

Parent-to-Child Grants and Their Influence on Inheritance Perspectives of Islamic Law and Positive Law

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Abstract

Parental grants (hibah) to children are commonly practiced as an expression of affection and as a means of managing family property during one's lifetime. However, in practice, such grants often give rise to legal issues, particularly when they affect the distribution of inheritance after the parents' death. This article aims to examine the legal position of hibah from the perspective of Islamic law, the practice of parental grants to children, and the impact of such grants on inheritance according to Islamic law and Indonesian positive law. This study employs a qualitative approach with a normative-juridical method through library research, analyzing the Qur'an, Hadith, Islamic jurisprudential principles, the Compilation of Islamic Law, and relevant legal literature. The findings indicate that hibah in Islamic law is a valid legal transaction as long as it is conducted voluntarily, fairly, and while the grantor is still alive. Parental grants to children are permissible but must uphold the principle of justice to prevent inequality and family disputes. In principle, a valid hibah does not constitute inheritance property. Nevertheless, under certain circumstances such as unjust grants, grants made shortly before death, or grants intended to circumvent inheritance rules hibah may be calculated as part of the inheritance, as stipulated in Article 211 of the Compilation of Islamic Law. Therefore, hibah and inheritance are closely interconnected and must be implemented based on principles of justice and public benefit.

Keywords: Hibah; Parents; Children; Inheritance; Islamic Law.

Abstrak

Hibah orang tua kepada anak merupakan praktik yang lazim dilakukan dalam masyarakat sebagai bentuk kasih sayang dan upaya pengaturan harta keluarga semasa hidup. Namun, dalam pelaksanaannya, hibah sering menimbulkan persoalan hukum, terutama ketika dikaitkan dengan pembagian warisan setelah orang tua meninggal dunia. Artikel ini bertujuan untuk mengkaji kedudukan hibah dalam perspektif hukum Islam, praktik hibah orang tua kepada anak, serta pengaruh hibah tersebut terhadap kewarisan menurut hukum Islam dan hukum positif di Indonesia. Penelitian ini menggunakan pendekatan kualitatif dengan metode yuridis-normatif melalui studi kepustakaan terhadap Al-Qur'an, hadis, kaidah fikih, Kompilasi Hukum Islam, serta literatur hukum terkait. Hasil penelitian menunjukkan bahwa hibah dalam Islam merupakan akad pemberian harta yang sah selama dilakukan secara sukarela, adil, dan ketika pemberi masih hidup. Hibah orang tua



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kepada anak dibolehkan, namun wajib memperhatikan prinsip keadilan agar tidak menimbulkan ketimpangan dan konflik keluarga. Hibah yang sah pada prinsipnya tidak termasuk harta warisan, tetapi dalam kondisi tertentu seperti hibah yang tidak adil, dilakukan menjelang wafat, atau bertujuan menghindari hukum waris dapat diperhitungkan sebagai bagian dari warisan sebagaimana diatur dalam Pasal 211 Kompilasi Hukum Islam. Dengan demikian, hibah dan warisan memiliki keterkaitan erat yang harus dikelola berdasarkan prinsip keadilan dan kemaslahatan.

Kata Kunci: Hibah; Orang Tua; Anak; Kewarisan; Hukum Islam.

INTRODUCTION

Grants in Islam are one of the tangible manifestations of the social function of wealth owned by a person. Property owners are encouraged to cultivate the values of solidarity, affection, and concern for others, especially those in need. The voluntary giving of property is not only of worship value, but also plays an important role in strengthening social relations and maintaining harmony in society. In Islam, property is not seen solely as the property of individuals, but as a mandate from Allah SWT. which contains social responsibility. Therefore, the use of wealth through grants, alms, and zakat is a means to realize social justice and welfare.¹

According to the Great Indonesian Dictionary, grant means giving (voluntarily) by transferring the right to something to someone else.² This meaning shows that the grant is made on the basis of sincerity and willingness on the part of the giver. According to the term, a grant is defined as the voluntary giving of an object or property from a person to another party without any compensation, which is done while the giver is still alive.³ Grants can be given to children, relatives, or to parties outside the family such as social institutions and community organizations. In Islam, grants are a form of social interaction that is highly recommended because it contains high moral and spiritual values. The Qur'an and hadith emphasize the importance of giving to each other as a means to strengthen affection and brotherhood among others.⁴

In the practice of Indonesian life, grants are often made in the form of giving land, houses, or other assets to children as a form of parental affection as well as a way to regulate the distribution of family assets from an early age. This tradition of grants has been known and practiced long before the birth of formal regulations such as the Basic Agrarian Law. In the early days, the implementation of grants was more guided by customary law that lived and developed in the community, so that the validity of a gift was assessed based on local customs. Along with the development of the times and the increasingly complex needs of society, the object of grants is no longer limited to land and buildings, but also includes other movable and immovable objects, such as vehicles, savings, and various forms of investment assets.⁵

¹ Nor Mohammad Abdoeh, "Hibah Harta pada Anak Angkat (Telaah Filosofis terhadap Bagian Maksimal Sepertiga)," *Millah Journal* 18, no. 2 (2019): 207–34, <https://doi.org/10.20885/millah.vol18.iss2.art2>.

² KBBI Online, "Hibah," 2025, <https://kbbi.web.id/hibah>.

³ Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam* (Jakarta: PT Ihtiar Van Hoeve, 1996).

⁴ Tasya Vidi Putri dan Wahyuni Retnowulandari, "Hibah Hanya Kepada Salah Satu Anak Menurut Hukum Waris Islam Di Indonesia (Studi Kasus Putusan Pengadilan Agama Pekanbaru Nomor: 0214/Pdt.G/2017/Pa.Pbr, Putusan Pengadilan Tinggi Agama Pekanbaru Nomor: 0027/Pdt.G/ 2017/Pta.Pbr, Putusan Mahkamah Agung Nomor: 558 K/Ag/2017)," *Reformasi Hukum Trisakti* 1, no. 1 (Juni 2019), <https://doi.org/10.25105/refor.v1i1.10447>.

⁵ Braham Maya Baratulla dan Nashih Muhammad, "Fenomena Pemberian Hibah Kepada Anak

In positive law, the regulation regarding grants can be found in Article 1666 of the Civil Code (BW). The article explains that a grant or *gift* is an agreement in which a person freely gives an object to another party, and the gift is in principle irrevocable. Unlike a will, a grant is valid and has legal consequences while the giver is still alive, and is valid immediately after it is handed over to the recipient. Although grants in Islamic law and civil law both contain the principle of giving without compensation, they differ in several aspects, such as the intention of giving, the procedure of implementation, and the legal consequences, especially in relation to the division and calculation of inheritance.⁶

Grants are often given by parents to their children while they are still alive with the aim of maintaining family harmony and preventing inheritance disputes in the future. This gift is usually intended to make the division of wealth clearer from the beginning. However, in reality, the implementation of an unbalanced grant, for example only given to one child or carried out without consideration of justice, can actually cause a sense of injustice. This condition has the potential to trigger conflicts between heirs, especially if the grant is seen as a form of covert inheritance. In addition, there are still many people who do not understand the difference between grants, gifts, and inheritances, so there are often misunderstandings in the application and legal consequences.⁷

Other problems often arise when grants are made without strong legal evidence, such as a notary deed or official certificate. As a result, after the parents die, other heirs can sue the grant on the grounds that it is invalid or considered detrimental to certain parties. This situation then raises questions about the position of grants in relation to inheritance according to Islamic law. Whether the grant given by the parents to the child during life will reduce the child's share of the inheritance, or is it still seen as a legal act separate from the inheritance. This issue is important to be studied further so that there is no overlap between grants and inheritance distribution in the future.⁸

Several previous studies have discussed grants in the context of Islamic law, but not many have deeply linked them to the aspect of inheritance. For example, research by Hamdan Fadhli et al. (2024) in the *Journal of Law, Politics and Social Sciences* entitled "Grant Implementation Study in the Perspective of Islamic Law: An Analysis of the Implementation of Grants in the Islamic Framework" found that the implementation of grants is often carried out without paying attention to equality between heirs, thus potentially causing family disputes.⁹ Another study by Muhammad Faisyah (2024) in the *Journal of Sharia and Law* entitled "The Implementation of Parental Grants to Children in Bangkinang Kota District in a Review of Islamic Law" shows that grants are often used as a means of disguised inheritance distribution which causes injustice in the distribution

Kandung dalam Perspektif Maqashid Asy-Syariah (Analisis di Desa Gunungsari Bansari Temanggung)," *El-Qenon: Journal of Islamic Law* 2, no. 1 (2025).

⁶ Muammar Fadillah dan Muhammad Amin, "Kepastian Hukum Terhadap Tanah Hibah Tanpa Surat Hibah Dalam Perspektif Kuhperdata Dan Kompikasi Hukum Islam," *Nalar: Jurnal Of Law and Sharia* 1, no. 2 (2023), <https://doi.org/10.61461/nlr.v1i3.48>.

⁷ Muhammad Rizky dan Syaddan Dintara Lubis, "Praktek Hibah Sebagai Pengganti Warisan: Studi Didesa Pematang Panjang Kecamatan Lima Puluh Pesisir Kabupaten Batu Bara Provinsi Sumatera Utara," *Rewang Rencang: Jurnal Hukum Lex Generalis*. 5, no. 6 (2024), <https://doi.org/10.56370/jhlg.v5i6.556>.

⁸ Luna Alifia Khansa dan Surahmad Surahmad, "Pembatalan pada Peralihan Hak Milik Atas Dasar Hibah," *Wajah Hukum* 5, no. 1 (April 2021): 170, <https://doi.org/10.33087/wjh.v5i1.374>.

⁹ Hamdan Fadhli dkk., "Studi Implementasi Hibah Dalam Perspektif Hukum Islam: Analisis Pelaksanaan Pemberian Hibah Dalam Kerangka Islam," *Jurnal Hukum, Politik Dan Ilmu Sosial* 3, no. 2 (Mei 2024): 201–11, <https://doi.org/10.55606/jhpis.v3i2.3758>.

of property after the heir dies.¹⁰ However, the two studies have not comprehensively explained how the normative relationship between grants and inheritance is in the perspective of Islamic law. Therefore, this article is here to fill the gap in the study by examining more deeply the relationship between parent-to-child grants and its influence on the inheritance system according to Islamic law.

Based on the description that has been presented, this research is focused on examining three main problems. First, examine the position of grants from the perspective of Islamic law as a form of property giving that has legal and social consequences. Second, to study the practice of grants carried out by parents to children during their lives, including their purpose and implementation. Third, analyze the influence of parental grants to children on inheritance rights according to Islamic law and positive law in Indonesia. This study is expected to be a guideline for the public and practitioners of Islamic law so that grants can be carried out fairly, legally, and in accordance with sharia principles and applicable legal provisions. Therefore, this study is titled "Parent-to-Child Grants and Their Influence on Inheritance from the Perspective of Islamic Law and Positive Law."

RESEARCH METHODS

This research is a normative juridical research that focuses on the study of Islamic legal norms and laws and regulations related to grants and inheritance. The approach used is a conceptual approach to examine the doctrines, theories, principles, and principles of law that develop in the treasures of jurisprudence and Islamic legal thought, as well as a comparative approach by comparing the views of various schools of jurisprudence, the opinions of classical and contemporary scholars, and the provisions in the Compilation of Islamic Law in order to obtain a comprehensive and argumentative legal construction.

The source of research data consists of primary and secondary legal materials. Primary legal materials include the Qur'an, Hadith, as well as fiqh rules that are relevant to the concept of grant and inheritance. The secondary legal materials include classical and contemporary fiqh books, the Compilation of Islamic Law (KHI), related laws and regulations, scientific journals, the results of previous research, and supporting literature such as legal dictionaries and Islamic encyclopedias. All of these legal materials are selected based on their relevance, scientific authority, and relevance to the focus of the research problem.

The data collection technique is carried out through library research by searching, inventorying, and documenting various relevant legal sources. Data analysis is carried out qualitatively through the stages of classification and systematization of legal materials, interpretation of norms and concepts found, and comparative analysis to identify similarities and differences in views. Furthermore, conclusions are drawn deductively by formulating logical and systematic legal arguments to answer the formulation of research problems in an appropriate and measurable manner.¹¹

RESULTS AND DISCUSSION

The Concept and Terminology of Hibah in the Perspective of Islamic Fiqh

Etymologically, the word *hibah* comes from the Arabic (وَهَبَ - يَهَبُ - هِبَةٌ) *wahaba-yahabu-hibatan*, which means to give or to give. This word is the masdar form of the word (وَهَب) *wahaba*, which is used in the Qur'an approximately 25 times spread across

¹⁰ Muhammad Faisyah dan Ade Fariz Fahrullah, "Pelaksanaan Hibah Orang Tua Terhadap Anak di Kecamatan Bangkinang Kota dalam Tinjauan Hukum Islam," *Journal of Sharia and Law* 3, no. 1 (2024).

¹¹ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), <https://eprints.unram.ac.id/20305/1/Metode%20Penelitian%20Hukum.pdf>.

13 letters. The use of the word *wahaba* in the Qur'an generally refers to the meaning of giving grace from Allah SWT to His servants, especially the prophets and His chosen people, as in QS. Ali Imran verse 8, QS. Maryam verses 5, 49, 50, and 53.¹² *Wahaba* means to give, bestow, or bestow favors without expecting anything in return.

Terminologically, the meaning of grant has undergone various formulations among scholars, even though it basically has the same substance of meaning. In *the Encyclopedia of Islamic Law*, hibah is defined as a gift that is made voluntarily in order to get closer to Allah SWT without expecting anything in return. This definition emphasizes that grant is a form of *tabarru'* (goodness) deeds that are worth worship if intentioned sincerely. In addition, grants also reflect the principles of helping and social solidarity in Islam, as they aim to help other parties and strengthen family and community relationships.¹³

In *the International Popular Dictionary*, a grant is defined as a giving, almsgiving, or transfer of rights, which indicates the existence of an element of giving freely without any demand in return.¹⁴ As for the *Al-Munjid Dictionary*, grant is interpreted as a gift or giving, which comes from the root (وَهَبَ) of *wahaba*, which is to give something sincerely.¹⁵ Almost the same meaning is also found in *the al-Munawwir Dictionary*, which states that grant is a *mashdar* from the word *wahaba* which means giving.¹⁶ Meanwhile, in the *Great Dictionary of the Indonesian Language*, a grant is defined as a voluntary gift by transferring the right to something to another person, which confirms the transfer of property rights from the giver to the recipient without any compensation.¹⁷

Jumhur ulama defines a grant as a contract that causes the transfer of ownership of property from the giver to the recipient without a replacement, and is carried out while the giver is still alive. This definition emphasizes that a grant is a form of transfer of property that is carried out free of charge, without any compensation or reward from the recipient. One of the important elements in grants is the existence of voluntariness, both on the part of the giver and the recipient, so that the grant must not contain elements of coercion or burdensome conditions. With these characters, a grant has a clear distinction from a will. A will only takes effect after the giver dies, while a grant has immediate legal consequences from the moment it is handed over, both in terms of validity time and legal consequences.¹⁸

Abd al-Rahman al-Jaziri in the book *al-Fiqh 'ala al-Mazahib al-Arba'ah* compiles the definition of hibah according to the four schools of fiqh. According to the Hanafi madhhab, hibah is giving an object without promising an immediate reward. The Maliki school defines a grant as giving ownership of an object to another person in return, and under certain conditions can also be referred to as a gift. The Shafi'i school briefly states that a grant is to give conscious ownership of property while still alive. The Hambali madhhab provides a more detailed definition, namely the transfer of ownership of property from one person to another that allows the recipient to take legal action against the property, whether the property is certain or not, as long as the property can be handed

¹² Ahmad Rofiq, *Islamic Law in Indonesia* (Jakarta: RajaGrafindo Persada, 1997).

¹³ Dahlan, *Ensiklopedia Hukum Islam*.

¹⁴ Budiono, *International Popular Scientific Dictionary* (Surabaya: Alumni, 2005).

¹⁵ Louis Ma'luf, *al-Munjid fi al-Lughah wal-A'lam* (Beirut: Dar al-Masyriq, t.t.).

¹⁶ Ahmad Warson Munawwir, *Kamus Al-Munawwir* (Surabaya: Pustaka Progresif, 1997).

¹⁷ Ministry of National Education, *Great Dictionary of Indonesian Language* (Jakarta: Balai Pustaka, 2002).

¹⁸ Nasrun Haroen, *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2003).

over and the gift is made while the giver is still alive without expecting anything in return.¹⁹

Sayyid Sabiq defines hibah as an agreement that is done with the intention of transferring one's ownership to another person while he is still alive and without compensation. This definition emphasizes two important elements of grants, namely the transfer of property rights and the absence of rewards.²⁰ Meanwhile, Shaykh Muhammad ibn Qasim al-Ghazzi defines a grant as giving something permanent and absolute while the giver is still alive without compensation, even if the gift comes from a party of higher standing.²¹ Shaykh Zainuddin Ibn Abd Aziz al-Malibari also gave a definition that was not much different, namely giving an item that is generally legal to be traded or in the form of receivables by a person who is capable of tabarru' without any exchange.²²

Based on the various definitions that have been explained, it can be concluded that a grant in Islamic law is a contract for the gift of property from a person to another person that is done voluntarily, without any reward, and carried out while the giver is still alive. This grant contract results in the transfer of property rights completely from the giver to the recipient, so that the recipient has full freedom to control and utilize the property. In this case, grants have a clear difference from the concept of 'ariyah or loans. In 'ariyah, the recipient only obtains the right to use the goods without having ownership rights over them. Therefore, if a person hands over his property to another party only to be used without transferring ownership, then the act cannot be categorized as a grant, but as 'ariyah.

In the Qur'an, the term hibah is indeed more often used to describe the gift or gift from Allah SWT to His servants. However, verses that discuss the encouragement of giving and giving alms can be used as a normative basis for the practice of grants between fellow humans. The Qur'an expressly encourages Muslims to spend some of their possessions in the way of Allah with sincerity and without expecting anything in return. In addition, the Qur'an also prohibits procrastination in doing good. This is as affirmed in the Qur'an. Al-Baqarah verse 262 and QS. Al-Munafiqun verse 10, which emphasizes the importance of sharing wealth as a form of social concern and obedience to Allah SWT.²³

الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ ثُمَّ لَا يُتْبِعُونَ مَا أَنْفَقُوا مَنًّا وَلَا أَذًى لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ﴿٢٦٢﴾

Meaning: "Those who give their wealth in the way of Allah, then do not accompany what they give by mentioning it and hurting (the feelings of the recipient), for them is a reward from the side of their Lord. There is no fear in them and they are not sad." (QS. Al-Baqarah: 262).²⁴

وَأَنْفِقُوا مِنْ مَا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَكُمْ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلَا أَخَّرْتَنِي إِلَىٰ أَجَلٍ قَرِيبٍ فَأَصَّدَّقْتُ وَأَكُنُ مِنَ الصَّالِحِينَ ﴿١٠﴾

¹⁹ Abd al-Rahmân al-Jazirî, *Kitab al-Fiqh 'alâ al-Mazâhib al-Arba'ah*, 3 ed. (Beirut: Dâr al-Fikr, 1972).

²⁰ Sayyid Sabiq, *Fiqh al-Sunnah*, 2 ed. (Cairo: Maktabah Dâr al-Turas, t.t.).

²¹ Syekh Muhammad ibn Qâsim al-Ghazzi, *Fath al-Qarîb al-Mujîb* (Beirut: Dar al-Ihya al-Kitab, t.t.).

²² Shaykh Zainuddin Ibn Abd Aziz al-Malibary, *Fath al-Mu'în, Maktabah wa Matbaah* (Semarang: Toha Putera, t.t.).

²³ Rofiq, *Islamic Law in Indonesia*.

²⁴ "QS. Al-Baqarah: 262," p.t.

Meaning: "Infuse some of what We have bestowed upon you before death comes to one of you. He then said (with regret), "O my Lord, if You are willing to postpone my (death) a little longer, I will be able to give alms and I will be among the righteous." (QS. Al-Munafiqun: 10).²⁵

These verses give a clear signal that giving wealth to others is an act that is highly recommended in Islamic teachings. This recommendation is valid as long as the gift is carried out with sincere intentions for the sake of Allah SWT, without being accompanied by wrong intentions or harming other parties. In addition, the way of giving property must also be done fairly and not cause injustice or conflict in the future. Thus, the practice of giving property, including grants, is not only of worship value, but also serves to maintain the harmony of social relations and justice in community life.

Islam pays great attention to the principle of justice in every aspect of life, including in terms of the provision of property. This principle of justice was emphatically emphasized by the Messenger of Allah (peace and blessings of Allaah be upon him), especially in the practice of giving to children. He reminded parents not to be partisan in giving grants, because injustice can cause jealousy, injustice, and conflict among children. A fair attitude in granting grants not only maintains family harmony, but also reflects the moral values taught by Islam.²⁶ This is as emphasized in the hadith of the Prophet which emphasizes the obligation of parents to be fair to their children in giving grants.

اغْدُوا بَيْنَ أَوْلَادِكُمْ فِي النَّحْلِ، كَمَا تُحِبُّونَ أَنْ يَغْدُوا بَيْنَكُمْ فِي الْبِرِّ وَاللُّطْفِ

It means: "Be fair among your children in grants, as you want them to be fair to you in filial and gentle." (Narrated by al-Baihaqi).²⁷

The hadith emphasizes that justice in granting grants has a huge moral and social impact on family life. Justice applied by parents can maintain harmony, prevent jealousy, and prevent children from conflicts in the future. In this case, scholars have different opinions about the form of justice in grants. Some scholars argue that justice is done by adjusting the distribution such as inheritance provisions, namely boys get two shares compared to girls. However, some other scholars are of the opinion that grants should be divided equally regardless of gender. This second opinion is considered stronger because it is supported by the hadith of an-Nu'man bin Bashir Radhiyallahu 'anhu which emphasizes the prohibition of being unfair in giving to children.²⁸

In the hadith, it is said that an-Nu'man bin Bashir's father gave grants only to himself and not to his other children. His father then asked the Messenger of Allah (peace and blessings of Allaah be upon him) to be a witness to the gift. However, the Prophet rejected the request and considered the act as a tyranny because it was not done fairly to all children. The Prophet's rejection shows that Islam places great emphasis on justice in giving grants, especially to children. Injustice in grants can have a negative impact on the

²⁵ "QS. Al-Munafiqun: 10," t.t.

²⁶ Roro Fatikhin, "Social Justice in the Perspective of the Qur'an and Pancasila," *Al-Adalah: Journal of Politics, Social, Law and Humanities* 1, no. 2 (313 293M): 2017.

²⁷ "HR. al-Baihaqi," t.t.

²⁸ Suyono, "Hadiths on Grants and Their Provisions," *Al-Mabsut: Journal of Islamic and Social Studies* 11, no. 1 (2017): 1–15, <https://doi.org/10.56997/almabsut.v11i1.208>.

family.²⁹ On this occasion, the Messenger of Allah (peace and blessings of Allaah be upon him) said:

عَنْ النُّعْمَانَ قَالَ: سَأَلْتُ أُمَّي أَبِي بَعْضَ الْمَوْهَبَةِ فَوَهَبَهَا لِي، فَقَالَتْ: لَا أَرْضَى حَتَّى أَشْهَدَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: فَأَخَذَ أَبِي بِيَدِي وَأَنَا غُلَامٌ، فَأَتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّ أُمَّ هَذَا ابْنَةِ رَوَاحَةَ طَلَبَتْ مِنِّي بَعْضَ الْمَوْهَبَةِ، وَقَدْ أَعْجَبَهَا أَنْ أَشْهَدَكَ عَلَى ذَلِكَ، قَالَ: يَا بَشِيرُ، أَلَيْكَ ابْنٌ غَيْرُ هَذَا؟ قَالَ: نَعَمْ، قَالَ: فَوَهَبْتَ لَهُ مِثْلَ مَا وَهَبْتَ لِهَذَا؟ قَالَ: لَا، قَالَ: فَلَا تُشْهَدُنِي إِذَا، فَإِنِّي لَا أَشْهَدُ عَلَى جَوْرٍ

Meaning: "From an-Nu'man (bin Bashir), he Radhiyallahu anhu said, "My mother asked my father for a grant, and then gave it to me. Mother said, 'I am not willing until Rasûlullâh (peace and blessings of Allaah be upon him) to be a witness to this grant.' So my father took me when I was a child to Rasûlullâh (peace and blessings of Allaah be upon him) and said, 'O Rasûlullâh, the mother of this child, 'Amrah bint Rawahah asked for a grant for the child and wanted you to be a witness to the grant.' So Rasûlullâh (peace and blessings of Allaah be upon him) asked, 'O Bashir, do you have any children besides him?' 'Yes.', Dad replied. He (peace and blessings of Allaah be upon him) asked again, 'Have you also given the same grant to another son?' Dad said no. So Rasûlullâh said, 'Then do not make me a witness, because I am not a witness to injustice.' (Narrated by al-Bukhari).³⁰

This hadith shows that injustice in giving grants is a prohibited act and can be worth sin, because it has the potential to cause conflict, jealousy, and hatred among children. Such injustice not only has an impact on family relationships, but can also damage harmony and trust between parents and children. Therefore, the principle of justice is the main foundation in the practice of grants, especially grants given by parents to their children. Nevertheless, Islam still provides leniency under certain conditions, as long as it is based on justifiable reasons. These reasons include special needs, disability conditions, educational demands, or the agreement and willingness of all children, so that grants can still be made without causing injustice.³¹

Based on the explanation above, hibah in Islam is not only understood as the act of giving or transferring property to another person. More than that, grants have a noble purpose, which is to maintain good relations between family members and create harmony in community life. Grants that are made with sincere intentions and based on a fair attitude in accordance with Islamic teachings will provide benefits for both the giver and the recipient. In addition to being of worship value, grants also serve as a means to foster a sense of compassion and justice. With proper implementation, grants can be a preventive effort in preventing disputes or property disputes in the future, especially in the family environment.

Parent-to-Child Grants as Pre-Inheritance Instruments

Hibah is a gift that someone gives to another party for free without expecting anything in return. The grantee is the parent, while the grantee is the child who has a direct blood relationship or a downward lineage.³² A parent-to-child grant is a transfer of property ownership from the parent to the biological child when the parent is still alive

²⁹ Suyono.

³⁰ "HR. al-Bukhari," t.t.

³¹ Suyono, "Hadiths about Grants and Their Provisions."

³² Zakiyatul Ulya, "Fiqh Perspective Grants, KHI and KHES," *Maliyah Journal* 7, no. 2 (2017): 1–

and is done voluntarily. This kind of grant practice is permissible in Islam, even recommended if parents feel that their assets are sufficient and worthy of being used for the benefit of their children, their families, and those around them who are in need.³³

Grants from parents to children are often carried out with the aim of helping their children's lives from an early age, such as for education, marriage, housing, or other economic needs. Not a few parents also give grants to their children equally, without distinguishing between boys and girls.³⁴ This practice is in some cases driven by a desire to avoid dividing the inheritance with a 2:1 system as per the provisions of the faraidh, and rather leads to an equal division of 1:1. Although legally granted grants, the practice of grants that intend to circumvent inheritance law requires caution so as not to contradict the principles of justice and not to cause conflicts in the future.³⁵

Grants given by parents to children are basically permissible in Islam. However, these abilities are not absolute, but must meet certain conditions, especially related to the principles of justice and benefit for all children. Grants that are carried out unfairly, for example, are only given to some children without a clear reason, have the potential to cause jealousy, conflicts, and can even damage family relationships. This impact is certainly contrary to the main purpose of the grant itself, which is to maintain family harmony. Therefore, scholars emphasized that parental grants to children must be done with a fair attitude. Exceptions can only be justified if there are clear and acceptable sharia reasons, such as special needs or certain conditions in one of the children.³⁶

The grants given by parents to children have a very close relationship with the provisions of inheritance law. In principle, grants should not be given excessively to the extent that the child should have received the share of the inheritance. This is because under certain conditions, grants can be counted as part of the inheritance. If in the future the parents die and there is a dispute between the heirs, the grant that has previously been received by one of the children can be considered in the distribution of inheritance. Especially if the grant causes injustice or harms other heirs, then the grant can be recalculated to create justice and balance in the distribution of inheritance.³⁷

Grants to children can be counted as inheritance in several conditions, including:

- a) If the parents' inheritance is so small that if the grant received by one of the children is not counted as an inheritance, then the other heirs will not get a proper share according to the provisions of the Shari'a.
- b) If the recipient of the grant is a child who is already sufficient or rich, while other heirs are in a weak economic condition, so that the grant actually enriches the already rich and impoverishes the poor.³⁸

³³ Hamdan Fadhli et al., "A Study of Grant Implementation in the Perspective of Islamic Law: An Analysis of the Implementation of Grant Giving in an Islamic Framework," *Journal of Law, Politics and Social Sciences* 3, no. 2 (2024): 201–11, <https://doi.org/10.55606/jhpi.v3i2.3758>.

³⁴ Fauzi Saleh, "Fiqh Al-Hadith on the Grant of Fathers to Children," *Journal of Substance* 12, no. 1 (2020): 27–46.

³⁵ Muzakkir, "The Practice of Sharing Equals in the Distribution of Inheritance Reviewed According to Islamic Law," *Ameena Journal* 1, no. 3 (2023): 296–308.

³⁶ Muhammad Faisyah and Ade Fariz Fahrullah, "The Implementation of Parental Grants to Children in Bangkinang Kota District in a Review of Islamic Law," *Journal of Sharia and Law* 3, no. 1 (2024): 81–99.

³⁷ Ibn Rusydi, "Grants and Their Relationship with Inheritance According to a Compilation of Islamic Law and Civil Law," *Galuh Justisi Scientific Journal* 4, no. 2 (2017): 212, <https://doi.org/10.25157/jigj.v4i2.324>.

³⁸ Abdul Ghofur Anshori, *Filsafat Hukum Hibah dan Wasiat di Indonesia* (Yogyakarta: Gadjah Mada University Press, 2011).

The scholars have differing opinions about the need to be fair in the grant of parents to children. Imam Shafi'i argues that the grant from parents to children is still valid even though it is done unfairly. However, this injustice is punished by *makruh*. According to him, the command to be fair in grants is understood as a highly emphasized encouragement, not an absolute obligation. Therefore, if parents give grants in an unbalanced manner, the grant contract is not void, but their actions are considered reprehensible and should be avoided because they are contrary to the values of justice and family harmony.

In contrast to Imam Shafi'i, Imam Ahmad bin Hanbal is of the opinion that injustice in the grant of parents to their children is *haram*. According to him, parents are obliged to equate the granting of grants to all their children without exception, unless there is a clear *sharia* reason. If the grant is done unfairly, then the grant must be realigned or even revoked. This opinion is based on *hadiths* that expressly prohibit favoritism in giving to children and call such injustice a form of tyranny.

Meanwhile, Imam Abu Hanifah argued that the grant of parents to children is still valid even though it is unfair. However, he strongly recommends that parents be fair in order to avoid conflicts and hostilities among children. According to this view, justice in *hibah* is a form of prudence (*ihtiyath*) that is important to maintain family harmony. By being fair, parents can prevent negative impacts in the future, such as disputes and the breakdown of family relationships.³⁹

The majority of scholars agree that parents are *sunnah* to be fair and generalize the granting of grants to their children, as well as to discriminate without a justified reason. However, they differ in understanding the meaning of equality (*taswiyah*). Abu Yusuf of the Hanafi school, as well as the majority of scholars from the Maliki and Shafi'i schools, argued that equal distribution of grants means equal sharing between boys and girls. Girls receive the same share as boys. Abu Yusuf emphasized that giving too much to some children can cause harm to other children.⁴⁰

A more emphatic opinion was held by Imam Ahmad, Ishaq, Tsauri, Thawus, and some scholars from the Maliki school. They argue that parents are not justified in prioritizing the granting of grants to some children at the expense of others. According to this view, favoritism in grants has the potential to cause jealousy, hostility, and can even break the relationship between brothers, even though maintaining friendship is a command that is highly emphasized by Allah SWT. Therefore, fairness in grants is seen as an obligation that must be maintained by parents. This opinion is strengthened by the *hadith* of the Prophet Muhammad PBUH narrated from Ibn Abbas r.a:

عن ابن عباس عن النبي صلى الله عليه وسلم قال: سَوُّوا بَيْنَ أَوْلَادِكُمْ فِي الْعَطِيَّةِ، وَلَوْ كُنْتُ مُؤْتِرًا لَأَتَرْتُ النِّسَاءَ عَلَى الرِّجَالِ

Meaning: "From Ibn Abbas, from the Prophet PBUH said: Be equal among your children in giving. If I were to put someone first, I would have put women first." (HR. Baihaqi).⁴¹

This *hadith* shows how important the principle of justice is in giving grants to children. The Prophet PBUH expressly condemned the unjust attitude in grants and even called it a form of tyranny. This is as explained in the *hadith* an-Nu'man bin Basyir r.a.,

³⁹ Sabiq, *Fiqh al-Sunnah*.

⁴⁰ Ash-Shan'ani, *Syarah Bulughul Maram*, (p. D, 2015), p. 322. (Jakarta: Darus Sunnah Press, 2015).

⁴¹ "HR. al-Baihaqi."

when the Prophet PBUH refused to be a witness to the grant that was given only to one child and not to the other. The rejection shows that the practice of unfair grants is not justified in Islam. The Prophet PBUH emphasized that this act is a form of arbitrariness and contrary to the principle of justice which is the basis for maintaining family harmony and relationships between others.

The Prophet PBUH linked justice in giving grants to the obligation of children to be devoted to their parents. The fair attitude shown by parents in giving grants will foster the child's respect, affection, and obedience to his parents. Ibn Qayyim explained that justice in grants is part of the command of justice affirmed by Allah SWT in the Qur'an and is in line with the basic principles of Islamic law. According to him, justice is not only related to social relationships, but also has moral and spiritual dimensions. Therefore, injustice in grants cannot be considered as permissible acts, but contains elements of persecution that can damage harmony and family relationships.

Islamic jurists also discuss the limitations of grants in relation to the entire property. Sayyid Sabiq stated that the scholars agreed that a person may give all his property to a person who is not an heir. However, Muhammad ibn Hasan and some scholars of the Hanafi school of thought that it is not permissible to give away all wealth, even for good purposes, because it can show weakness of reason and have the potential to cause harm. As for grants to children, according to Imam Malik and ahlul Zahir, it is not permissible to give all property because it can harm the interests of other heirs.⁴²

The principle of implementing parental grants to children must follow the instructions of the Prophet PBUH, namely not giving all property to one child and equalizing the gift to children as far as possible. If the grant given exceeds the provisions of the inheritance share and causes injustice, then the grant can be counted as an inheritance. The Compilation of Islamic Law in Indonesia also accommodates this principle based on the customs of the community which aims to maintain justice and prevent family division. Umar bin Khattab once emphasized the importance of resolving property disputes within the family, because court decisions often leave wounds and suffering.⁴³

Based on the explanation above, grants given by parents to children in Islam are basically allowed, but must be carried out by meeting certain conditions. The granting of grants must pay attention to the principles of justice, consider the interests of all children, and do not conflict with the provisions and principles of applicable inheritance law. Grants that are made unfairly have the potential to cause jealousy, conflicts in the family, and even legal disputes in the future. Therefore, injustice in grants not only has legal consequences, but also carries serious social and moral repercussions. Islam places justice as the main principle that must be maintained in every practice of grants, especially grants from parents to children, in order to maintain family harmony and the integrity of family relationships.

Normative Analysis of Pre-Death Grant Practices and Their Implications for Heirs' Rights

Grants and inheritance are two different things in Islam, both in terms of their validity time and legal consequences. A grant is a contract for the provision of property that is carried out while the giver is still alive, while inheritance is a transfer of property that occurs after the heir dies.⁴⁴ In practice, grants have a significant influence on the

⁴² Sabiq, *Fiqh al-Sunnah*.

⁴³ Abdul Manan, *Various Islamic Civil Law Problems in Indonesia* (Jakarta: Kencana, 2006).

⁴⁴ Rusydi, "Grants and Their Relationship with Inheritance According to a Compilation of Islamic

distribution of inheritance, especially if grants are made by parents to their children. Discussions about the influence of grants on inheritance are important to ensure fairness and avoid disputes between heirs.

Grants made by a person while still alive and have fulfilled the principles and conditions specified in Islamic law are declared valid. If the grant has been handed over and is truly controlled by the recipient, then the property granted comes out of the giver's possession and is no longer part of the inheritance. Thus, a valid grant essentially does not include objects that are shared in the inheritance process. This is in line with the rules of fiqh which states that a person has full rights to his property as long as he is alive and has common sense. Therefore, he is free to use and manage his property, including giving some of his property to others through grants.

Grants are often used as a way to avoid the division of inheritance based on the faraidh system. As explained in the previous discussion, some parents give their property to their children equally with the aim of avoiding the 2:1 inheritance provision between boys and girls. Formally, this practice can be considered valid if the grant is made while the parents are still alive, in good health, without coercion, and accompanied by the handover of property. However, from the ethical perspective of Islamic law, the practice of grants aimed at circumventing inheritance law needs to be critically examined, especially if it causes injustice or harms one of the heirs.

Islam does not prohibit a person from giving his property to another party while he is still alive. However, grants made with the aim of circumventing or circumventing the provisions of inheritance law may be contrary to maqashid al-shari'ah, especially in maintaining the principles of justice and family harmony.⁴⁵ The scholars emphasized that grants should not be used as a means to damage or ignore the inheritance system that has been established by Allah SWT. In the Qur'an, the provisions regarding inheritance are regulated in a strict and detailed manner in order to create justice for all heirs. This is as explained in the Qur'an, an-Nisa' verses 11, 12, and 176, which are the main basis for the division of inheritance in Islam and should not be circumvented through the practice of improper grants.⁴⁶

One of the important issues related to the influence of grants on inheritance is the grants made before death. Grants in such conditions are often referred to as grants that contain elements of syubhat of will, because they are substantially similar to wills. Grants given before death, especially when the giver is in a state of severe illness that is feared to lead to death (*maradh al-maut*), is viewed by scholars with great caution. This caution arises because the grant has the potential to affect the distribution of inheritance and the rights of the heirs. Therefore, grants in this condition are often treated specifically so as not to cause injustice and not to violate the provisions of inheritance law that have been established in Islam.⁴⁷

A will given to an heir is basically not permissible in Islam, unless it obtains the consent of all other heirs. This provision aims to maintain justice and protect the rights of

Law and Civil Law."

⁴⁵ Siti Ameliyah, "Islam Answers Grants Do Not Count When Distributing Inheritance," *Journal of Medan Agama Research* 12, no. 1 (2021): 13, <https://doi.org/10.58836/jpma.v12i1.9773>.

⁴⁶ Delvi Widhia Astuti, Zamakhsyari Bin Hasballah Thaib, and Utary Maharany Barus, "Juridical Analysis of the Distribution of Grants to Heirs Who Are Counted as Inheritance (Study of Decision Number 0599/Pdt.G/2019/Pa.Kdi)," *JIIIC: Journal of Intellectual Insan Cendikia* 2, no. 1 (2025): 1128–40.

⁴⁷ Abd. Rahman Saleh and Imam Fawaid, "Grants and Inheritance Rights: A Comparative Study of Law and Compilation of Islamic Law (KHI)," *Al-Hukmi: Journal of Islamic Economic and Family Law* 2, no. 2 (2021): 167–78, <https://doi.org/10.35316/alhukmi.v2i2.1788>.

each heir so that no party is harmed. Islam has clearly defined inheritance, so giving a will to an heir without consent can upset the balance of the distribution. Therefore, the consent of all heirs is an important condition so that the will to the heirs can be justified.⁴⁸ This is as emphasized by the Prophet PBUH in a hadith that emphasizes the prohibition of making a will to heirs without mutual agreement.

حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ حَدَّثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنَا شُرْحَبِيلُ بْنُ مُسْلِمٍ الْخَوْلَانِيُّ سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ فِي خُطْبَتِهِ عَامَ حَجَّةِ الْوُدَّاعِ إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِرِوَارِثٍ

Meaning: "Indeed, Allah has given to everyone who is entitled to his right, so there is no will for the heirs." (HR. Abu Dawud and Tirmidhi).⁴⁹

The hadith is the normative basis that the giving of property to heirs that resembles a will is not justified if it is done without the consent of other heirs. This provision aims to prevent injustice in the distribution of inherited property, so that the rights of each heir are still protected. Therefore, a grant made before the death of one of the children, especially if it causes harm or reduces the rights of other heirs, can be equated with a will. Under these conditions, the grant is not seen as a pure grant, but rather as a legal act that has inheritance consequences. As a result, the grant has the potential to be legally questionable and can even be canceled or counted as part of the inheritance in order to maintain the principle of justice.⁵⁰

The scholars have different views in assessing the validity of grants made before death. Some scholars are of the opinion that the grant remains valid as long as it fulfills the principles and conditions of the grant, there has been a handover (qabdh), and there is no indication of any intention to avoid or circumvent the provisions of inheritance law. According to this view, a grant is seen as a stand-alone legal act as long as it is done lawfully. However, some other scholars are of the view that grants made in the state of *maradh al-maut* should be treated like a will. This means that the grant is limited to a maximum of one-third of the assets and should not be given to the heirs except with the consent of the other heirs. This opinion aims to maintain justice and protect the rights of all heirs from being harmed.⁵¹

Substantive Justice in the Calculation of Grants as Part of the Perspective of Inheritance Article 211 of the Compilation of Islamic Law

The influence of grants on heritage in Indonesia is clearly regulated in Article 211 of the Compilation of Islamic Law (KHI). This article states that grants given by parents to children can be counted as part of the inheritance. This provision indicates that the grant is not necessarily removed or disregarded, but remains legally recognized. However, if the distribution of the inheritance of the grant causes injustice to other heirs, then the grant can be recalculated so that the distribution of inheritance is balanced. Thus,

⁴⁸ Dimas Triandiki and Dimas Triandiki DimaFaisal Afif, "The Concept of Wills from the Perspective of Hadith and the Compilation of Islamic Law," *Journal of Islamic Studies Masile* 5, no. 2 (2024): 44–51.

⁴⁹ "HR. Abu Dawud and Tirmidhi," t.t.

⁵⁰ Siti Afifah Solehah Afifah, Abdul Kadir Sabaruddin, and Musthafa, "The Concept of Conditional Grants as a Prevention of Inheritance Disputes in Religious Courts," *Indonesian Journal of Law and Justice* 3, no. 2 (2025): 10, <https://doi.org/10.47134/ijlj.v3i2.5258>.

⁵¹ Ulya, "Fiqh Perspective Grants, KHI and KHES."

Article 211 of the KHI acts as a bridge between grant law and inheritance law, so that the two can run in harmony to maintain justice and harmony in the family.⁵²

Based on Article 211 of the KHI, there are two important legal implications, namely:

- a) First, the grant from parents to children does not automatically expire, so that grants that have been made legally are still recognized for their existence.
- b) Second, the grant can be counted as part of the inheritance if necessary to maintain balance and a sense of justice among the heirs.

The calculation of a grant as part of an inheritance is generally carried out if the grant causes a clear inequality among the heirs. This can happen, for example, when one of the children has received a sizable amount of a grant while the parents are still alive, while the other children have not received a comparable share. Conditions like this have the potential to cause injustice and conflict in the family. Therefore, grants that have been received by one of the children can be recalculated as part of the estate. The goal is so that the distribution of heritage assets can ultimately be carried out in a more fair and balanced manner for all heirs.

The calculation of grants as part of inheritance also has an important function in preventing conflicts within the family. In practice, many inheritance disputes arise due to feelings of injustice due to grants given unevenly while the parents are still alive. This condition often causes jealousy, disappointment, and even hostility between family members. By taking into account grants as part of the inheritance, the distribution of heritage property can be carried out in a more balanced and fair manner. This principle is in line with the purpose of Islamic law which emphasizes the benefits and efforts to prevent damage (*dar'u al-mafāsīd*), so that the harmony and integrity of the family are maintained.

Umar bin Khattab once emphasized the importance of resolving property disputes within the family first and avoiding settlement through the courts if possible. According to him, family settlement reflects the value of justice and maintaining good relations between family members. Court decisions often only resolve the formal aspects of the law, but they often leave social wounds, disappointment, and family divisions. This principle is particularly relevant in the context of grants and inheritances, as property disputes often involve strong emotional connections. Therefore, the approach of deliberation, substantive justice, and efforts to maintain family harmony need to be prioritized rather than simply focusing on the validity of formal law.⁵³

Based on this description, it can be understood that the influence of grants on heritage in Islam is complex and highly dependent on the context of its implementation. Basically, grants that are valid and made while the giver is still alive are not included in the inheritance. However, grants can be problematic if they are used as a means to avoid inheritance law provisions or are carried out before death with certain purposes that harm other heirs. Through Article 211 of the Compilation of Islamic Law, Islamic law in Indonesia provides space to take into account grants as part of the inheritance in order to maintain justice and family harmony. Grants that are implemented with good intentions,

⁵² Monday, "Parent-to-Child Grants Can Be Counted as Substitutes for Heirs (Analysis of the Concept of Maslahah Article 211 of the Compilation of Islamic Law)," *Proceedings of the National Seminar on Entrepreneurship* 2, no. 1 (2021): 1–25, <https://doi.org/10.30596/snk.v2i1.8404>.

⁵³ Dian Dewi Khasanah, Abdul Kodir Alhamdani, and Indira Swasti Gama Bhakti, *Islamic Heritage Law* (Banten: Sada Kurnia Pustaka, 2024).

legitimate procedures, and considerations of justice will strengthen family relationships. Islam places justice and benefit as the main principles in regulating the relationship between grants and inheritance.

CONCLUSION

Based on the results of the research, it can be emphasized that a grant in Islamic law is a *tabarru'* contract that transfers property rights perfectly from the giver to the recipient when the giver is still alive and without compensation. Conceptually, a grant is fundamentally different from a will because its legal consequences take effect immediately after the fulfillment of the principles and conditions, not after the heirs die. From a normative perspective, grants are recommended as a manifestation of the values of sincerity, solidarity, and social welfare, as long as they do not contradict the principles of justice and do not cause harm to others.

This research also shows that parental grants to children are basically allowed, but their implementation must take into account the principle of proportional justice among children. Inequality in the provision of grants has the potential to cause family disharmony and inheritance disputes, even in the view of some scholars, it can be qualified as a reprehensible act if it is done discriminatorily without a justified reason according to sharia. Thus, grants should not be used as an instrument to avoid the provisions of inheritance law, but are directed to strengthen benefits and maintain the integrity of family relationships.

Furthermore, grants that have met the principles and conditions and are carried out while the giver is still alive in principle remain valid and not forfeited. However, if the grant is made with the indication of avoiding the division of inheritance or is carried out in near-death conditions that resemble a will, then juridically it can be considered as part of the inheritance, as affirmed in Article 211 of the Compilation of Islamic Law. These findings recommend the need for more comprehensive regulatory affirmations and interpretive guidelines regarding the limits of parent-to-child grants, in order to ensure legal certainty, prevent abuse of grant institutions, and realize substantive justice in Islamic inheritance practices.

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