

LEGAL ANALYSIS OF THE DISTRIBUTION OF INHERITANCE FOR WIDOWS ACCORDING TO THE CIVIL CODE

Andri Wiranata^a, Sri Iin Hartini^b, Yulianus Pabassing^b

^a Faculty of Law, Universitas Doktor Husni Ingratubun Papua, Email: andriwiranata829@gmail.com

^b Faculty of Law, Universitas Doktor Husni Ingratubun Papua, Email: budenonce@gmail.com,
yulianuspabassing@gmail.com

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Abstract:

Regulations regarding inheritance law cannot be separated from regulations regarding marriage law. This can be attributed to at least two factors: first, the process of determining heirs begins with marriage. In inheritance law, a widow is defined as a wife who outlives her spouse in a marriage that ends due to the death of her husband. This study aims to determine the position of widows as heirs according to the Civil Code and the distribution of inheritance for widows according to the Civil Code. The research method used in this study is normative legal research or library legal research, namely legal research conducted by conducting research on library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are then systematically compiled, reviewed, and conclusions are drawn in a summary with the problem being studied, namely inheritance for widows according to the Civil Code. The results of the study indicate that the position of widows as heirs is included in Class I of heirs. Based on the position of widows as heirs, Class I, widows inherit based on their own position. The widow's position appears as an heir based on priority, thus closing off other groups. A widow can inherit the inheritance by leaving parents or siblings if there are no descendants who have the right to inherit. The distribution of inheritance for widows is based on Article 852a of the Civil Code; the widow's share of inheritance is equal to the share of a legitimate child, so that inheritance is head of household. A widow will receive $\frac{1}{2}$ (half) of the joint property, and the remaining $\frac{1}{2}$ (half) becomes the inheritance of the testator, which will be divided between the widow and her children.

Keywords: Division of Inheritance; Widows; Civil Code

INTRODUCTION

Inheritance under the Indonesian Civil Code concerns the legal consequences of death for the transfer of a deceased person's patrimonial rights and obligations to those entitled to succeed. The opening of an inheritance therefore raises not only a question concerning the property left by the deceased, but also the legal status of the persons entitled to receive it. Article 832 of the Civil Code recognizes blood relatives and the surviving husband or wife as statutory heirs, while the structure of intestate succession gives priority to heirs in the preceding order over

those belonging to subsequent orders.¹ Within this structure, the surviving spouse occupies a distinctive position because the spouse's entitlement arises from marriage rather than consanguinity, yet the Civil Code places the surviving spouse alongside the deceased's descendants in the first order of intestate succession.² For purposes of this study, the analysis is specifically directed to the widow, understood as the wife who survives her deceased husband, while acknowledging that the relevant provisions of the Civil Code are formulated for either a surviving husband or wife.

The legal position of a widow is primarily constructed through the relationship between Articles 832 and 852a of the Civil Code. Article 832 establishes the surviving spouse as an heir by operation of law, whereas Article 852a provides that, in applying the rules of intestate succession, the surviving husband or wife is treated in the same manner as a legitimate child of the deceased.³ In doctrinal classifications of intestate heirs, this places the widow within the first class of heirs together with the deceased's descendants and consequently excludes heirs belonging to subsequent classes for as long as an heir of the first class exists.⁴ The legal problem, however, does not end with identifying the widow as an heir. Her actual entitlement must also be determined by identifying the assets that legally constitute the deceased's estate and by examining whether the Civil Code imposes special limitations on the amount that she may receive.

The determination of the estate is particularly important because the death of a spouse may simultaneously produce legal consequences under matrimonial-property law and inheritance law. Article 35 of Law Number 1 of 1974 concerning Marriage distinguishes property acquired during marriage from property brought into the marriage and property obtained individually through gift or inheritance.⁵ The distinction remains relevant because property belonging to the surviving spouse on the basis of the matrimonial-property relationship is not identical to property obtained by that spouse through inheritance. Studies concerning matrimonial property under Indonesian civil law similarly demonstrate that the determination and division of matrimonial property constitute a legal issue distinct from the subsequent distribution of the deceased spouse's estate.⁶ Accordingly, the deceased's estate must first be identified before the widow's inheritance share can be calculated. The widow may therefore obtain property on two different legal grounds: her entitlement arising from the matrimonial-property relationship and her entitlement arising from her status as an heir.

The legal construction becomes more complex where the deceased entered into a second or subsequent marriage and left children or descendants from an earlier marriage. In this context, the Civil Code establishes two related but legally distinct restrictions. Article 181

¹ *Kitab Undang-Undang Hukum Perdata* [Burgerlijk Wetboek], art. 832; Abd. Halim, "Kedudukan Janda dalam Hukum Waris Adat, Perdata, dan Islam: Kajian Integratif," *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 2 (2017): 181–196, <https://doi.org/10.14421/al-mazaahib.v5i2.1417>.

² *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Halim, "Kedudukan Janda," 181–196.

³ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Miguel Leonardo Sudjana et al., "Hak Waris Suami atau Istri terhadap Harta Bawaan Pewaris Menurut Kitab Undang-Undang Hukum Perdata," *Lex Journal: Kajian Hukum dan Keadilan* 10, no. S1 (2026): 284–299, <https://doi.org/10.25139/lex.v10iS1.12697>.

⁴ Halim, "Kedudukan Janda," 181–196; Sudjana et al., "Hak Waris Suami atau Istri," 284–299; *Kitab Undang-Undang Hukum Perdata*, art. 852a.

⁵ Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 35, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 3019; Roswati Nurdin, Nurbaya Abdullah, and Rustam Magum Pikhulan, "Harta Bersama serta Kedudukannya Menurut Kompilasi Hukum Islam (KHI) dan Kitab Undang-Undang Hukum Perdata (KUHPerdata)," *Al-Muqararah: Jurnal Hukum dan Pemikiran Islam* 2, no. 2 (2024): 57–80, <https://doi.org/10.33477/am.v2i2.7894>.

⁶ Nurdin, Abdullah, and Pikhulan, "Harta Bersama," 57–80; Fajar Ronal Harry Pasaribu and Zainal Arifin Hoesein, "Kajian Komparatif terhadap Pengaturan dan Pembagian Harta Bersama dalam Perkawinan Menurut Hukum Islam dan Kitab Undang-Undang Hukum Perdata," *Judge: Jurnal Hukum* 6, no. 4 (2025): 1125–1139, <https://doi.org/10.54209/judge.v6i04.1803>.

concerns benefits obtained by the new husband or wife through the commingling of assets and liabilities in a second or subsequent marriage; where children or descendants from a previous marriage exist, such benefits may not exceed the smallest portion obtained by a child or that child's successors and, in any event, may not exceed one quarter of the property of the spouse who remarried.⁷ Article 852a, by contrast, regulates the surviving spouse's inheritance share, providing that the new spouse may not inherit more than the smallest portion received by a child or the descendants representing that child and may not, in any event, receive more than one quarter of the deceased's estate.⁸ The distinction between these provisions is significant because one governs patrimonial benefits arising from the matrimonial-property relationship, while the other governs succession. The widow's inheritance must therefore be determined through a sequence that distinguishes her status as an heir, the composition of the estate, and the special statutory limitation applicable in a second or subsequent marriage.

Previous studies have addressed different components of this legal problem. Abd. Halim examines the position of widows comparatively under customary, Islamic, and civil inheritance law and demonstrates that the recognition and position of a widow vary according to the normative structure of each inheritance system.⁹ Suwarni, Budiarta, and Arini examine inheritance distribution more generally under the Civil Code, including the mechanisms for resolving disputes concerning inheritance distribution.¹⁰ Nurdin, Abdullah, and Pikahulan focus on the legal basis and position of matrimonial property under the Compilation of Islamic Law and the Civil Code,¹¹ while Pasaribu and Hoesein similarly compare the regulation and division of matrimonial property under Islamic law and the Civil Code.¹² These studies are relevant to understanding the legal status of widows, the general structure of inheritance distribution, and the treatment of matrimonial property, but their principal inquiries do not specifically integrate those components into the determination of a widow's inheritance under the Civil Code.

A recent study by Sudjana, Marwiyah, Amiq, and Taufik comes closer to the present inquiry by examining the surviving husband's or wife's right to inherit the deceased's separate property (*harta bawaan*). The study concludes that, once succession opens, the deceased's separate property becomes part of the estate and the surviving spouse's inheritance right is determined by his or her position as an heir under Articles 832 and 852a of the Civil Code rather than by the origin of the property.¹³ This finding clarifies an important aspect of the relationship between matrimonial property and inheritance. Nevertheless, the principal inquiry of that study concerns whether the surviving spouse may inherit the deceased's separate property, whereas the present study concerns the broader construction of the widow's legal position and the distribution of her inheritance under the Civil Code, including the determination of the estate and the special limitation applicable in second or subsequent marriages.¹⁴

Taken together, these studies have developed important analyses concerning the widow's position in different inheritance systems, the general distribution of inheritance under the Civil Code, matrimonial property, and the surviving spouse's right to the deceased's separate

⁷ *Kitab Undang-Undang Hukum Perdata*, art. 181.

⁸ *Kitab Undang-Undang Hukum Perdata*, art. 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

⁹ Halim, "Kedudukan Janda," 181–196.

¹⁰ Ni Luh Gede Suwarni, I. Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Pembagian Harta Warisan Ditinjau dari Kitab Undang-Undang Hukum Perdata," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 148–152, <https://doi.org/10.22225/juinhum.1.2.2453.148-152>.

¹¹ Nurdin, Abdullah, and Pikahulan, "Harta Bersama," 57–80.

¹² Pasaribu and Hoesein, "Kajian Komparatif," 1125–1139.

¹³ Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

¹⁴ Sudjana et al., "Hak Waris Suami atau Istri," 284–299; *Kitab Undang-Undang Hukum Perdata*, arts. 181 and 852a.

property.¹⁵ Within this body of literature, however, the widow's status as an *ab intestato* heir, the prior determination of the deceased's estate after the matrimonial-property relationship is identified, and the special restriction applicable to a surviving spouse in a second or subsequent marriage have not been examined as one integrated legal sequence for determining the widow's inheritance under the Civil Code.¹⁶ This study therefore maintains two related questions: what is the legal position of a widow as an heir under the Civil Code, and how is inheritance distributed to a widow under the Civil Code? The analysis focuses on the legal construction of the widow as an *ab intestato* heir and the rules determining the extent of the inheritance that she may receive. By distinguishing rights arising from the matrimonial-property relationship from rights arising from succession and by examining the specific limitation applicable to subsequent marriages, the study seeks to provide a systematic explanation of how the widow's legal position affects the distribution of the deceased's estate.

METHOD

This study employs normative legal research to examine the legal position of widows as heirs and the distribution of inheritance under the Indonesian Civil Code. The research primarily uses a statute approach by examining the relevant provisions of the Civil Code, particularly those governing intestate succession, matrimonial property, and limitations applicable to second or subsequent marriages, together with Law Number 1 of 1974 concerning Marriage. Relevant judicial decisions are used as supplementary primary legal materials where necessary to clarify the application of these provisions, while books and scholarly articles on civil inheritance law and matrimonial property constitute the secondary legal materials. The collected legal materials are analyzed qualitatively through systematic legal interpretation, particularly by examining the relationship among the provisions governing the widow's status as an heir, the determination of the deceased's estate, and the calculation and limitation of the widow's inheritance share.

ANALYSIS AND DISCUSSION

The Legal Position of Widows as Heirs under the Civil Code

The legal position of a widow in intestate succession is founded on Article 832 of the Civil Code, which recognizes blood relatives and the surviving husband or wife as persons entitled to inherit by operation of law.¹⁷ The widow acquires her status as an heir through the marital relationship with the deceased rather than through consanguinity. Article 852a further provides that, for purposes of intestate succession, the surviving husband or wife is treated in the same manner as a legitimate child of the deceased.¹⁸ Read together, these provisions establish the widow as an *ab intestato* heir whose entitlement arises from statutory law and does not depend on a testamentary disposition. Her legal position therefore has two foundations: Article 832 determines that she is included among statutory heirs, while Article 852a determines how she is positioned within the distribution of the estate. This distinction is important because the existence of a legal right to inherit must first be established before the extent of the share received by the widow can be determined under the rules governing intestate succession.

¹⁵ Halim, "Kedudukan Janda," 181–196; Suwarni, Budiarta, and Arini, "Pembagian Harta Warisan," 148–152; Nurdin, Abdullah, and Pikahulan, "Harta Bersama," 57–80; Pasaribu and Hoessein, "Kajian Komparatif," 1125–1139; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

¹⁶ *Kitab Undang-Undang Hukum Perdata*, arts. 181, 832, and 852a; Halim, "Kedudukan Janda," 181–196; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

¹⁷ *Kitab Undang-Undang Hukum Perdata*, art. 832; Halim, "Kedudukan Janda," 181–196.

¹⁸ *Kitab Undang-Undang Hukum Perdata*, art. 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

Within the doctrinal classification of heirs under the Civil Code, the surviving husband or wife and the deceased's children or descendants constitute the first class of heirs.¹⁹ This classification is significant because the Civil Code organizes intestate succession according to an order of priority in which heirs belonging to a preceding class exclude those in subsequent classes. The widow's inclusion in the first class consequently affects the entitlement of parents, siblings, and more remote relatives belonging to the second and subsequent classes.²⁰ Her legal position therefore concerns not only the portion of the estate that she may ultimately receive, but also the order in which other potential heirs may be called to the succession. The classification performs a structural function by determining who is legally entitled to inherit before the amount of each heir's share is calculated. In this sense, the widow's status within the first class is not merely descriptive, but directly determines the operation of the priority system governing intestate succession under the Civil Code.

The widow's position must nevertheless be distinguished from that of descendants. Article 852a equates the surviving spouse with a legitimate child for purposes of inheritance distribution, but it does not transform the spouse into a descendant of the deceased.²¹ The legal basis of the widow's entitlement remains the marital relationship recognized by Article 832. Halim's comparative study likewise shows that the Civil Code recognizes the widow as an heir through marriage, while other inheritance systems construct her position through different normative frameworks.²² This distinction matters because equivalence in distribution does not eliminate the different juridical bases upon which spouses and descendants are called to inherit. The widow must therefore be treated as an independent statutory heir whose entitlement is comparable to that of a legitimate child only to the extent expressly provided by the Civil Code. The equality established by Article 852a concerns the operation of inheritance distribution, not a complete assimilation of the spouse's legal status to that of the deceased's descendants in every aspect of succession.

The widow also inherits in her own capacity rather than through the mechanism of substitution. Article 852 recognizes inheritance *per capita* where heirs who are entitled in their own right receive shares according to their respective positions, while Articles 841-848 regulate *plaatsvervulling* or representation in circumstances permitted by the Civil Code.²³ The widow does not take the place of another heir; she is called directly because of her status as the surviving spouse. Accordingly, her position under Article 852a should not be understood as extending to all legal characteristics of descendants, particularly the rules governing representation.²⁴ Article 852a determines the widow's position and share in intestate succession, but does not create an identity of juridical status between spouse and descendant. This distinction preserves the separate legal bases of direct succession and succession by representation. It also prevents the statutory equation between the widow and a legitimate child

¹⁹ *Kitab Undang-Undang Hukum Perdata*, arts. 832, 852, and 852a; Halim, "Kedudukan Janda," 181–196; Effendi Perangin, *Hukum Waris*, 6th ed. (Jakarta: Rajawali Pers, 2014).

²⁰ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Halim, "Kedudukan Janda," 181–196.

²¹ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299; Muhammad Ramadhani Hidayat and Anshori, "Kedudukan Janda dalam Mewaris Harta Bawaan Suami," *Jurnal Kewarganegaraan* 6, no. 2 (2022), <https://doi.org/10.31316/jk.v6i2.3235>.

²² Halim, "Kedudukan Janda," 181–196.

²³ *Kitab Undang-Undang Hukum Perdata*, arts. 841–848 and 852; Surini Ahlan Sjarif and Nurul Elmiyah, *Hukum Warisan Perdata Barat* (Jakarta: Prenada Media, 2004); Muhammad, Syahrial Ahmad, and Abdul Wahid Bagoes Timor Ali Ramdhan, "Studi Komparasi Ahli Waris Pengganti (*Plaatsvervulling*) dalam Perspektif KUH Perdata dan Kompilasi Hukum Islam," *Menara Tebuireng: Jurnal Ilmu-Ilmu Keislaman* 18, no. 2 (2023): 1–15, <https://doi.org/10.33752/menaratebuireng.v18i2.4848>.

²⁴ *Kitab Undang-Undang Hukum Perdata*, arts. 841–848 and 852a; Halim, "Kedudukan Janda," 181–196; Muhammad, Ahmad, and Ramdhan, "Studi Komparasi Ahli Waris Pengganti," 1–15.

from being interpreted more broadly than the Civil Code itself provides for purposes of inheritance distribution.

The consequences of this legal position become evident where the deceased leaves no children or descendants. Because the surviving spouse remains within the first class of heirs, the absence of descendants does not by itself open the succession to parents or siblings while the surviving spouse is entitled to inherit.²⁵ The class system means that heirs in the second and subsequent classes are called only when no heir from the preceding class is entitled to succeed.²⁶ The widow's priority therefore derives from her statutory placement within the first class rather than from any blood relationship with the deceased. This construction explains why she may exclude parents, siblings, and more remote relatives even though she is not connected to the deceased by consanguinity. The decisive factor is her legally recognized position within the hierarchy of intestate heirs established by the Civil Code. The practical consequence is that the determination of the widow's status must precede any assessment of whether relatives belonging to later classes acquire a right to the estate.

The widow's legal position under the Civil Code can therefore be understood through two related propositions. Article 832 establishes her status as a statutory heir, while Article 852a determines her position in inheritance distribution by equating the surviving spouse with a legitimate child, subject to the limitations provided by law.²⁷ Recent research concerning the surviving spouse's right to the deceased's separate property confirms that inheritance entitlement is determined by the spouse's legal status as an heir under Articles 832 and 852a rather than merely by the origin of the property concerned.²⁸ This position provides the legal foundation for determining the widow's inheritance, but it does not by itself establish the amount she will ultimately receive. Before the share can be calculated, it is necessary to identify which assets form part of the deceased's estate and which assets arise from the matrimonial-property relationship. The distinction is essential because those categories derive from different legal bases and must be resolved before the rules governing distribution of the estate can be properly applied.

Determination of the Estate: Matrimonial Property and Inherited Property

The determination of a widow's inheritance share must begin with identifying the assets that legally constitute the deceased's estate. This step precedes the application of inheritance rules because not every asset connected with the marriage automatically becomes part of the estate upon the husband's death. Article 35 of Law Number 1 of 1974 concerning Marriage distinguishes property acquired during marriage from property brought into the marriage and property individually acquired through gift or inheritance.²⁹ This distinction separates the surviving spouse's proprietary rights from property that is legally attributable to the deceased. Studies on matrimonial property likewise emphasize that the classification of assets within marriage determines which property is jointly held and which remains under the control of each spouse.³⁰ The inheritance process must therefore begin by establishing the legal ownership and

²⁵ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Halim, "Kedudukan Janda," 181–196; Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW* (Jakarta: RajaGrafindo Persada, 2003).

²⁶ *Kitab Undang-Undang Hukum Perdata*, arts. 832–858; Halim, "Kedudukan Janda," 181–196; Perangin, *Hukum Waris*.

²⁷ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Halim, "Kedudukan Janda," 181–196.

²⁸ Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

²⁹ Sudjana et al., "Hak Waris Suami atau Istri," 284–299; Evi Djuniarti, "Hukum Harta Bersama Ditinjau dari Perspektif Undang-Undang Perkawinan dan KUH Perdata," *Jurnal Penelitian Hukum De Jure* 17, no. 4 (2017): 445–461, <https://doi.org/10.30641/dejure.2017.V17.445-461>.

³⁰ Nurdin, Abdullah, and Pikahulan, "Harta Bersama," 57–80; Pasaribu and Hoesein, "Kajian Komparatif," 1125–1139; Muhammad Tigas Pradoto, "Aspek Yuridis Pembagian Harta Bersama dalam Perkawinan (Tinjauan

classification of the relevant assets before determining which of them enter the estate and can subsequently be transferred to the heirs. This sequence is essential because the size of the estate determines the object upon which the widow's inheritance share will later be calculated.

The distinction is particularly important because the death of a spouse simultaneously produces consequences under matrimonial-property law and inheritance law. First, the matrimonial-property relationship terminates, and the proprietary rights of each spouse must be determined according to the applicable legal regime. Second, succession opens only over the property that is legally attributable to the deceased. Under Article 35 of the Marriage Law, property acquired during marriage constitutes joint property, whereas property brought into the marriage and property obtained individually through gift or inheritance remains under the control of the respective spouse unless the parties determine otherwise.³¹ Scholarship concerning matrimonial property similarly distinguishes joint assets from property individually controlled by each spouse.³² Accordingly, property that already belongs to the widow by virtue of the matrimonial-property relationship cannot be treated as inheritance. Only property attributable to the deceased may form part of the estate. This separation prevents the widow's pre-existing proprietary entitlement from being counted again as part of her inheritance and preserves the distinction between ownership arising from marriage and entitlement arising from succession.

The Civil Code also contains rules concerning community property that are relevant when that property regime governs the marriage. Article 119 provides that, unless otherwise stipulated in a marriage agreement, a general community of property arises from the commencement of marriage, while Article 126 identifies death as one of the events that dissolves that community.³³ Article 128 further provides that, following dissolution, the community property is divided equally between husband and wife, or between their respective heirs, without regard to the origin of the assets.³⁴ These provisions explain why the settlement of matrimonial property must conceptually precede inheritance distribution under the Civil Code regime. The surviving widow receives the portion belonging to her under that regime not because she is an heir, but because it represents her own proprietary entitlement resulting from the dissolution of the community of property. Only the portion attributable to the deceased after that division can enter the estate and become subject to the rules of succession. The sequence therefore prevents matrimonial-property rights from being confused with inheritance rights.

The relationship between the Civil Code and the Marriage Law requires particular care when identifying the applicable matrimonial-property regime. Article 119 of the Civil Code formulates a general community of property subject to a marriage agreement, whereas Article 35 of the Marriage Law distinguishes joint property acquired during marriage from property brought into the marriage and property obtained individually through gift or inheritance.³⁵

Hukum Islam dan Hukum Perdata),” *Jurnal Jurisprudence* 4, no. 2 (2014), <https://doi.org/10.23917/jurisprudence.v4i2.4208>.

³¹ Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 35; Nurdin, Abdullah, and Pikahulan, “Harta Bersama,” 57–80.

³² Nurdin, Abdullah, and Pikahulan, “Harta Bersama,” 57–80; Pasaribu and Hoessein, “Kajian Komparatif,” 1125–1139.

³³ *Kitab Undang-Undang Hukum Perdata*, arts. 119 and 126.

³⁴ *Kitab Undang-Undang Hukum Perdata*, art. 128; Nurdin, Abdullah, and Pikahulan, “Harta Bersama,” 57–80; Novi Febrianti Damanik, Yohanes Suhardin, and Christopher Panal Lumban Gaol, “Tinjauan Yuridis Normatif Pembagian Harta Bersama Akibat Perceraian Menurut Kitab Undang-Undang Hukum Perdata dan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan,” *Fiat Iustitia: Jurnal Hukum* 3, no. 1 (2022), <https://doi.org/10.54367/fiat.v3i1.2129>.

³⁵ *Kitab Undang-Undang Hukum Perdata*, art. 119; Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 35; Djuniarti, “Hukum Harta Bersama,” 445–461; Faradilla Asyatama and Fully Handayani Ridwan, “Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan di Indonesia: Studi Putusan

Article 66 further provides that Civil Code provisions concerning marriage cease to apply insofar as the relevant matters have been regulated by the Marriage Law.³⁶ The applicable property regime must therefore be identified before determining the deceased's estate, taking into account the legal basis governing the marriage and any valid matrimonial agreement. It would be inaccurate to assume that every marriage produces an identical pool of joint property or that every widow automatically receives one half of all assets associated with the marriage. The correct analysis depends on identifying which legal regime governs the parties' property relations and then determining which assets belong to the widow, which belong to the deceased, and which are jointly held.

The existence of a marriage agreement may further affect the composition of property examined when succession opens. Article 29 of the Marriage Law permits spouses to regulate their property relations by agreement, while Constitutional Court Decision Number 69/PUU-XIII/2015 interprets that provision to allow such an agreement to be made before, at the time of, or during the marriage.³⁷ The applicable matrimonial arrangement must therefore be examined to determine whether particular assets are jointly held or remain separately controlled.³⁸ This issue directly affects inheritance because only property legally attributable to the deceased enters the estate. Any portion already belonging to the widow under the applicable matrimonial-property regime remains outside the inheritance and must not be counted again as part of her inheritance share. The marriage agreement may therefore alter the composition of the estate even though it does not itself determine the widow's status as an heir. Its legal relevance lies in identifying ownership before succession, thereby ensuring that the later calculation of inheritance is based only on assets that actually belong to the deceased.

The distinction between matrimonial property and the estate is equally important for the deceased's separate property. Sudjana, Marwiyah, Amiq, and Taufik conclude that once succession opens, separate property belonging to the deceased becomes part of the *boedel waris*, and the surviving spouse may inherit from it according to status as an heir under Articles 832 and 852a of the Civil Code.³⁹ The origin of an asset therefore determines its ownership before death, but does not remove that asset from succession once it is established as property belonging to the deceased.⁴⁰ The estate may accordingly consist of the deceased's portion of matrimonial property together with separate assets legally belonging to the deceased. This formulation avoids two opposite errors: treating all property connected with the marriage as

Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–122, <https://doi.org/10.30656/ajudikasi.v5i2.3937>.

³⁶ Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 66.

³⁷ Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 29; Mahkamah Konstitusi Republik Indonesia, Putusan No. 69/PUU-XIII/2015, October 27, 2016; Oken Shahnaz Pramasantya, “Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Cakrawala Hukum* 8, no. 2 (2017): 191–200, <https://doi.org/10.26905/idjch.v8i2.1671>; Sonny Dewi Judiasih, Deviana Yuanitasari, and Revi Inayatillah, “Model Perjanjian Kawin yang Dibuat Setelah Perkawinan Berlangsung Pasca Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Masalah-Masalah Hukum* 47, no. 3 (2018): 252–267, <https://doi.org/10.14710/mmh.47.3.2018.252-267>.

³⁸ Mahkamah Konstitusi Republik Indonesia, Putusan No. 69/PUU-XIII/2015; Damian Agata Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Konstitusi* 14, no. 4 (2017): 799–819, <https://doi.org/10.31078/jk1445>; Eva Dwinopianti, “Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris,” *Lex Renaissance* 2, no. 1 (2017), <https://doi.org/10.20885/JLR.vol2.iss1.art2>.

³⁹ Sudjana et al., “Hak Waris Suami atau Istri,” 284–299; *Kitab Undang-Undang Hukum Perdata*, arts. 830, 832, and 852a; Hidayat and Anshori, “Kedudukan Janda dalam Mewaris Harta Bawaan Suami”; Adinda Citra Rosania and Heppy Hyma Puspytasari, “Analisis Putusan Kasasi MA-RI Nomor 2981 K/Pdt/2024 terkait Sengketa Waris Harta Bawaan Pasangan Tanpa Keturunan,” *Indonesian Journal of Contemporary Law* 3, no. 6 (2026).

⁴⁰ Sudjana et al., “Hak Waris Suami atau Istri,” 284–299; Indonesia, *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, art. 35; Dwinopianti, “Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi.”

inheritance, and excluding the deceased's separate property from the estate merely because it was not jointly owned during marriage. Only after the estate has been identified on this basis can the widow's inheritance share be calculated under the rules of intestate succession, including any limitation applicable in a second or subsequent marriage.

Distribution of the Widow's Inheritance and Restrictions in Second or Subsequent Marriages

Once the deceased's estate has been identified, the widow's share is determined under the rules of intestate succession. Article 852a of the Civil Code provides that the surviving husband or wife is treated in the same manner as a legitimate child for purposes of inheritance distribution.⁴¹ Read together with Article 852, this means that the surviving spouse and children who inherit in their own right receive equal portions, without distinction based on sex or birth order.⁴² The widow's inheritance is therefore not universally fixed at one-half or one-quarter of the estate. Its amount depends on the number and legal position of the heirs who are called to inherit. Where the deceased leaves a widow and children, the estate is divided among them according to their respective statutory positions after the estate itself has first been determined. This calculation concerns only the deceased's estate and excludes property already belonging to the widow under the applicable matrimonial-property regime.

The calculation differs where the deceased leaves no children or descendants. Because the surviving spouse occupies the first class of statutory heirs, the absence of descendants does not by itself cause parents, siblings, or more remote relatives to succeed while the surviving spouse remains entitled to inherit.⁴³ Under the doctrinal hierarchy of intestate heirs, the existence of an heir in the first class excludes heirs belonging to the following classes.⁴⁴ The widow may consequently receive the entire estate where she is the sole heir within the first class, subject to other applicable rules of succession. This consequence does not arise from a special fixed fraction granted to widows but from her independent statutory position within the first order of heirs. The amount received by the widow must therefore be distinguished from the question of her priority, because priority determines who inherits before the specific distribution of the estate is calculated.

Where the applicable matrimonial-property regime produces community property, the widow's proprietary entitlement must remain distinct from her inheritance entitlement. Article 128 of the Civil Code provides that, upon dissolution of the community, its assets are divided equally between husband and wife or their respective heirs.⁴⁵ Supreme Court Decision Number 3764 K/Pdt/1992 illustrates this distinction: the widow was entitled first to one-half of the joint property, while the deceased husband's remaining half constituted his estate and was subsequently divided between the widow and their children.⁴⁶ The decision demonstrates two

⁴¹ *Kitab Undang-Undang Hukum Perdata*, art. 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

⁴² *Kitab Undang-Undang Hukum Perdata*, arts. 852 and 852a; Suwarni, Budiarta, and Arini, "Pembagian Harta Warisan," 148–152.

⁴³ *Kitab Undang-Undang Hukum Perdata*, arts. 832 and 852a; Halim, "Kedudukan Janda," 181–196; Adinda Citra Rosania and Heppy Hyma Puspytasari, "Analisis Putusan Kasasi MA-RI Nomor 2981 K/Pdt/2024 terkait Sengketa Waris Harta Bawaan Pasangan Tanpa Keturunan," *Indonesian Journal of Contemporary Law* 3, no. 6 (2026).

⁴⁴ Halim, "Kedudukan Janda," 181–196; *Kitab Undang-Undang Hukum Perdata*, arts. 832–858.

⁴⁵ *Kitab Undang-Undang Hukum Perdata*, art. 128; Nurdin, Abdullah, and Pikahulan, "Harta Bersama," 57–80.

⁴⁶ Mahkamah Agung Republik Indonesia, Putusan No. 3764 K/Pdt/1992, March 30, 1995, reproduced in Djaja S. Meliala, *Himpunan Jurisprudensi Hukum Waris Indonesia* (Bandung: Nuansa Aulia, 2008), 1–12; Riki Budi Aji, "Perbandingan Pembagian Warisan untuk Janda Menurut Kitab Undang-Undang Hukum Perdata dan Kompilasi Hukum Islam," *JOM Fakultas Hukum* 1, no. 1 (2015): 11, <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/download/4288/4180>. Putusan, tanggal, dan kaidah hukumnya juga terdapat dalam kompilasi Meliala.

legally separate stages—settlement of matrimonial property and distribution of inheritance. Its significance therefore lies in the sequence of legal analysis rather than in establishing a universal formula that every widow automatically receives one-half of all marital assets. Where another matrimonial-property regime or a valid marriage agreement applies, the composition of the estate must be determined according to that particular legal arrangement.

A special limitation applies where the deceased entered into a second or subsequent marriage and left children or descendants from an earlier marriage. Article 852a provides two simultaneous statutory ceilings on the surviving spouse's inheritance. First, the spouse may not receive more than the smallest portion received by one of the children or, where representation operates, by that child's descendants. Second, the spouse's inheritance may in no circumstances exceed one quarter of the deceased's estate.⁴⁷ These limitations qualify the general rule equating the surviving spouse with a legitimate child. The spouse's otherwise applicable inheritance share must therefore be tested against both statutory ceilings, and the lower permissible amount determines the maximum share that may be received.⁴⁸ The provision thereby prevents the operation of the general equality rule from producing a share for the spouse in a subsequent marriage that exceeds the protection expressly reserved by the Civil Code for descendants from an earlier marriage.

Article 852a must nevertheless be distinguished from Article 181 because the two provisions govern different sources of patrimonial advantage. Article 181 concerns the benefit that a husband or wife in a second or subsequent marriage may obtain through the commingling of property and liabilities where children or descendants from a previous marriage exist.⁴⁹ Article 852a, by contrast, governs the surviving spouse's entitlement arising specifically from intestate succession.⁵⁰ Their relationship is therefore systematic rather than identical: Article 181 operates within the matrimonial-property relationship, whereas Article 852a operates after succession has opened and the deceased's estate has been identified. Reading the provisions separately prevents advantages arising from the marital-property regime from being confused with inheritance rights. It also demonstrates that the legal protection afforded to descendants from a previous marriage operates at different patrimonial stages rather than through a single undifferentiated restriction on the surviving spouse.

The distribution of inheritance to a widow consequently requires a sequential legal analysis. Her status as a statutory heir must first be established under Article 832 and her position in intestate distribution determined under Article 852a.⁵¹ The applicable matrimonial-property regime must then be resolved so that property already belonging to the widow can be separated from property constituting the deceased's estate. Only after the estate has been identified can the widow's inheritance be calculated in relation to the other heirs actually called to succeed. Where the conditions of a second or subsequent marriage under Article 852a are present, the resulting share must additionally comply with its specific statutory ceilings, while benefits arising from the matrimonial-property relationship remain governed by the provisions applicable to that relationship.⁵² The widow's final entitlement is therefore determined not by a single predetermined fraction, but by the interaction of heirship, estate composition, co-heirs, and any applicable statutory restriction.

⁴⁷ *Kitab Undang-Undang Hukum Perdata*, art. 852a; Suhartati and Hasriani, "Tinjawuan Yuridis terhadap Hak Waris Istri Kedua dari Perkawinan Tanpa Izin," *Alauddin Law Development Journal* 2, no. 3 (2020): 374–388, <https://doi.org/10.24252/aldev.v2i3.15690>.

⁴⁸ *Kitab Undang-Undang Hukum Perdata*, art. 852a.

⁴⁹ *Kitab Undang-Undang Hukum Perdata*, art. 181; Suhartati and Hasriani, "Tinjawuan Yuridis," 374–388.

⁵⁰ *Kitab Undang-Undang Hukum Perdata*, art. 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299; Suhartati and Hasriani, "Tinjawuan Yuridis," 374–388.

⁵¹ *Kitab Undang-Undang Hukum Perdata*, arts. 832, 852, and 852a; Sudjana et al., "Hak Waris Suami atau Istri," 284–299.

⁵² *Kitab Undang-Undang Hukum Perdata*, arts. 181 and 852a.

CONCLUSION

The category of ab-intestato heirs includes widows as heirs. A widow is one of the Class I heirs. A widow inherits according to her status as a Class I ab-intestato heir. Other groups are excluded because the widow's position arises as an heir based on precedent. If there are no descendants entitled to inherit, a widow can inherit all the inheritance by ignoring parents, siblings, and so on. Distribution of Inheritance for Widows. The Civil Code states in Article 852a of the Civil Code that the inheritance of a widow is divided equally, equal to the share of legitimate children. A widow will receive half of the joint property, and the remaining half will be the inheritance of the testator, which will be divided equally between the widow and her descendants. Article 852a of the Civil Code stipulates that if a widow marries for the second time and in the first marriage there are legitimate children, then the inheritance for the widow may not exceed the smallest share of a stepchild and not more than 4 parts of the inheritance.

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