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INHERITANCE RIGHTS PROTECTION FOR FETUS IN UTERO THROUGH TRUST-LIKE MECHANISM AS A NORMATIVE SOLUTION IN INDONESIAN

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ABSTRACT

The regulation of inheritance rights for a fetus in utero has been recognized under the Kitab Undang-Undang Hukum Perdata (KUHPerdata) through the principle of nasciturus pro iam nato habetur, which grants a conditional legal status provided the fetus is subsequently born alive. However, this recognition lacks an adequate legal mechanism to ensure the management and protection of inherited assets during the period when the legal subject is not yet capable of exercising those rights. This study employs a juridical- normative method with conceptual, statutory, and comparative approaches to analyze the normative weaknesses in the existing regulation and to formulate a trust-like mechanism as an adaptive solution within the Indonesian civil law system. The analysis reveals five structural weaknesses in the current regulation: ambiguity in gestational age verification, absence of interim asset management mechanisms, inconsistency with child protection legislation, inadequacy in disputed parentage scenarios, and the non-existence of the curator ventris institution. Drawing on English Trust Law and comparative civil law systems, this study constructs a trust-like mechanism consisting of four operational phases: asset segregation from the estate, appointment of a trustee-analogous manager, prudential asset management, and conditional asset transfer upon fulfillment of legal requirements. This mechanism, grounded in the principles of the nasciturus doctrine, guardianship law, and the general principle of good faith under Indonesian civil law, offers a normative framework capable of bridging the gap between the declarative recognition of the fetus's legal status and the substantive protection of its inheritance rights, thereby enhancing legal certainty and promoting a more adaptive civil inheritance law reform in Indonesia.

Keywords **Data Mining, Inheritance rights, fetus in utero, trust-like mechanism, civil code, legal reform**

1. INTRODUCTION

Inheritance law is one of the most fundamental branches of private law, as it directly concerns the inter-generational transfer of property rights. Within the Indonesian civil law system, which derives from the Dutch codification contained in the Kitab Undang-Undang Hukum Perdata (KUHPerdata, the Civil Code), inheritance is regulated in a relatively comprehensive manner, albeit not free from various limitations that have emerged in response to the evolving needs of society. One issue that has consistently generated legal uncertainty is the position of a fetus in utero as a prospective heir at the time of the testator's death.

Juridical recognition of the fetus as a conditional legal subject is embodied in the principle of nasciturus pro iam nato habetur quotiens de commodis eius agitur, which etymologically derives from Roman law and was absorbed into the Dutch Burgerlijk Wetboek (BW) before being introduced into Indonesia. This principle, enshrined in Article (Yanto, 2024, pp. 1– (Sitkoff and Dukeminier, 2022, p. 1046)) 2 of the KUHPerdata, provides the basis for a fetus to be recognized as a holder of inheritance rights where its

interests so require, subject to the absolute condition that it is born alive. If this condition is met, the fetus's inheritance rights apply retroactively from the moment the estate opens, i.e., from the date of the testator's death.

Notwithstanding this seemingly adequate theoretical recognition, it confronts serious challenges in the practical dimension. When a testator dies and the estate opens, the fetus as a prospective heir exists in a legally potential state: it is recognized as a legal subject, yet it cannot exercise or manage its own rights. This situation creates a significant legal gap because the KUHPerdata provides no clear mechanism as to who is authorized to safeguard, manage, and account for the inheritance assets potentially designated for the fetus during the gestational period.

This normative vacuum is not merely an academic concern. Data from the National Law Development Agency (BPHN) for the year 2022 indicate that more than 3,500 inheritance dispute cases were filed before the courts, an increase of approximately 15% (Thaib, 2022) compared to the previous year, with the majority related to ambiguities in the status of heirs. This demonstrates that uncertainty in the regulation of fetal inheritance rights has a real impact on social life, manifesting in the form of conflicts among heirs, the potential for misappropriation of assets by those in control of them, and the lack of clarity concerning the share to which the fetus is entitled.

By way of comparison, the trust mechanism under English law (common law) has long provided an instrument enabling the management of assets for the benefit of unborn beneficiaries, through a mechanism that separates legal ownership held by the trustee from the beneficial interest belonging to the beneficiary. (Penner and Lau, 2022, p. 504) This mechanism effectively prevents misappropriation of assets, provides legal certainty regarding asset management, and protects the interests of parties lacking full legal capacity. Although the Indonesian legal system does not recognize trust as a formal legal form, its essential elements can be adapted within the civil law context through a normative construction known as a trust-like mechanism.

This approach does not require wholesale legal transplantation; rather, it entails a conceptual reconstruction that utilizes existing legal instruments within the Indonesian civil law system, such as guardianship, management agreements, and the principle of good faith. Accordingly, this study undertakes an in-depth examination of the regulation of fetal inheritance rights in the KUHPerdata and its weaknesses, and proceeds to formulate a trust-like mechanism as an adaptive normative solution to guarantee the protection and legal certainty of the fetus's inheritance rights.

Based on the foregoing background, this study formulates two principal research questions: (1) What is the status quo of the regulation of inheritance rights for a fetus in utero under the KUHPerdata, and why has that regulation been unable to provide legal certainty and effective protection for the management of inheritance assets?; (2) How can a trust-like mechanism be constructed as a normative solution within Indonesian civil law to guarantee the management and protection of inheritance assets for the fetus as a prospective heir?

2. METHODS

This study constitutes normative legal research (juridical-normative research), examining norms within the positive legal system in a systematic and analytical manner. Three approaches are employed in a complementary fashion: first, the conceptual approach, to construct the idea of a trust-like mechanism based on relevant legal doctrine and theory; second, the statutory approach, to analyze the positive regulations pertaining

to fetal inheritance rights; and third, the comparative approach, to compare the trust system in English law with the protective mechanisms existing in Indonesian civil law and the Dutch legal system.

The legal materials employed consist of three categories: primary legal materials comprising legislation (KUHPerdata, the Child Protection Act, the Islamic Law Compilation, Presidential Instruction No. 1 of 1991, and related regulations); secondary legal materials comprising academic literature, national and international law journals, and government agency reports; and tertiary legal materials comprising legal dictionaries and encyclopaedias. The data analysis technique employs a descriptivequalitative method with source triangulation to ensure the validity of findings.

3. RESULT AND DISCUSSION

3. 1 Status Quo and Structural Weaknesses in the Regulation of Fetal Inheritance Rights under the KUHPerdata

a) Normative Foundation: The Principle of Nasciturus Pro Iam Nato Habetur

The juridical basis for fetal inheritance rights in Indonesian civil law rests upon Article (Yanto, 2024, pp. 1– (Sitkoff and Dukeminier, 2022, p. 1046)) Article 2 of the KUHPerdata, which constitutes the normative embodiment of the principle of nasciturus pro iam nato habetur quotiens de commodis eius agitur. This principle is rooted in classical Roman law and conveys the meaning that a child yet to be born is deemed already born whenever its interests so require. In the Roman legal tradition, this principle served as an instrument for protecting prospective rights-holders whose legal existence still depended upon a future natural event.

In the context of Indonesian civil law, the nasciturus principle operates through two cumulative conditions that must simultaneously be satisfied: (a) there must be an interest that objectively benefits the fetus, such that the principle does not apply to obligations or burdens that would disadvantage it; and (b) the fetus must be born alive, because if born dead it is deemed never to have existed and its rights are automatically extinguished. Yanto (2024) affirms that, although a fetus does not possess the capacity to perform legal acts, this incapacity does not negate its existence as a legal subject, given that a fetus is a prospective human being whose position is juridically recognized by the positive legal system.

Read in conjunction with Article 836 of the KUHPerdata, which requires an heir to have 'existed' at the time the estate opens, the combination of these two articles technically permits a fetus already in the womb at the time of the testator's death to be recognized as a lawful heir. According to Natani and Lesmana (2024), Article 836 of the KUHPerdata regulates the condition of an heir's existence absolutely, and only through its interaction with Article 2 can the fetus be excepted from that general provision. In practice, the mechanism commonly employed is the suspension of estate distribution (in suspenso) until the fetus is born, with all estate assets remaining in a state of indefinite indivisibility because one portion is potentially designated for the fetus.

Table 1. Regulation of Fetal Inheritance Rights under the KUHPerdata

Aspect	KUHPerdata Provision	Legal Implication
Legal Basis	Article 2 jo. Article 836 KUHPerdata	The fetus is recognized as a conditional heir with retroactive rights

Principal Condition	Born alive	The inheritance right applies retroactively from the time the estate opens
Interest Requirement	Must be beneficial to the child (not an obligation/burden)	The principle does not apply to the inheritance of the testator's debts
Effect of Stillbirth	Deemed never to have existed (Article 2(2) KUHPerdata)	The estate is divided as if the fetus never existed as an heir
Asset Manager	Guardian or parent (implicit, not explicitly regulated)	No special curator is provided; susceptible to misappropriation
Gestational Age Limit	Not regulated (cf. Dutch NBW: 300 days)	Legal uncertainty as to which fetus is legally relevant

Source: Author's analysis based on KUHPerdata and comparison with Dutch NBW (2024).

b) Five Structural Weaknesses in the Existing Regulation

The normative construction, seemingly adequate in theory, conceals five significant structural weaknesses when confronted with the complexity of concrete cases in legal practice, including: First, Ambiguity in the Verification of the Fetus's Existence and Gestational Age. The KUHPerdata does not establish any minimum or maximum gestational age limit for the fetus to be considered legally relevant at the time the estate opens. Wattimena, Januar, and Astuti (2024) demonstrate that even in divorce proceedings, judges frequently encounter difficulty in validly verifying the fetus's condition and existence due to the absence of standard procedural guidelines in Indonesian civil law. Unlike the Dutch legal system under the Nieuw Burgerlijk Wetboek (NBW), which establishes a legal presumption that the maximum gestational period is 300 days, the Indonesian KUHPerdata recognizes no such time limit, thereby creating acute uncertainty in judicial practice.

Second, Absence of an Interim Asset Management Mechanism. The KUHPerdata contains no explicit provision as to who is responsible for safeguarding, managing, and accounting for the 'suspended' inheritance assets during the gestational period. There is no provision for asset-blocking, the appointment of an interim guardian specifically for the fetus's interests, reporting obligations on the state of assets to the court, or criminal or civil sanctions against parties who alienate estate assets during the period of waiting for the fetus's birth. Mustofa, Imron, and Gibtiah (2023) demonstrate that Islamic law, in both the Shafi'i and Hanbali schools, has been considerably more concrete in providing guidance on the suspension and management of inheritance assets during pregnancy a mechanism entirely unknown in explicit terms under the KUHPerdata (Mustofa, Imron and Gibtiah, 2023, pp. 183–192).

Third, Inconsistency with Child Protection Legal Instruments. Law No. 35 of 2014 on Child Protection explicitly defines a child as a person under 18 years of age (Fuady, 2021), including children still in the womb, thereby implicitly acknowledging the legal subjectivity of the fetus within the framework of state protection. However, as highlighted by Wuryaningsih et al. (2024), this recognition in public law has not been matched by equivalent adjustment in private law, particularly inheritance law. This vertical inconsistency between the KUHPerdata and the Child Protection Act raises a crucial theoretical question: does a fetus explicitly recognized as a 'child' under the Child

Protection Act automatically receive comprehensive protection of its civil rights, including inheritance rights? The answer is not harmoniously found in either instrument.

Fourth, Inadequacy in the Context of Parentage Disputes. The KUHPerdata provides inadequate guidance for situations in which the fetus's lineage is still disputed at the time the estate opens, for example in cases of plural marriage or disputes concerning the validity of a marriage. Salpiah et al. (2025) affirm that, while Islamic law through the provisions of fiqh mawaris has established two relatively clear primary conditions for a fetus to become an heir, the KUHPerdata provides no equivalent guidance for resolving disputes when both conditions are contested by the parties. As a result, judges are compelled to exercise wide discretion based on the general principles of civil law, which risks producing divergent decisions between courts.

Fifth, Non-Recognition of the Curator Ventris Institution. Roman law and several modern European legal systems recognize the institution of the curator ventris a curator specifically appointed by the court solely to safeguard and represent the interests of the unborn fetus. Although Article 347 of the KUHPerdata regulates guardianship in general, it does not specifically regulate guardianship for the unborn. The absence of this institution means that no party is legally obligated and authorized to: petition the court for a declaration of the fetus's existence; monitor the pregnancy in the legal interest; ensure that assets designated for the fetus are safe from alienation; or represent the fetus in any legal proceedings arising during the gestational period. Budiono (2023) affirms that the absence of such an institution is one of the largest gaps in Indonesian civil inheritance law, and urgently requires filling through legislative reform.

c) Comparison with the Islamic Law Compilation (KHI) and the Islamic Legal System

When compared with the Islamic legal system as accommodated in the Islamic Law Compilation (KHI) based on Presidential Instruction No. 1 of 1991, the regulation of fetal inheritance rights under the KUHPerdata appears considerably more procedurally limited. The KHI not only recognizes the fetus's inheritance rights substantively but also provides more concrete guidance on the suspension of estate distribution and the management of assets during pregnancy. Under the Shafi'i school, the entire estate is suspended from distribution until the fetus is born, with the wali nasab (blood guardians) serving as custodians of assets during the waiting period. The Hanbali school goes further still, establishing a maximum allocation for a fetus whose number is yet unknown.

This comparison reveals that the legal pluralism encompassing Indonesia's inheritance system specifically the coexistence of Western civil law (KUHPerdata) and Islamic law (KHI) actually reinforces the argument for normative reform in civil inheritance law. When one of the legal systems operatives in Indonesia has already provided a superior mechanism, this should serve as a catalyst for the reform of the other system, rather than each standing alone in a separate normative silo.

3. 2 Trust Law in the Common Law System as a Comparative Model

a) History and Fundamental Principles of English Trust Law

Trust is one of the greatest contributions of the English common law system to the treasury of world law. Historically, trust developed from the institution of uses in the Middle Ages, whereby landowners transferred formal ownership to another party (feoffee to uses) for the benefit of themselves or a third party (cestui que use). This practice was initially recognized and enforced by the Court of Chancery on equitable principles, not by ordinary common law courts. After the Statute of Uses 1535 attempted to abolish the institution, legal practitioners developed a new form that ultimately evolved into the modern trust as it is known today. Penner (2020) propounds that the

modern trust is a legal relationship that arises when a person (the settlor) transfers property or rights to another party (the trustee) to be managed for the benefit of a third party (the beneficiary) or a particular purpose recognized by law.

The tripartite structure of a trust settlor, trustee, and beneficiary, creates a clear separation between legal title, which vests in the trustee, and the equitable or beneficial interest, which belongs to the beneficiary. Hudson (2021) emphasizes that this separation is the core of the trust concept and its principal distinguishing feature from ordinary ownership in any legal system. The trustee is formally the lawful owner of the trust property, but cannot use it for personal benefit; instead, it is bound by comprehensive fiduciary duties to manage the property solely in the interest of the beneficiary.

The relevance of trust to the present study lies in its ability to protect the interests of unborn beneficiaries. English trust law consistently recognizes the validity of trusts established for the benefit of unborn children, provided that the appointed trustee already exists and possesses full legal capacity to hold and manage the trust property. Moffat, Bean, and Probert (2021) explain that, in the context of trusts for unborn beneficiaries, the trustee is under a duty to preserve and develop the trust property until the beneficiary reaches the legal status enabling it to receive the transfer of property namely, upon birth or upon attaining a specified age set out in the trust deed.

Pettit (2022) further explains that a trustee's fiduciary duty comprises three principal components: the duty of loyalty (the obligation not to have interests conflicting with those of the beneficiary), the duty of care (the obligation to act with the care and skill of a reasonable professional), and the duty to follow the terms of the trust (the obligation to comply with the provisions established in the trust deed). These three duties collectively create a rigorous accountability system for trust property management, thereby minimizing the risk of misappropriation or improper disbursement from assets designated for the beneficiary.

A genealogically closer comparison for the Indonesian legal system can be found in the Nieuw Burgerlijk Wetboek (NBW) of the Netherlands, which has undergone significant modernization since 1992. In contrast to the old BW that gave rise to the Indonesian KUHPerdata, the NBW establishes a legal presumption that the maximum period of pregnancy is 300 days from the testator's death, such that a fetus born within that period is deemed to have existed at the time the estate opened. Furthermore, the NBW recognizes the institution of bewind (property supervision), which can function in a trust-like capacity in the context of managing assets for persons lacking full legal capacity, including fetuses.

Reid, de Waal, and Zimmermann (2021), in their comparative analysis of mandatory protection in succession law, demonstrate that modern European civil law systems—including those of the Netherlands, Germany, and France—have developed instruments functionally analogous to trust, even though they do not formally employ that name. These instruments, including Treuhand in German law and bewind in Dutch law, provide the theoretical foundation for the proposition that adapting trust principles into a civil law system is something that has been proven normatively feasible and does not require a fundamental transformation of the framework of the legal system concerned.

b) Construction of a Trust-Like Mechanism as a Normative Solution in Indonesian Civil Law

The construction of a trust-like mechanism in the context of fetal inheritance rights is grounded in two principal and mutually complementary legal theories. First, the theory of legal protection developed by Satjipto Rahardjo (2021), which emphasizes that

the state is obligated to provide protection to every legal subject, including those in a vulnerable position or lacking full legal capacity. Such protection must be preventive in nature (preventing harm before it occurs) and repressive (providing redress after harm has occurred). In the context of the fetus as a prospective heir, preventive protection is critically important because harm occurring during the gestational period such as the alienation of assets by other heirs is permanent in nature and difficult to remedy after the fetus is born.

Second, the theory of legal certainty as developed by Gustav Radbruch and subsequently elaborated in the Indonesian legal context by various legal scholars. Legal certainty requires clarity as to the norm, the legal subject, the legal object, and the procedure for the enforcement of rights. The absence of a clear mechanism for managing inheritance assets for the fetus potentially generates uncertainty that opens space for conflict and misappropriation. Susilowati (2022) propounds that, in the context of inheritance law, legal certainty encompasses clarity as to who is authorized to manage assets, what the scope of that responsibility is, and when the right is fully transferred to the entitled subject.

Wijayanti (2022) adds that, although Indonesia does not recognize trust as a formal legal form, the underlying principles the separation of legal ownership from beneficial interest, the fiduciary obligations of the manager, and the protection of the beneficiary's interest can be found dispersed throughout various Indonesian civil law instruments. Accordingly, the construction of a trust-like mechanism does not constitute the transplantation of foreign law but rather a normative reconstruction based on existing positive law.

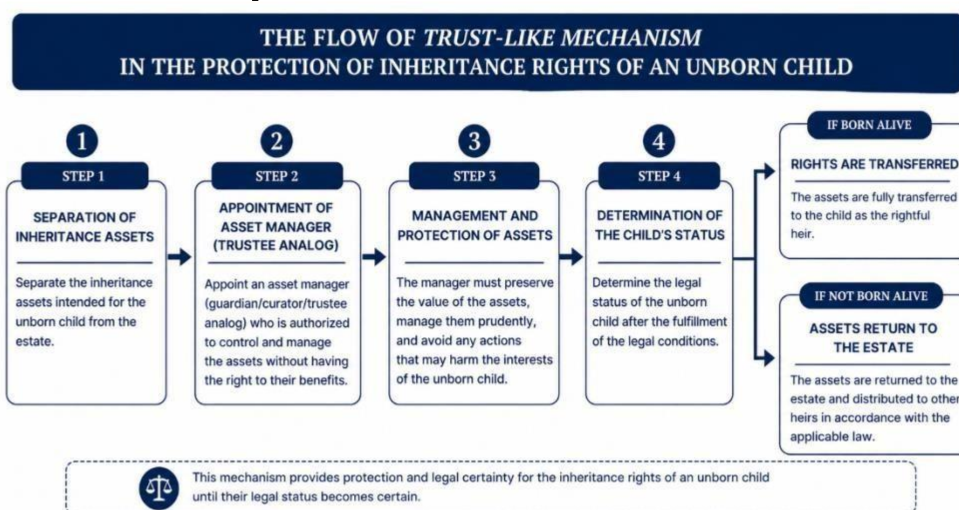
Table 2. Structural Elements of the Trust-Like Mechanism

Element	Description	Legal Basis
Asset Segregation	Assets constituting the fetus's share are separated from the immediately distributable estate	Article 2 jo. Article 836 KUHPerdata; nasciturus principle; principle of interest protection
Trustee Analog (Asset Manager)	A guardian, curator, or testamentary appointee bearing fiduciary duties	Articles 345–354 KUHPerdata (guardianship); principle of good faith under Article 1338 KUHPerdata
Prudential Management	Management of assets with care, accountability, and solely for the fetus's benefit	Prudence principle; Articles 1131–1132 KUHPerdata; Law No. 35 of 2014, Article 1(1)
Conditional Transfer	Full transfer of rights to the live-born fetus; reversion to the estate if born dead	Article 2(2) KUHPerdata; principle of the suspensive condition (opschortende voorwaarde)

Source: Author's Construction.

In operational terms, the trust-like mechanism functions through four sequential and interdependent phases.

Flowchart Operational Phases of the Trust-Like Mechanism



Source: Author's analysis.

The first phase is the asset segregation phase. Immediately upon the opening of the estate, where a fetus in the womb potentially qualifies as an heir, all inheritance assets constituting the fetus's share must be legally separated from the portions belonging to other heirs. This segregation aims to ensure that those assets are not commingled and cannot be used by any other party before the fetus's legal status becomes certain. Kartika and Setiawan (2023) emphasize that asset segregation is the critical first step without which the entire subsequent protection mechanism cannot function effectively.

The second phase is the appointment phase. In the Indonesian legal context, this role may be performed by a guardian appointed by court order, or by a party designated through the testator's will. This manager holds exclusive authority to possess and manage the segregated assets, but has no right to their benefit. Its position resembles that of a trustee in the trust system, bound by the duty to act in good faith and with full responsibility toward the court as supervisor. Nurhayati and Sitorus (2023) affirm that the manager must possess full legal capacity, must have no conflict of interest with the fetus, and must be subject to a clear accountability mechanism.

The third phase is the prudential management and asset protection phase (management phase). During this phase, the manager is obligated to preserve the value of the assets, manage them reasonably, avoid speculative actions that could harm the fetus's interests, and submit periodic reports to the court or designated supervisory body. Management is conducted on the basis of the prudence principle, which is the principal element of fiduciary duty in the trust system. Langbein (2023) propounds that the standard of care in the management of fiduciary assets has evolved from the prudent man standard to the prudent investor standard, permitting the manager to diversify investments provided this benefits the beneficiary.14

The fourth phase is the transfer phase upon fulfillment of the legal conditions. If the fetus is born alive, the right to the segregated assets vests fully in it as a lawful heir, with rights applying retroactively from the time the estate opened. Conversely, if the fetus is born dead or fails to be born (miscarriage after a legally relevant age), the assets are returned to the general estate for distribution to the other heirs in accordance with the applicable provisions. Thaib (2022) affirms that this phase constitutes the realization of the suspensive condition (opschortende voorwaarde) that implicitly underpins the entire construction of fetal inheritance rights in the KUHPerdata system.

The construction of a trust-like mechanism does not require entirely new legal norms in order to be applied. Several provisions in the current Indonesian positive law can serve as supporting normative foundations. First, the nasciturus principle in Article 2 of the KUHPerdata, having already recognized the fetus as a conditional legal subject, furnishes the foundation for the legitimacy of asset segregation and the appointment of a manager for its benefit. Second, the guardianship provisions in Articles 345–354 of the KUHPerdata, while not specifically regulating guardianship for the unborn, can be applied by analogy to permit the appointment of a guardian acting as an asset manager during the gestational period. Third, the principle of good faith (goede trouw/bonafides) dispersed throughout various KUHPerdata provisions, particularly Article 1338(3), provides the basis for the manager's obligation to act with honesty and responsibility in managing the fetus's assets.

Fourth, Law No. 35 of 2014 on Child Protection, which explicitly recognizes the fetus as 'a child still in the womb,' provides a public law basis for the existence of a private law protective instrument. Fifth, the Islamic Law Compilation (KHI) under. Presidential Instruction No. 1 of 1991, though only applicable to Muslims, can serve as an internal normative comparison reinforcing the argument for a similar mechanism in the KUHPerdata system. Manan (2022) affirms that Indonesian legal pluralism should be regarded as a strength, not a weakness; when one legal system has provided a superior solution, the other must respond adaptively.

c) Implications of the Trust-Like Mechanism for Legal Certainty and Protection of Fetal Rights

The systematic application of a trust-like mechanism will produce a significant enhancement of legal certainty in several respects. First, certainty as to the status of inheritance assets: with a clear mechanism for asset segregation, there will be no further ambiguity concerning which assets may be immediately distributed and which must be suspended until the fetus's legal status becomes certain. Second, certainty as to management authority: the appointment of a manager through a court order will end the normative vacuum concerning who is authorized to safeguard assets during the gestational period. Third, certainty as to accountability mechanisms: the manager's periodic reporting obligations to the court create an accountability system verifiable by all interested parties.

Prawirohamidjojo (2020) affirms that legal certainty in the inheritance context is important not only for the directly involved parties, but also for the overall stability of property transactions. When the status of inheritance assets is unclear due to the existence of an unborn prospective heir, it may impede various economic transactions involving those assets. The trust-like mechanism, by providing a clear and accountable management framework, will reduce those impediments without sacrificing protection of the fetus's interests.

In addition to legal certainty, the trust-like mechanism also strengthens the substantive dimension of legal protection for the fetus. Protection that has hitherto been declarative in nature—a mere normative acknowledgment of the fetus's inheritance rights without a concrete mechanism for realizing them—will be transformed into operational preventive protection. Sitkoff and Dukeminier (2022) propound that the true value of a fiduciary asset management instrument lies not only in its capacity to manage assets efficiently, but also in its capacity to prevent permanent and irreversible harm.

In the context of the fetus as a prospective heir, this means that the trust-like mechanism functions as a legal shield preventing other heirs from alienating, dissipating, or destroying assets that should form the fetus's share—long before the fetus is born and

able to assert its own rights through legal proceedings. Fuady (2021) emphasizes that such preventive protection is far more effective and efficient than repressive protection that demands redress for harm after the fact, because by the time redress is sought, the value of the assets may have been significantly diminished or entirely extinguished.18.

d) Prospects for National Inheritance Law Reform Through Adoption of the Trust-Like Mechanism

Optimal adoption of the trust-like mechanism requires structured legislative reform. Dutta (2022), in a comparative study of unborn beneficiaries in succession law, concludes that civil law countries that have successfully provided effective protection for prospective heirs not yet born have generally undertaken reform through two avenues: first, amendment of the existing civil code to incorporate explicit provisions on asset management for fetuses; and second, special legislation regulating the mechanism of fiduciary asset management outside the framework of formal trust.

In the Indonesian context, the first avenue appears more feasible given the existence of a Draft Civil Code currently under discussion. This opportunity must be seized to incorporate specific provisions on: (a) the appointment of a curator ventris by the court upon application by an interested party; (b) the procedure for the segregation and recording of assets potentially constituting the fetus's share; (c) the standard of fiduciary duty binding the asset manager; (d) the mechanism for periodic reporting and court supervision; and (e) the legal consequences for a manager who breaches its obligations. Based on the comparative analysis and normative construction set out above, the following normative blueprint is recommended to fill the legal vacuum in the management of inheritance assets for a fetus in Indonesia:

Article X.1 (Asset Segregation): Where, at the time the estate opens, there is a fetus in the womb potentially qualifying as an heir, the court, upon application by an interested party, shall order the segregation of the share of assets potentially constituting the fetus's entitlement from the portion immediately distributable to other heirs.

Article X.2 (Curator Ventris): The court shall appoint a curator ventris acting solely in the interest of the fetus and responsible for managing the segregated assets. The curator ventris shall be obligated to: (a) preserve the integrity and value of the assets; (b) submit quarterly reports to the court; (c) refrain from performing any legal act in respect of those assets without the court's approval; and (d) account for its management to the lawful heirs once the fetus's legal status is determined.

Article X.3 (Presumptive Time Limit): A fetus born within 300 days of the testator's death is deemed to have existed at the time the estate opened and is entitled to its share of the estate. A fetus born after that period is not entitled to the estate of the testator concerned, unless otherwise proved by valid medical evidence.

Article X.4 (Transfer of Rights): If the fetus is born alive, the curator ventris shall transfer management of the assets to the lawful guardian in accordance with the guardianship provisions. If the fetus is born dead or fails to be born, the segregated assets shall be returned to the general estate for distribution in accordance with the applicable provisions.

The application of a trust-like mechanism is not without a number of practical challenges that must be anticipated. First, the challenge of institutional court capacity. The mechanism of asset segregation and the appointment of a curator ventris will significantly increase the court's workload, particularly given the already high volume of cases. A solution could involve the establishment of a dedicated family and inheritance law division in major courts, or the strengthening of the role of the Balai Harta

Peninggalan (BHP, Office of Estate Affairs) as the institution traditionally responsible for managing the assets of those lacking legal capacity.

Second, the challenge of verifying the fetus's medical condition. A legal determination as to the fetus's existence and condition requires valid medical evidence, which in turn requires coordination between the judicial system and health institutions. Braun and Röthel (2020) demonstrate that various countries have developed standard procedures for verifying the condition of a fetus in the context of inheritance disputes, which generally involve certification by an obstetrician appointed by the court. Indonesia could adopt a similar approach involving accredited obstetric specialists.

Third, the challenge of public legal awareness. Even the best mechanism will not function effectively if members of the public are unaware of its existence or how to access it. Systematic socialization programs are required, particularly among notaries, judges, advocates, and civil registry officials, who in practice are oft en the first parties contacted in inheritance matters.

4. CONCLUSION

4. 1 Conclusion

First, the regulation of fetal inheritance rights under the KUHPerdata, resting on the principle of nasciturus pro iam nato habetur, possesses a theoretically adequate normative foundation through the combination of Articles 2 and 836 of the KUHPerdata. Nevertheless, this regulation contains five significant structural weaknesses: (a) ambiguity in the verification of gestational age and the fetus's existence; (b) the absence of a clear mechanism for managing assets during the gestational period; (c) vertical inconsistency with the Child Protection Act; (d) inadequate guidance for handling parentage disputes; and (e) non-recognition of the institution of the curator ventris specifically representing the fetus's interests. Cumulatively, these weaknesses produce a normative vacuum that results in legal uncertainty and the real potential for harm to the fetus's interests as an heir.

Second, the construction of a trust-like mechanism formulated in this study offers an adaptive and feasible normative solution within the Indonesian civil law system. By utilizing existing legal instruments—namely the nasciturus principle, guardianship provisions, and the principle of good faith—combined with the essential elements of English trust law and the bewind system in modern Dutch law, the trust-like mechanism is capable of filling that normative vacuum without necessitating radical legal transplantation. The mechanism operates through four sequential phases: asset segregation, appointment of a trustee-analog manager, prudential asset management, and conditional transfer of rights—which together create a system of protection that is preventive in character while providing structured, verifiable legal certainty.

4. 2 Recommendations

Based on the above conclusions, this study puts forward four constructive recommendations. First, the House of Representatives (DPR) and the Government, in the process of drafting the new Civil Code, should incorporate explicit provisions on: (a) the institution of the curator ventris with clearly defined duties, authority, and accountability mechanisms; (b) the procedure for segregating inheritance assets potentially constituting the fetus's entitlement; (c) a legal presumption concerning the time limit of pregnancy deemed legally relevant; and (d) the standard of fiduciary duty binding the asset manager. Second, the Supreme Court should issue a Supreme Court Regulation (PERMA) providing guidance for judges in handling cases involving fetal inheritance rights, including the

procedure for verifying the fetus's condition and the mechanism for appointing an interim asset manager.

Third, the Ministry of Law and Human Rights should strengthen the capacity of the Balai Harta Peninggalan (BHP) as an institution capable of serving as curator ventris in cases where no suitable party is available for appointment as the fetus's asset manager. This strengthening encompasses the enhancement of human resources, the expansion of authority, and the modernization of the BHP's working procedures. Fourth, the academic legal community should continue research on the trust-like mechanism, focusing on aspects not fully examined in this study, particularly the tax implications of asset segregation for the benefit of a fetus, and the mechanism for conflict resolution that may arise between the curator ventris and other heirs.

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