemporary studies also highlight alternative solutions, as discussed by Friedman, that grants or wills can be used as a middle way to accommodate heirs of different religions in order to still get a share of the legacy. This shows the tension between positive law, substantive justice values, and social practices in society.<sup>12</sup> Thus, previous studies show that there is a serious debate that has not found a common ground until now, so this theme remains relevant to be studied more deeply in the context of civil law and social reality in Indonesia.

Seeing this reality, this study aims to analyze more deeply how Indonesian civil law views religious differences in the context of inheritance.<sup>13</sup> The focus of this research will examine three main things, namely first, the basis of inheritance law in Indonesian civil law, second, the mechanism for the distribution of inheritance according to civil law, and third, whether and how religious differences are obstacles in the inheritance process. This research is expected to provide a clearer understanding of the problems that arise due to religious differences in inheritance and possible solutions that can be applied to overcome these legal barriers. Thus, this research is expected to make a significant contribution to enriching the legal literature on inheritance in Indonesia, especially in diverse social and religious contexts.

## Method

This research employs a qualitative approach with a normative legal research method. The qualitative nature of the study allows for an in-depth and comprehensive understanding of legal concepts, principles, and norms governing inheritance law, particularly as regulated in the Civil Code.<sup>14</sup> The normative approach is chosen because the focus of this research is not on measuring social behavior or legal practices in society, but on examining the law as a set of rules, doctrines, and principles that provide guidance and legal certainty in inheritance matters. Normative legal research is carried out by examining library materials or secondary data, which consist of written legal sources. This type of research is often referred to as doctrinal legal research or library-based legal research, distinguishing it from sociological or empirical legal research that primarily relies on

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<sup>12</sup> Lawrence M. Friedman, "The law of the living, the law of the dead: Property, succession, and society," *Wis. L. Rev.*, HeinOnline, 1966, 340.

<sup>13</sup> Utama Wardi dkk., "Comparative analysis of Islamic family law and customary law in the settlement of inheritance disputes in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (2024): 13–25.

<sup>14</sup> Bambang Sunggono, *Metodologi penelitian hukum*, Raja Grafindo Persada, 2006, <https://library.stik-ptik.ac.id/detail?id=2409&lokasi=lokal>.

primary data obtained through fieldwork, such as interviews, observations, or surveys. In this study, the law is analyzed in its normative dimension, namely how inheritance rules are formulated, structured, and systematically arranged within the legal system.

The sources of legal materials used in this research are classified into several categories. Primary legal materials include statutory regulations, particularly the Civil Code (*Burgerlijk Wetboek*), which serves as the main legal basis for civil inheritance law, as well as other related laws and regulations that have relevance to inheritance issues. Secondary legal materials consist of scholarly writings, such as academic journals, books, commentaries, and research reports that discuss theories, principles, and interpretations of civil inheritance law.<sup>15</sup> These materials are essential in providing doctrinal explanations and critical perspectives on the application of inheritance norms. In addition, tertiary legal materials, such as legal dictionaries and encyclopedias, are also used to clarify legal terminology and concepts. Data collection in this research is conducted through systematic literature review, by identifying, selecting, and analyzing relevant legal materials.<sup>16</sup> The analysis technique used is qualitative descriptive and analytical, which involves describing legal norms as stipulated in legislation and then analyzing them through legal reasoning, interpretation, and conceptual approaches. Methods of legal interpretation, such as grammatical, systematic, and teleological interpretation, are applied to understand the meaning and purpose of inheritance provisions in the Civil Code.

Through this comprehensive normative approach, the research aims to produce a coherent and structured analysis of civil inheritance law, highlighting its underlying principles, legal construction, and implications. The findings of this study are expected to contribute both theoretically, by enriching academic discourse on inheritance law, and practically, by providing a clearer understanding of the applicable legal norms for scholars, legal practitioners, and the wider community.

## Results and Discussion

### Inheritance Law in Civil Law

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<sup>15</sup> I. Made Pasek Diantha dan M. S. Sh, *Metodologi penelitian hukum normatif dalam justifikasi teori hukum* (Prenada Media, 2016), <https://books.google.com/books>.

<sup>16</sup> Qadriani Arifuddin dkk., *Metodologi Penelitian Hukum* (PT. Sonpedia Publishing Indonesia, 2025), <https://books.google.com/books>.

Inheritance law according to civil law (KUHPerdata/BW), is part of the law of property.<sup>17</sup> The right of inheritance in the Civil Code is the material right to the property of a deceased person. Article 584 of the Civil Code states that the right of inheritance is a wrong way to obtain property rights.<sup>18</sup> The ways to obtain property rights are regulated in Book II of the Civil Code. In Book II of the Civil Code, the Law of Inheritance is regulated together with the Law of Property and Material Rights. Inheritance law according to the Civil Law Code is the laws or regulations that regulate whether and how the rights and obligations regarding a person's property at the time of his death will be transferred to another person who is still alive. The inheritance law in the Civil Code applies in the event of death. It is stipulated in Article 830 of the Civil Code that, "Inheritance only occurs due to death". The meaning of the article is, if a person has died, then his rights and obligations transfer to all his heirs.

The elements that must be fulfilled in terms of inheritance in civil law are: *Erflater*, heir (person who has died). A person who dies (male or female) is said to be an heir if he leaves his property, both in the form of rights obtained, or obligations that must be carried out while still alive. *Erfgenaam*, heir (a person who is still alive as an inheritor). Heirs are certain people who are regulated limitatively in the BW, as people who are entitled to receive inheritance. A detailed explanation of the heirs is explained in this book in a special chapter on the heirs. *Nalatenschap*, inheritance (abandoned property). Inheritance property is a manifestation of the wealth left by the heirs and the rights are transferred to the heirs.

Article 830 of the Civil Code clearly establishes the cause of death as the principle of inheritance. If a person is to an heir.<sup>19</sup> Rights and obligations that can be inherited according to Civil Law are rights and obligations in the field of property law (can be assessed in money). As for the rights and obligations in the field of family law or personality (such as the rights and obligations of a husband or wife), they cannot be inherited. The Civil Code contains the principle of "*hereditatis petition*", which is that the heir has the right to demand

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<sup>17</sup> Wahyu Tris Haryadi, "Juridic Analysis of the Provisions of Health Rights on Adapted Children in the Perspective of Civil Material Law (Burgerlijk Wetboek) in Indonesia," *International Journal of Multidisciplinary Research and Analysis (IJMRA)* 5, no. 9 (2022): 2339–44.

<sup>18</sup> Svitlana S. Bychkova dkk., "Implementation of the right to inheritance: Problems of theory and practice," *Global Journal of Comparative Law* 10, no. 1–2 (2021): 203–20.

<sup>19</sup> Ahmad Redi dan Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective," *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, Atlantis Press, 2022, 850–56, <https://www.atlantispress.com/proceedings/ticash-21/125973220>.

the person who controls the inheritance, to hand over all the property that is part of him in accordance with his rights as heirs.

In addition to these principles, Jaya explained that there are 3 (three) principles adhered to. Individual Basics. The individual principle emphasizes that heirs are individuals. This means that the heirs are determined personally (individually) and are not in the form of a group, tribe, or family. Bilateral Principles. The bilateral principle emphasizes that a person does not only inherit from his father alone, or his mother alone, but from both. Likewise, a brother can inherit from his brother and sister. This principle can be seen in Articles 850, 853, and 856, which stipulate that the estate of the deceased can be inherited by fathers, mothers, brothers, and sisters. Principle of Degree. The basis of inheritance emphasizes the position (degree) of the heirs who are closer to the heir, being able to cover the heirs whose degree is further away from the heir. To make it easier to calculate the shares, provisions were made regarding the classification of heirs in the Civil Code.

#### **How to distribute inheritance according to civil law**

Heirs according to civil inheritance law are not differentiated according to sex as in some customary inheritance laws.<sup>20</sup> A person becomes an heir according to civil inheritance law due to marriage and blood relations, whether legally or not. It is the person who has a close blood relationship who has the right to inherit (which is contained in Article 852 of the Civil Code). Far from the close blood relationship can be grouped into (4) four groups, namely, Group I In this group, the husband or wife and/or the heir's descendants are entitled to receive inheritance. In the chart above, those who get inheritance are their wives/husbands and their three children. Each gets 1/4 share. Father, mother, heir, brother. Group II, This group consists of parents, brothers or sisters and their descendants. According to Article 854 paragraph (1) of the Civil Code (KUHPperdata), if there are no heirs in the first group, then the inheritance falls to the second group.

The share of each father and mother, in the event that the father or mother inherits himself, means that there are no brothers and sisters who inherit together with him, so he inherits the entire inheritance.<sup>21</sup> (Article 859 of the Civil Code (KUHPercivil) So if the father

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<sup>20</sup> Aigul Ashimovna Nukusheva dkk., "FEATURES OF INHERITANCE BY LAW: COMPARATIVE LEGAL ANALYSIS," *Scientific and legal journal «Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan»* 3, no. 78 (2024), <https://vestnik.zqai.kz/index.php/vestnik/article/view/1547>.

<sup>21</sup> Jack Goody, "The mother's brother and the sister's son in West Africa," *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* 89, no. 1 (1959): 61–88.

or mother who inherits them, each of them gets 1/2 inheritance. If the father and mother inherit together with a brother or sister, then each gets an equal share. Father and mother each get 1/3 share and the remaining 1/3 is brother's share (Article 854 of the Civil Code (KUHPercivil)). If the father and mother inherit together with two brothers or sisters, then the father and mother get 1/4 of the share, and the rest is for the brother with the same large share (Article 854 paragraph (2) of the Civil Code). If the father and mother inherit with more than two siblings, then the father's and mother's share of 1/4 each is taken first and 2/3 divided for the heir's brother. . (Article 855 of the Civil Code (Civil Code))

What needs to be noted in Article 855 of the Civil Code (KUHPercivil) is: the position of the father or mother towards the child's inheritance is different from the position of the brother. The father or mother gets the share first, then the rest is the right of the heirs. Brother's share as heirs: If a person dies without leaving a spouse or a husband and wife, and his father and mother have died first, then the brother and sister inherit all their property. (Article 856 of the Civil Code (KUHP Percivil)).

Group III, grandparents, in this group the heirs do not have siblings, so the inheritors are the family in a straight line upwards, both from the maternal and paternal lines. Examples of inheritance are grandparents from both father and mother. For the division, the inheritance is divided into two first, one part for the straight line of the father's descendants and the other part for the straight line of the mother's descendants.

Group IV, In this group who are entitled to inheritance are the surviving blood relatives in the upper line. These people get 1/2 of the share. While the heir in the other line and the degree closest to the heir gets the remaining 1/2 share. The heirs in the other lines here are the uncles and aunts and all the descendants of uncles and aunts who have died before the heir. In the Civil Code, it is also known as unmanaged inheritance, that is, if a person dies and has property, but there are no heirs, then the inheritance is considered unmanaged. In such a case, the Heritage Center (Wesskamer) does not have to wait for an order from the Court to take care of the property but must notify the Court.

### **Religious differences as a barrier to inheritance according to civil law**

According to the civil code, article 838 that those who are considered worthy not to be heirs and therefore excluded from inheritance are those who by the decision of the judge are convicted of murdering, or attempting to kill the deceased.<sup>22</sup> Those who by the judge's

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<sup>22</sup> Davina Dewi Aulyanti, "The Position of Substitute Heirs as Perpetrators of The Murder of Direct Heirs Based on Civil Inheritance Law," *Jurnal Mercatoria* 17, no. 2 (2024): 122–32.



decision because they are blamed, because of the way of slander, have filed a complaint against the deceased, is a complaint that has committed a crime that is threatened with imprisonment for five years or a heavier punishment. Those who by violence or deed have prevented the deceased from making or revoking his will. Those who have embezzled, damaged or forged deceased letters. Based on the formulation of the above article, it can be understood that religious differences in civil law are not an obstacle to mutual inheritance, therefore in terms of inheritance, if there is no such thing as the one mentioned above, then according to civil law the heir still gets his right to inherit the heir's property.

The Civil Code does not regulate the inheritance of different religions. The principle of inheritance in the Civil Code is based on blood relations, so that religious differences are not an obstacle to obtaining inheritance. According to Article 832 of the Civil Code, those who have the right to become heirs are: Blood family, both legal and out of wedlock The husband or wife who lives the longest The distribution of inheritance according to the Civil Code also does not distinguish gender, both men and women get the same share. Meanwhile, in Islamic law, religious differences can be a barrier to getting an inheritance. Islamic inheritance law does not provide the right to inherit between people of different religions. Then in relation to the above, civil law. Recognizing Bilateral Inheritance Even though the Parties Are Different Religions.

The following will be presented the articles which mention the bilateral system of inheritance, namely Article 850: Each inheritance which, either in whole or in part, is open to the happiness of your family in a straight upward line or in a deviating line must be divided into two equal parts, the parts of which one is for all the relatives in the father's line and the other for the relatives in the mother's line. Article 853: If the deceased leaves no descendants, husband, wife, or siblings, his inheritance shall be divided into two equal parts, one for one family of brothers in the father's line straight upwards and one part for all the same families in the mother's line. Article 856: If a person dies without leaving any descendants or husband or wife, while both his father and mother have died first, then the entire inheritance is the right of all the brothers and sisters of the deceased (R. Subekti and R. Tjitrosudibyo). Based on the formulation of the above article, it can be understood that civil law recognizes the bilateral inheritance system, where the parties get the inheritance of the heir on the condition that it does not violate the provisions of article 383.

## **Conclusion**

Inheritance law under the Civil Law Code (*Burgerlijk Wetboek*) can be understood as a set of legal norms governing the transfer of rights and obligations over a person's property after his or her death to those who are still alive. This legal regime emphasizes certainty and order in determining who is entitled to inherit, what assets are included in the estate, and how such assets are to be distributed. In this context, inheritance is not merely viewed as the transfer of material wealth, but also as the continuation of legal relationships that arise from blood ties and marital bonds recognized by law. From the perspective of civil inheritance law, there are three essential elements that must be fulfilled. First is the *erflater*, namely the person who dies and leaves behind property. Second is the *erfgenaam*, the individual or individuals who are legally entitled to receive the inheritance. Third is the *nalatenschap*, which refers to the entire estate left by the deceased, including both assets and liabilities. These three elements form an inseparable unity, because inheritance can only occur when there is a deceased person, heirs, and an estate to be transferred.

The Civil Code further classifies heirs into four groups based on their degree of kinship with the deceased. Group I consists of the surviving spouse and legitimate descendants, namely children and their offspring, who take precedence in inheriting the estate. Group II includes parents, brothers and sisters, as well as the descendants of such siblings. Group III comprises grandparents, while Group IV consists of blood relatives in the ascending line beyond grandparents who are still alive. This hierarchical grouping reflects the civil law principle that priority in inheritance is determined by the closeness of blood and marital relations. Importantly, the Civil Code does not regulate inheritance on the basis of religious affiliation. Consequently, differences in religion between the deceased and the heirs do not constitute a legal barrier to inheritance. The fundamental principle underlying civil inheritance law is blood relationship and lawful marriage, not religious identity. This approach underscores the secular character of the Civil Code, which places kinship ties above religious considerations in determining inheritance rights. In line with Article 832 of the Civil Code, those entitled to become heirs are blood relatives, whether legitimate or born out of wedlock in accordance with applicable legal provisions, as well as the surviving husband or wife. Furthermore, the distribution of inheritance under the Civil Code adheres to the principle of equality, whereby no distinction is made based on gender. Men and women are granted equal shares of inheritance, reflecting the civil law commitment to formal equality and non-discrimination in the allocation of inheritance rights.

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