

## Land Grant to Adopted Children, a Court Case Study

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### ABSTRACT

A gift is a free and irrevocable gift from one person to another person regarding movable goods through a Notarial deed or immovable goods under a deed from the Land Deed Official (PPAT) while the grantor is still alive. Gifts can only be made on existing objects, in contrast to inheritance which makes it possible to inherit existing assets, for example insurance coverage money. Even though the rules regarding gifts are clear, problems still often arise where heirs do not agree if the heir's assets are gifted to other people who are not related to the heir, including adopted children. Through descriptive analytical research, the article aims to find out the conditions regarding grants and the maximum share that grant recipients are entitled to get even if they are not heirs such as adopted children.

### ABSTRAK

Hibah merupakan pemberian seseorang kepada orang lainnya secara cuma-cuma dan tidak dapat ditarik kembali atas barang-barang bergerak melalui akta Notaris maupun barang tidak bergerak dengan akta Pejabat Pembuat Akta Tanah (PPAT) pada saat pemberi hibah masih hidup. Hibah hanya dapat dilakukan atas benda yang sudah ada, beda dengan waris yang memungkinkan untuk mewariskan harta yang akan ada misal uang pertanggung asuransi. Meski telah jelas aturan tentang hibah namun masih sering terjadi permasalahan yang muncul dimana ahli waris tidak setuju jika harta pewaris dihibahkan kepada orang lain yang tidak memiliki hubungan darah dengan pewaris termasuk anak angkat. Melalui Penelitian yang bersifat deskriptif analitis, artikel bertujuan untuk mengetahui syarat tentang hibah dan maksimal berapa bagian yang berhak diperoleh oleh penerima hibah walau bukan ahli waris seperti anak angkat.

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## I. INTRODUCTION

If someone dies leaving assets and heirs, then all the assets left behind by the heirs are subject to other rights which must be issued first before the assets can be distributed. These assets do not have to be the rights of the heirs. . To the heirs. There are several things that must be considered (excluded from inherited assets) before distribution, including gifts, wills and inheritances. However, there are also heirs who make gifts during their lifetime, and there are also those who do not make a will or testament, so that these three people do not need to be present at the death of the heir (Jannah et al., 2019)

"Grant" has several meanings and linguistically comes from the word "Athiyah" (gift), but according to the term "Grant" is ownership of something for life without reward or consideration. Any contract that represents rights (Sabir & Mutmainnah, 2020), "According to the concept of sharia," a gift is a contract that allows

ownership of an object to be transferred without exchange during a person's lifetime and is voluntary. According to the Council Dictionary, a gift is a voluntary giving of rights (property) to another person in good faith. (Mustamam, 2020)

Prizes involve a "free" (om niet) arrangement. In this case, the word "free" refers only to the performance of one party, and the other party is not required to expect any compensation. Such agreements are also referred to as "unilateral" agreements rather than "bilateral" agreements. Of course, many contracts are based on reciprocity. Because what these contracts have in common is that the person providing the service receives something in return (Rusydi, 2017)

According to Article 1666 of the Civil Code, a gift is a contract in which the grantor voluntarily and irrevocably transfers something during his lifetime to meet the needs of the grantee. A gift is a unilateral agreement in which only one party, namely the giver, has obligations and the recipient of the gift has no obligations at all.

In Indonesian tradition, many parents share their inheritance during their lifetime. In fact, distributive practices like this are more accurately called donations. Because in farid science or Islamic inheritance science, inherited assets (tirqa, milats) are distributed to heirs (muwarit) who are included in the group of recipients of inherited assets (fulud). al-muqaddarah) after the first testator dies, minus the costs incurred to care for the body and the debts of the deceased. (Harahap & Arafa, 2022).

While the grant implementation requirements cover several things. The requirement for the grant-maker that is grant has what is granted; the grant is not a person whose rights are restricted for a reason; the grant is an adult, intelligent and rasyid and without any element of coercion. Requirements for the person given the grant ie; entitled to have and actually exist at the time given a grant, holding a grant over the permission of *wāhib*. While the terms of goods granted ie there must be a time of grant; in the form of a strong and useful property, belonging to itself, can be possessed of the substance and not related to another place / separately. (Sukiati, 2018).

Apart from gifts, there are many other forms of transfer of rights, including sales, bartering, customary gifts, business income (imbrene), and inheritance (legato). The transfer of rights occurs while the right holder is still alive, and is a cash transaction, except for gifts made in a will. Inheritance disputes usually arise due to control of assets originating from the heir.

He is an heir and is considered an heir by some heirs, giving rise to demands from other heirs. At the request of some of the heirs, Article 188 of the Islamic Code regulates that if one of the heirs does not agree to the request, then the aggrieved person can file a lawsuit to the religious court for the distribution of the inheritance (Sri Murbowati, 2023)

There are several cases regarding the granting of grants, one of which is Court Decision Number 469/Pdt.G/2020/PA.JB which discusses the transfer of ownership of land rights through a grant given by the adoptive mother (X) to the adopted child (Z) after the adoptive father (Y) died. During his lifetime, X did not have any children from his marriage to Y, while Y had one child from his previous marriage. As in the case of the decision that the heirs consisting of the biological children of the deceased Y, the siblings of the deceased Y who were the heirs of the deceased Y, the siblings of the deceased regarding a land grant with a certificate of ownership in the name of.

The most basic theoretical meaning in the issue of land grant is the transfer of ownership rights. This land grant will affect the adoptive son's ownership of the land and what will happen to the land in the event of one party's death and in terms of practical significance, there are a few things to note: Land granting is an official act of transferring land ownership from adoptive parents to adopted children. The first practical meaning is that the adopted child will become the legal owner of the land after being granted a license. Furthermore, it is important to ensure that the rights of adopted children are legally protected within the framework of land grants. This may involve writing appropriate licensing documents and complying with all applicable regulations.

## II. RESEARCH METHOD

This study is structured in a normative form using a statutory approach and a conceptual approach so that this study focuses on events occurring in society. There are several legal sources in this study, which are: Sources of basic legal documents that are directly obtained and have binding legal value, namely; Undang1945 Constitution of the Republic of Indonesia; Law No. 5 of 1960 relating to Agricultural Principles. Secondary legal sources come from documents, scientific works and research results. There are some data collection methods including Interview, observation and literature study The method of collecting documents from legal sources is literature study . Textual research can be understood as a method of collecting a number of literature related to an issue that the writer will research from primary and secondary legal documents. Legal literature related to the issues discussed in this report are then systematically compiled and analyzed using methods of legal interpretation and reasoning.

The legal document collection technique used is documentary research or library research. Legal document analysis is carried out by collecting and processing organized legal documents systematically to find solutions to legal problems using content analysis(Hartono, 2022).

This research was conducted to solve problems that emerged. Meanwhile, the research results focus on what must be done to overcome current problems.

## III. RESULT AND DISCUSSION

Inheritance law in Indonesia is general civil law and a small part of family law. Inheritance law is closely related to the field of human life with many different customs (tribes), because every human being will definitely experience a legal event, namely death. Death occurs in one of the family members, for example father, mother or child. If the deceased had property, then the main issue is not the circumstances of the death. But inherited assets, namely who has the right to enjoy the assets left by the heirs(Aisyah, 2022)

Arabic-based heritage, Al-miirats in Arabic is a form of masdar (prototype) based on the words waritsa-yaritsu-irtsan-miiraatsan. What this means, in language, is "the transfer of rights and obligations towards something, whether property or dependents, on the basis that someone has died and that person's family is still alive. " (Edwin Marganda Tua Siahaan, 2022)

Talking about inheritance, namely inheritance left by heirs, it cannot be separated from gifts. Where a gift is the giving of property which is the right of the gift giver to the recipient of the gift which is done voluntarily or without coercion from any party, while inheritance is related to the transfer of someone's property/ownership at that time. death to the heirs ijbari (automatic). The basic concepts of gifts and inheritances essentially talk about the transfer of assets (Amirullah, Lomba Sultan, 2019)

Gifts can be given to anyone according to the wishes of the giver, especially parents who give gifts to their children as a parent's responsibility to provide love and living expenses

Joint assets in marriage can be movable assets, immovable assets (fixed objects), tangible assets and intangible assets (rights, ownership, interests, money), profits and dividends. , loss Land is a real estate asset that can be owned jointly by husband and wife in the family. (Ade Ariyani B. Rayu, Farida Patittingi, 2020)

On the other hand, land can be purchased through donations or grants. The grantee accepts and receives the land free of charge from the grantor. Land donations are made during the grantor's lifetime. This condition is what differentiates between donations and wills. In this case, the transfer

of land according to a will is carried out after the testator dies. Article 874 of the Colonial Regulations, Staatsblad Number 23 of 1847 in Burgerlijk Wetboek for Indonesia/Civil Code (hereinafter referred to as the Civil Code), regulates that:

The property left by a person after his death belongs to his legal heirs, as long as he does not legally dispose of it. law. just like will. (Ayudiatri & Cahyono, 2022)

Giveaway only relates to existing items. If it includes elements that are only discovered later, then the contribution is completely void according to the provisions of Article 1667 of the Civil Code (Abdullah et al., 2023)

Article 1666 of the Criminal Code stipulates that benefits can only be returned with the consent of the person receiving the benefit. However, according to Article 1688 of the Civil Code, donors have the right to withdraw or cancel their donations, especially if the conditions are not met, even though the donation has been made (Article 913 of the Civil Code). Civil), if the donor does not meet these requirements. The person receiving the gift is considered guilty of trying to kill the giver if the recipient does not want to pay the giver an annuity. Once the beneficiary faces poverty or bankruptcy (Putri & Ruslie, 2023).

The main reason why a gift can be void is essentially based on Islamic law, where the gift giver or the amount of goods given is limited by law to 1/3 of the giver's assets. The aim is to avoid conflicts and quarrels that arise between colleagues. (Aliyatin Dwi, 2019)

However, if the heir does not have children or is an adopted child, is the adopted child entitled to receive gifts from his adoptive parents

The transfer of land use rights by grant is regulated in the Civil Code which recognizes two forms of grant, namely: (a) Formal gifts (form of schenking), especially gifts in the narrow sense, are the result of actions that only fulfill the requirements of Article 1666 of the Civil Code, for example the gift is free. cost. (b) Material gifts (materiele schenking), namely gifts according to their nature, for example someone sells a house at a cheap price. According to Article 1666 of the Civil Code, these gifts are not gifts, but according to a broad definition, the things mentioned above can be considered gifts (Abdullah et al., 2023)

The limit on transfers/gifts to other parties who are not heirs is a maximum of 1/3 of the assets, in accordance with Islamic law. If there is no agreement from the heirs, then when the handover occurs, the heirs can sue that party (Suyitno, 2019)

Adoption or child adoption is a legal institution that can move a person into another (new) family relationship in such a way as to create all or part of the same legal relationship between a legally born child and his parents. There are two types of adopted children, namely those who take care of other people who are less able to receive an education and those who are sent to formal education. This kind of treatment is just ordinary help and is highly recommended in the Islamic religion. There is no inheritance relationship between the two. And adoption is called tabanni in Islam or in positive law it is called adoption. The parents who adopted this child considered him family in every way. (Andrizal & Daeng, 2023)

Notaries as representatives of the community in carrying out their functions must be accountable for their actions to satisfy the wishes of the parties in the form of an authentic deed. Notary responsibilities relate to duties, authority and ethics, both as individuals and as civil servants. Notaries may make mistakes or mistakes when making a deed. If proven, the deed will lose its authenticity and become invalid or can be cancelled (Fitra Deni, 2023)

An act is said to be authentic if it contains rights and obligations at the time of its implementation, thus providing legal certainty, and the act carried out has the power of proof if it later becomes

invalid. If disputes arise that cannot be avoided through authentically implemented tools, the resolution process will be easy because the authenticator can be considered the strongest proof of reliability. really into problem solving (Adriansa et al., 2022)

For those whose concession subject is land, based on the provisions of Article 1 Number 1 of Government Regulation Number 37 of 1998 which regulates the rights of the person responsible for signing a land deed, this document is issued by the person in charge. representative. person who makes a land deed (PPAT), namely a person who is authorized to sign a deed of authenticity in connection with legal acts relating to land rights. or ownership of an apartment. The concession deed issued by PPAT contains an agreement guided by Article 1320 of the Civil Code. If the conditions of paragraphs 1 and 2 are not fulfilled, then the agreement is void. Likewise, if conditions 3 and 4 are not met, the contract can be terminated (Perdana Putra et al., 2022)

Regarding land as an object of gift, it must be certain that it comes from assets obtained during the marriage without a marriage agreement between the spouses or inherited assets acquired before the marriage. Moreover, if the marriage does not have children. Then the conditions for the validity of the agreement as in article 1320 of the Civil Code are that there is an agreement in this case between the grantor and the grantee, where the grantor truly intends to give assets to the grantee without any coercion from any party and the element of skill to make a an agreement where the grantor is in good health, not old and capable of carrying out legal actions

Agreements have the same legal force as statutory regulations, meaning that agreements made by certain parties can be used as a legal basis for those who make them. In essence, an agreement is needed to guarantee that the parties in carrying out their business activities can be maintained or have legal certainty. (Yustiana, 2020)

If the conditions have been fulfilled in accordance with the validity of an agreement then it cannot be a reason to cancel the agreement

#### IV. CONCLUSION

Donation is the free will of the property owner to give it to whoever he wants, but freedom is always limited by the rights of other people. In the settler's inheritance there is an absolute right to share (legitieme portie) the children as heirs and this right is protected by law. In Islamic inheritance law, gifts to other people are also limited to a maximum of 1/3 of the inherited assets.

To prevent a recurrence of complaints in the future, in practice a letter of approval from the licensor's biological children is always required. Therefore, giving gifts must be with the consent of the heirs and must not violate their absolute rights. Adopted children do not have the right to inherit from their adoptive parents. Because in principle inheritance rights arise from blood or marriage relations with the heir as stated in article 832 of the Civil Code and article 174 paragraph [1] Summary of Islamic Law or KHI).

However, adopted children can receive gifts from their adoptive parents. If the adopted child does not receive a gift, then the person concerned receives a mandatory bequest of up to 1/3 of the inheritance of his adoptive parents as stated in Article 209 paragraph [2] Collection of Islamic Law. Furthermore, Article 1676 of the Civil Code also regulates that everyone is allowed to give or receive something, except for those who are declared legally incompetent. In short, if it can be proven that the gift does not exceed 1/3 of the testator's inheritance (according to the Islamic inheritance system), then the gift to the adopted child will still be made.

It is recommend that courts and religious bodies should raise awareness to disseminate the Compendium of Islamic Law to raise public awareness of the law and that when making decisions,

judges must be able to the ability to discover the values that exist in society so that they are not violated. too fixated on standard rules so that decisions are made wiser and more fairly

## Reference

- Abdullah, M., AltinG, H., Anshar, & Alauddin, R. (2023). Aspek Hukum Pembatalan Hibah Tanah oleh Pengadilan Agama. *Amanna Gappa*, 31(1), 2549–9785.
- Ade Ariyani B. Rayu, Farida Patittingi, S. S. N. (2020). *Perlindungan Hukum Ahli Waris Lainnya Dalam Pembuatan Jual Beli Antara Orang Tua Dan Anak*. 28(2), 64–76.
- Adriansa, M. Z., Dewi, I. G. S., & Priyono, E. A. A. (2022). Kekuatan Hukum Perjanjian Pengikatan Jual Beli Tanah Dibuat Dibawah Tangan. *PROGRESIF: Jurnal Hukum*, 16(2), 130–148.
- Aisyah, N. A. (2022). *Keberadaan Hukum Adat Dalam Pembagian Warisan Pada Masyarakat Adat Batak Toba Sumatera Utara*. 11(2022), 1–23.
- Aliyatin Dwi, I. (2019). Kajian Yuridis Akibat Hukum Perjanjian Hibah Wasiat Yang Melebihi Legitiem Portie. *Jurnal Kajian Pendidikan Ekonomi Dan Ilmu Ekonomi*, 2(1), 1–19. [http://www.scopus.com/inward/record.url?eid=2-s2.0-84865607390&partnerID=tZOtx3y1%0Ahttp://books.google.com/books?hl=en&lr=&id=2LIMMD9FVXkC&oi=fnd&pg=PR5&dq=Principles+of+Digital+Image+Processing+fundamental+techniques&ots=HjrHeuS\\_](http://www.scopus.com/inward/record.url?eid=2-s2.0-84865607390&partnerID=tZOtx3y1%0Ahttp://books.google.com/books?hl=en&lr=&id=2LIMMD9FVXkC&oi=fnd&pg=PR5&dq=Principles+of+Digital+Image+Processing+fundamental+techniques&ots=HjrHeuS_)
- Amirullah, Lomba Sultan, S. (2019). *Eksistensi Hibah diperhitungkan Sebagai Warisan Telaah Pasal 211 Kompilasi Hukum Islam*. 44(12), 2–8.
- Andrizal, A., & Daeng, M. Y. (2023). Penyelesaian Sengketa Kewarisan Anak Angkat Yang Memiliki Keterangan Indentitas Sebagai Anak Kandung. *Jurnal Ilmu Hukum*, 12(1), 63. <https://doi.org/10.30652/jih.v12i1.8541>
- Ayudiatri, S., & Cahyono, A. B. (2022). Legalitas Hibah Oleh Warga Asing Atas Objek Tanah Di Indonesia : Studi Kasus Putusan Pengadilan. *SiGn Jurnal Hukum*, 4(1), 31.
- Edwin Marganda Tua Siahaan, A. P. N. (2022). *Pembagian Harta Warisan Untuk Anak Perempuan Tunggal Dalam Adat Batak Toba*. 11, 43–51.
- Fitra Deni, D. F. (2023). Tanggung Jawab Notaris Terhadap Tindak Pidana. *Jurnal Hukum Kenotariatan*, 5(1), 39–60.
- Harahap, A. S., & Arafa, F. A. (2022). *Korupsi , Hibah Dan Hadiah Dalam Perspektif Hukum Islam ( Studi Analisis Majelis Ulama Indonesia Medan )*. 9(2), 1–13.
- Hartono, W. (2022). Kepastian Hukum Jual Beli Tanah dengan Kepemilikan Berdasarkan Perjanjian Nominee. *Jurnal Ilmu Hukum AMANNA GAPPA*, 21(1), 74–83.
- Jannah, A. R., Abdullah, Z., & Anggraeni, R. (2019). Pandangan Hukum Islam Tentang Hibah, Wasiat dan Hibah Wasiat Kajian Putusan Nomor 0214/PDT.G/2017/PA.PBR. *Jurnal Legal Reasoning*, 1(2), 81–105. <https://journal.uinsgd.ac.id/index.php/asy-syariah/article/view/12755>
- Mustamam, M. (2020). Analisis Yuridis Tentang Pencabutan Hibah Orang Tua Kepada Anak kandungnya Dalam Perspektif Kompilasi Hukum Islam (Studi Putusan Nomor 1934/Pdt.G/2013/ PA.Mdn). *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 20(1), 36–44. <https://doi.org/10.30743/jhk.v20i1.3258>
- Perdana Putra, H., Ochtorina Susanti, D., & Indra Tektona, R. (2022). Keabsahan Akta Hibah yang Dibuak oleh Ppat Bagi Anak Angkat Tanpa Persetujuan Salah Satu Ahli Waris. *Jurnal Rechtsens*, 11(1), 35–52. <https://doi.org/10.56013/rechtsens.v11i1.1177>
- Putri, R. S., & Ruslie, A. S. (2023). Penarikan Kembali Harta Hibah sebagai Harta Waris Menurut KHI dan KUH Perdata. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(2), 1394–1406.
- Rusydi, I. (2017). Hibah Dan Hubungannya Dengan Kewarisan Menurut Kompilasi Hukum Islam Dan Hukum Perdata. *Jurnal Ilmiah Galuh Justisi*, 4(2), 212. <https://doi.org/10.25157/jigj.v4i2.324>
- Sabir, M., & Mutmainnah, I. (2020). Korupsi, Hibah dan Hadiah dalam Perspektif Hukum Islam (Klarifikasi dan Pencegahan Korupsi). *Al Hurriyah : Jurnal Hukum Islam*, 5(2), 114. <https://doi.org/10.30983/alhurriyah.v5i2.2690>
- Sri Murbowati. (2023). Penyelesaian Sengketa Waris Akibat Kelalaian Penerima Hibah (Studi Kasus Putusan Mahkamah Agung Ri Nomor: 240 K/Ag/2020). *Jurnal Akta Notaris*, 1(2), 58–70. <https://doi.org/10.56444/aktanotaris.v1i2.397>
- Sukiati, S. (2018). the Practice of Hibah As a Substitute Heir Among the Javanese Family. *MIQOT: Jurnal Ilmu-Ilmu*

*Keislaman*, 42(1), 59. <https://doi.org/10.30821/miqot.v42i1.552>

Suyitno, et al. (2019). Kajian yuridis hibah hak atas tanah. *Jurnal Reformasi Hukum : Cogito Ergo Sum*, 2, 48-51.

Yustiana, Y. (2020). Eksekusi Hak Tanggungan terhadap Kredit Macet Bank. *Al-Ishlah: Jurnal Ilmiah Hukum*, 23(1), 77-97. <https://doi.org/10.56087/aijih.v23i1.38>