



Eligibility of Transgender Partners of Indonesian National Police Officers to Receive Allowances and Pensions

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Info Artikel

Received : 20/10/2025

Accepted : 30/12/2025

Keywords:

Wife Allowance; Indonesian National Police; Transgender

Abstract

Indonesian law has not yet accommodated the rights to allowances for spouses of Indonesian National Police (POLRI) members undergoing gender transition. Based on Law No. 11 of 1996 concerning Pensions for Widowed/Widowed Employees and Government Regulation No. 29 of 2001 concerning the salary regulations for POLRI members, which stipulate that spousal allowances are still provided as long as they have not remarried, the state does not regulate the revocation of pensions for spouses undergoing gender transition and the state only bases these rights on legal marital status. This states that gender orientation is a private domain and has not been regulated by the state regime. This study aims to analyze the rights obtained by POLRI spouses and the procedures for couples undergoing gender transition. This study uses a normative research method, with a conceptual and legislative approach. The results of the study found that the state only bases administratively on the legal status of marriage and the right to allowances that are still binding.

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I. PENDAHULUAN

The number of crimes that occurred in the 2024 period has reached 408,166 cases, while until September 15, 2025, crime data has reached 300,011 cases (Pusiknas Bareskrim Polri, 2025). This data makes the high crime rate from the 2024 period one of the causes of 987 POLRI members dying in the line of duty, especially for POLRI members who are married (mediaindonesia.com, 2024). Based on Article 66 of the Regulation of the Republic of Indonesia National Police Number 1 of 2019 concerning Administration of Termination of Service for Civil Servants in the Republic of Indonesia National Police, the legal heirs of Polri members who are left behind due to death, death, passing away or being declared missing, are entitled to full income. Meanwhile, Government Regulation (PP) 102 of 2015, which replaced the previous regulation, PP No. 67 of 1991, also states that the heirs of Polri members who die in the line of duty will receive a death benefit of 400 million rupiah. Meanwhile, victims who die in the category of death receive 275 million rupiah (Dhani, 2025).

Although compensation and benefits will be provided to widows, humans, as social beings, cannot live alone because they need other people and are interdependent. This nature drives humans to

strive to fulfill their needs, one of which is social needs. To fulfill these social needs, humans interact with others by building closer relationships between women and men, as well as romantic relationships between men and women (Sari & Wahyuliarmy, 2023).

The social needs felt by a person can lead to an awareness of gender preferences. Pangkahila herself stated that the loss of a partner can create a psychological barrier, resulting in the disappearance of sexual urges. However, over time, after they were able to adjust and accept reality, the burden of their thoughts gradually disappeared, and their sexual urges returned to normal. Although the LGBTQ+ community is no longer a foreign topic in Indonesia, it remains a marginalized group and therefore a concern within society, including academics and the general public. Indonesia is a country with a diverse and diverse culture. This diversity makes Indonesian society known as a heterogeneous society. However, on the other hand, there are also small groups whose presence is not recognized by Indonesian society and often receives treatment that is not in accordance with the enforcement of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. This group includes transgender individuals, or individuals who change their gender status due to a deviation in their gender orientation (Indriasari, Adriansyah, & Pratama, 2021).

Data from World Visualized also indicates that Indonesia's transgender population is the 11th largest in the world, with a population of 43,100 (World Population Review, 2025). This growth in the transgender population has opened up broader discussion and drawn deeper attention to transgender groups, including those in government agencies. One issue that has arisen concerns the benefits rights of spouses of members of the Indonesian National Police (POLRI) undergoing gender transition. Santoso's (2016) research states that LGBTQ+ individuals should enjoy the same standard of living as healthy individuals in general, as long as they are not discriminated against. This is because LGBTQ+ individuals have equal rights with other individuals. According to Santoso, human rights (HAM) are fundamental rights inherent in human nature and precede national laws. However, in Indonesia, these human rights cannot be exercised freely and must adhere to Indonesian values.

When discussing the international community, one of the world's largest international organizations, the United Nations (UN), cannot be overlooked. In 2024, the UN Secretariat adopted a strategy on protection from violence and discrimination for LGBTQ+ persons. This strategy reaffirms its internal commitment to provide a safe, conducive, welcoming and supportive environment that values all United Nations personnel, regardless of gender identity, gender expression, sexual orientation or sex characteristics, to promote equal opportunity, non-discrimination, zero tolerance of prohibited conduct, respect for human dignity and rights, and effective participation. The strategy also reaffirms its external commitment, in line with respective UN mandates, international law, norms and standards, and other globally agreed commitments including the 2030 Agenda, to prevent, mitigate and address

exclusion, violence, stigma and discrimination, and to advance the protection and fulfillment of human rights for LGBTIQ+ persons, as part of efforts to leave no one behind (United Nations, 2025).

Several studies, such as those by Aurelia Lulu Heny Salsabila (Salsabila, Fatahullah, & Wagian, 2023), Evy Indriasari (Indriasari, Adriansyah, & Pratama, 2021), Ina Tasya Aunil Ahdah (Ahdah & Ahmad, 2025), and Eka Abriyani (Abriyani et al., 2022), have outlined the rights of individuals undergoing gender transition from the perspective of Indonesian positive law and human rights. After reviewing previous research, the author found that there is no legal framework explicitly guaranteeing gender identity rights, such as the right to benefits for transition. This has led to prior research focusing on the inheritance rights of transgender individuals in general. This gap will be examined and focused on in this paper, providing a reference for discussing the rights of individuals undergoing gender transition.

In practice, the legal and civil service administration systems in Indonesia lack clear regulations or mechanisms to accommodate this situation. In fact, this issue has direct implications for the fulfillment of the social and economic rights of the spouses of Indonesian National Police (POLRI) members, particularly regarding spousal allowances and pension rights. Upon closer examination, Indonesian positive law still tends to use a traditional normative approach to marital relations. Marriage is fundamentally understood as a formal institution that underpins the rights and obligations of married parties, including the right to benefits and pensions (Darmawan, Patricia, & Izulkha, n.d.). However, when one party in a marriage undergoes gender transition, the applicable legal framework does not provide instruments to regulate or reassess the validity of the marriage. This legal vacuum has created uncertainty regarding the status of the benefits entitlements of transgender partners of POLRI members. Normatively, provisions regarding pensions and benefits for spouses of POLRI members are regulated by Law Number 11 of 1996 concerning Pensions for Widowed/Widowed Employees and reinforced by Government Regulation Number 29 of 2001 concerning the salary regulations for POLRI members. This regulation explicitly states that the legal spouse of a POLRI member is entitled to benefits and pensions, as long as he or she has not remarried. The legal issue that is the focus of this paper is the policy regarding the spouse benefits of Indonesian National Police (POLRI) members who died in the line of duty. This paper attempts to outline the eligibility of transgender partners of POLRI members for these benefits. Ultimately, this research is expected to serve as reading material and a study that can provide solutions or preventative measures to prevent discrimination against transgender people in Indonesia.

Based on the background description, this study aims to explain how the policy related to the allowance rights received by the spouses of POLRI members, the eligibility of transgender spouses of POLRI members to allowance rights from the perspective of Indonesian law and human rights perspective. The approach used in this study is a theoretical approach and a legislative approach. The

conceptual approach starts from a legal view or thought on the issue being studied, while the legislative approach is carried out by examining all laws and regulations related to the legal issue being faced (Says, 2017). The data sources used in this study come from primary legal sources in the form of the 1945 Constitution, the Human Rights Law, Police Regulations, and other reading materials related to this research.

II. METODE PENELITIAN

The research method used in this paper is normative research. The normative approach in legal research focuses on the analysis of legislation, legal doctrine, and court decisions. This approach is important because it provides a strong theoretical foundation for researchers to understand and interpret applicable legal norms. The main advantage of the normative approach is its ability to provide a clear and structured legal framework (Wiraguna, 2024).

III. HASIL PENELITIAN DAN PEMBAHASAN

Transgender comes from two words: "trans," meaning to move (hand, dependent) or transfer, and "gender," meaning sex. Transgender is used to refer to people who act, feel, think, or appear differently from the sex they were assigned at birth (Netti, 2022). A transgender person generally desires to change their physical and biological appearance, not just their clothing. Transgender people are more or less defined as individuals who identify with or are the opposite of their assigned sex at birth and tend to resemble the opposite sex.

The rise in coverage of LGBT sexual deviations has led to a polemic in society. LGBT sexual deviation, if not intervened, will have an impact on the health, education, and social well-being of the community (Alizamar, 2019). In Indonesia, transgender people are often called waria. Specific data on transgender people is difficult to obtain in Indonesia due to the lack of official data, but one global estimate in 2020 was that the number of transgender people was 43,100. More granular data, such as a 2020 study by the Indonesian Puzzle Community, demonstrates the significant impact of the lack of official identification, with 84.2% of respondents in Bandung experiencing discrimination and barriers in accessing public services (Putri, 2024).

The transgender phenomenon in Indonesia presents a paradox between the constitutional principle of equality of citizens and a highly discriminatory social reality. Transgender individuals, as individuals experiencing a mismatch between their gender identity and their biological sex, are often marginalized within heteronormative social structures. Although Indonesia recognizes human rights as inherent and non-derogable rights, the implementation of this principle is often hampered by moral bias and religious values that dominate legal interpretation and public policy. In this context, transgender

individuals face not only social stigma but also legal exclusion that limits their access to civil and administrative rights as citizens.

Legally, Indonesian positive law does not yet provide clear recognition for transgender identities. There are no explicit norms governing gender status changes in legislation, so the legal status of transgender individuals often depends on subjective interpretations by administrative institutions and state officials. This lack of norms creates problems in implementing the principle of equality before the law, particularly when it comes to rights stemming from civil service relations. In the context of the Indonesian National Police (POLRI), this issue is further complicated because the benefits system and civil service administration rely on state-recognized population data and marital status—two aspects that often place transgender individuals in an uncertain legal position and vulnerable to denial of their rights.

III.1. Rights of Indonesian Police Spouses Based on Existing Policies

III.1.1. Eligibility of Transgender Spouses of Indonesian National Police Members for Transgender Allowances from an Indonesian Legal Perspective

The basis for legal protection for transgender people in Indonesia is based on Law Number 39 of 1999 concerning Human Rights, which serves as the primary legal instrument for guaranteeing the fulfillment and protection of the fundamental rights of every individual without discrimination. The provisions of this law affirm that all rights and obligations inherent in human beings, including the right to recognition, protection, and fair treatment before the law, are an integral part of human rights. Therefore, any action that potentially violates these rights must be viewed as a violation of the fundamental principles of human rights enforcement. Therefore, the implementation of this law constitutes a non-negotiable constitutional obligation of the state.

Transgender protection in Indonesia is equal to that of other rights-holding majority groups from a human rights perspective. However, the reality is that transgender people are a subordinate class of society, requiring special rights to elevate them. These rights are intended to enable transgender individuals to maintain their identity, characteristics, and traditions as long as they do not commit criminal acts. Special rights like these are crucial to ensure they receive equal treatment without discrimination against any group. Relevant legal protection to address this issue is regulated in Article 4 of Law Number 39 of 1999 concerning Human Rights, which affirms that the right to life, the right to be free from torture, the right to freedom of person, thought, and conscience, the right to religion, the right not to be enslaved, the right to recognition as a person before the law, and the right to equality before the law are all absolute human rights and cannot be diminished under any circumstances by anyone.

The legal status of transgender people in Indonesia, when viewed from the perspective of applicable positive law, demonstrates that the national legal system still focuses on recognizing only two genders: male and female. This provision can be found in Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, and in Law Number 23 of 2006 concerning Population Administration, which lists gender in population data in a binary manner. Normatively, Indonesian law actually provides guaranteed protection for all citizens, including transgender people, from all forms of discrimination. This principle is affirmed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights, which guarantees equality before the law and fair treatment for every individual. However, the implementation of this legal protection has not been effective. This is due to the low level of knowledge of transgender people regarding the legal basis that protects their rights, as well as a reluctance to pursue legal action due to concerns that their personal identities will be exposed in the public sphere (Raihana & Bilal, 2025).

The Constitution and laws have established principles of equality and anti-discrimination, such as Articles 27 and 28D of the 1945 Constitution, and Law No. 39 of 1999 concerning Human Rights, which guarantees the right to be free from discrimination. Indonesia's positive regulations still show a lack of norms and unclear provisions specifically for gender identities that differ from the categories of "male" and "female." For example, laws such as Law No. 1 of 1974 concerning Marriage (as amended by Law No. 16 of 2019) and Law No. 23 of 2006 concerning Population Administration (in conjunction with Law No. 24 of 2013 concerning Population Administration) only recognize dual gender (male/female) in administrative and civil service structures. This situation places transgender individuals in a position that is not yet fully legally recognized, particularly regarding changes in identity, marital status, or administrative rights that depend on registered sex. As a result, despite the existence of a normative basis supporting equal treatment and anti-discrimination, its practical implementation remains delayed: there are no clear regulations regarding sex or gender identity changes in official documents; and existing court decisions are ad hoc and have not established systematic precedent. This creates a legal vacuum that creates uncertainty for transgender people in accessing employment rights, benefits, and other administrative status (Wiryani et al., 2023). In the opening of the 1945 Constitution, the fourth paragraph states that "Then, to form an Indonesian state government that protects all the Indonesian people and all of Indonesia's blood and to advance general welfare, enlighten the opening of the 1945 Constitution, paragraph 4, provides relief for LGBT people that they who are Indonesian people as the nation's generation must be protected by providing protection and self-recognition (Asmat, 2016). With this phrase, it can be justified if the opening of the 1945 Constitution says like that, because the birth of the 1945 Constitution was intended for the welfare and self-protection of citizens.

III.2. Kelayakan Pasangan Transgender Anggota POLRI atas Penerimaan Tunjangan

The legal basis for the validity of a marriage in Indonesia is explicitly regulated in Article 1 of Law Number 1 of 1974 concerning Marriage, which explicitly states: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of establishing a happy and eternal family (household) based on the One and Only God." This provision establishes the requirement of heterosexuality as a fundamental and essential element in the legal definition of marriage in Indonesia. The "legal" status of a marriage depends not only on the performance of religious rituals and registration by the authorized institution (the Office of Religious Affairs or the Civil Registry Office), but also on the fulfillment of the element of gender difference between the parties (Mulyana, 2016).

Referring to these constitutional and human rights norms, there should be no discrimination between members of the Indonesian National Police (Polri) and heterosexual and transgender couples, as long as the marriage is legal and recognized by the state. Refusing benefits solely because of transgender status could be considered a violation of the principles of equality and justice under Indonesian law. However, in practice, administrative recognition is a key factor. Without court rulings and changes to official documents, constitutional rights often cannot be effectively implemented. This demonstrates the gap between constitutional norms guaranteeing equality and rigid administrative regulations.

The implications of the normative limitations of Article 1 of the Marriage Law extend to the realm of personnel administration and the financial rights of state officials, including members of the Indonesian National Police (Polri). The right to family allowances (including spousal allowances) for Civil Servants (PNS), the Indonesian National Armed Forces (TNI), and the Polri is strictly based on legal and administratively recorded marital status. The legal basis for granting this allowance generally refers to derivative regulations, such as Government Regulations concerning salaries and allowances, which require a valid marriage certificate/marriage book, a Family Card (KK) and an Identity Card (KTP) reflecting marital status as recorded in the population administration (as stipulated in Law No. 24 of 2013).

In this context, the spousal allowance is a right inherent in members of the Indonesian National Police (Polri) who have entered into a marriage that meets the requirements of "a man

and a woman" as required by positive law. Therefore, if a relationship is not recognized as a legal marriage due to a violation of Article 1 of the Marriage Law (for example, a same-sex marriage), then the Polri member's right to the spousal allowance is automatically forfeited due to the failure to meet the formal and material requirements stipulated in civil service law. Although a District Court Decision can legitimize a change in gender status, the status of the allowance will depend heavily on the final marital status (Handayani, 2019):

1. If the change in gender (post-marriage) results in the union becoming administratively same sex, there is the potential for annulment of the marriage or refusal of alimony based on legal consistency with Article 1 of Law No. 1 of 1974.
2. If a transgender individual has obtained recognition of their new gender status before marriage, and the marriage is between a man and a woman who are legally documented, then the right to benefits must be granted because, in terms of population administration and marriage law, the heterosexual requirements have been fulfilled.

Although District Court Decisions have granted legal recognition to changes in an individual's gender status (such as in cases where individuals are recognized as legally male/female), legally, there is a strategic gap in norms at the intersection of marriage law, population administration law, and National Police personnel regulations. This gap creates the potential for discrimination that contradicts the constitutional mandate. The legal recognition of a change in an individual's gender status through a judicial mechanism, as stipulated in Article 56 paragraph (1) of Law Number 24 of 2013 concerning Population Administration, establishes a new population status for an individual. This status should be a final legal fact binding on all state institutions.

There is a vertical and horizontal conflict between these norms, namely, the existence of legal recognition (vertical) through a court decision that serves as a new legal basis for gender status. When a member of the National Police subsequently marries, administratively registered as "Male and Female," the marriage formally fulfills Article 1 of Law Number 24 of 2013 concerning Population Administration. 1 of 1974. Secondly, there is the regulation of allowances (Horizontal): This gap arises because the regulation regarding spousal allowances (both Government Regulations and the Regulation of the Chief of Police) never explicitly regulates or anticipates marital status involving couples with a history of legal gender

reassignment. The allowance regulation only focuses on normative administrative requirements. This gap is crucial because even if the formal requirements have been met, the National Police agency has the potential to reinterpret the validity of the marriage based on the biological history of the couple rather than the legal status that has been approved by the court. This reinterpretation is driven by the absence of a norm that requires agencies to comply with the final outcome of the court's decision. This normative gap effectively ignores the imperative legal principles (*ius cogens*) in the context of human rights and the constitution:

- a. Violation of the Principle of Equality (Article 28D paragraph (1) of the 1945 Constitution)

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees: "Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law." If an individual has been legally recognized as a man/woman through a judicial process, then the refusal of benefits by the Police, on non-juridical grounds such as biological identity or transgender history, constitutes indirect discrimination against civil rights that have been legalized by the state. This refusal means that the legal status is not truly equal to that of other citizens whose gender status has never been changed, even though constitutionally, both must be treated equally before civil service law.

- b. Violation of the Anti-Discrimination Principle (Law No. 39 of 1999)

The National Commission on Human Rights emphasizes protection from discrimination. Denying benefits to spouses who have met all administrative requirements (Case 2: Post-Change, Male-Female status) constitutes discrimination that harms the socio-economic rights of police officers and their families. This discrimination arises from the absence of a norm explicitly prohibiting civil service agencies from denying recognition of rights based on a spouse's history of gender change.

The lack of norms in personnel regulations (allowances) gives the Indonesian National Police (Polri) bureaucracy broad discretion. In the absence of clear rules, this discretion tends to be based on dominant (majority) social or moral values, rather than on legal facts established

by the courts. This creates legal uncertainty and violates the principle of legality in state administration, where the economic rights of members (A\$) depend on unstructured interpretations by agencies, rather than on legal certainty (court decisions). The issue of allowances for Polri members whose partners have changed gender (and are legally married as a man and a woman) is a manifestation of a pure legal vacuum (*rechtledigheid*). This vacuum occurs because:

1. The Population Administration Law recognizes the legal fact (Male/Female).
2. The Marriage Law has formally complied with the principle of Male-Female.
3. The Employee Allowance Regulation fails to align with both laws, creating room for potentially discriminatory discretion and violating the principle of constitutional equality.

To address this gap, legislative intervention or regulation at the level of a Government Regulation is required which explicitly states that gender status which has been validated through a court decision and recorded in population documents must be the sole basis for determining employment rights, including benefits, regardless of an individual's biological history.

IV. KESIMPULAN

Based on the description above, it can be concluded that the eligibility of transgender partners of Polri members for allowance rights is an issue that unites the dimensions of positive law, constitution, professional ethics, and bureaucratic implementation.

1. Legally, family allowances can only be granted if the marriage is legally conducted and registered according to statutory regulations. Transgender individuals can have their new identities recognized if there is a court decision and valid administrative registration.
2. Constitutionally and in terms of human rights, the 1945 Constitution and the Human Rights Law guarantee the right to equality and non-discriminatory treatment. Therefore, denying allowances to transgender couples without clear legal grounds violates the principle of equality before the law.

3. From a professional ethical perspective, the principles of Tri Brata, Catur Prasetya, and the Code of Professional Ethics require every police officer to uphold human dignity and uphold justice. This aligns with the recognition of the rights of transgender couples.
4. In practice, numerous obstacles remain: social resistance, cultural stigma, the lack of specific technical regulations, and bureaucratic inconsistencies. These factors often hinder transgender couples from accessing rights that should be protected by law.
5. Through jurisprudence, several court decisions have paved the way for the legal recognition of transgender individuals. These decisions provide a strong basis for demanding administrative rights, including the right to family allowances for police officers.

Thus, it can be emphasized that the eligibility of transgender partners of Indonesian National Police (Polri) members to allowances depends heavily on the validity of their marriage and legally recognized gender status. If both of these aspects are met, then these rights are normatively and constitutionally appropriate.

However, to ensure true equality, clearer technical policies are needed within the Indonesian National Police (Polri), as well as internal dissemination of the principle of non-discrimination. This will not only protect the rights of Polri members but also strengthen Polri's image as an institution that upholds justice, law, and human rights.

The provision of facilities for transgender partners of Polri members needs to be accommodated through the development of technical guidelines that explicitly regulate the administrative recognition of transgender partners of Polri members. These guidelines must be based on the principle of non-discrimination and ensure the right of transgender partners to receive family allowances if their Polri partner dies in the line of duty. Furthermore, cross-institutional collaboration is needed, including with the National Police (Polri), the District Court, and the Population and Civil Registration Office (DPK) to provide fair and legal access to the gender identity change process for spouses of Polri members who have undergone gender transition.

To guarantee equal rights and avoid discriminatory practices in the provision of benefits to which they are entitled, a specific legal instrument is also needed, such as a regulation from

the Chief of Polri or a revision to Polri personnel regulations. This instrument must include provisions stating that the provision of family allowances to spouses who have undergone gender identity change must be carried out fairly and uphold human rights principles. With these specific regulations, the recognition of the widow status of Polri members who died in the line of duty and have undergone gender transition, based on population documents, is legitimate. This recognition can also serve as an important basis for the full provision of rights related to benefits and inheritance by the Polri and the government, regardless of the gender identity change.

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