

# **Parental Grants to Children and Their Relation to Inheritance in the Perspective of Positive and Customary Laws of Indonesia**

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## **Abstract:**

The understanding of the correlation between parental grants (hibah) to children and inheritance can lead to disputes and conflicts among heirs within families in Indonesia. This article aims to elucidate the correlation between gifts and inheritance, particularly parental gifts to children, from the perspective of positive law and customary law in Indonesia. To achieve this, the author conducted a literature review to examine and analyze various relevant sources on gifts and their correlation with inheritance. This study yielded the following conclusions: Firstly, according to the Civil Code (KUHPerdata), Compilation of Islamic Law (KHI), and customary law, gifts given by parents to children can be counted as part of the inheritance. Secondly, the status of a child who is a recipient of parental gifts, according to the Civil Code, KHI, and customary law, does not hinder them from receiving their rightful inheritance.

Pemahaman masyarakat terkait dengan korelasi hibah orang tua kepada anak dengan kewarisan, dapat mendorong perselisihan dan sengketa yang

terjadi antara ahli waris dalam keluarga di Indonesia. Tulisan ini mencoba untuk menguraikan korelasi hibah dengan kewarisan, utamanya hibah orang tua terhadap anak ditinjau dari perspektif hukum positif-adat di Indonesia. Untuk itu, penulis melakukan kajian pustaka untuk meneliti dan mengkaji berbagai literatur yang berhubungan dengan hibah dan korelasinya terhadap kewarisan. Penelitian ini menghasilkan kesimpulan: pertama Kitab Undang-Undang Hukum Perdata (KUHPerdata), Kompilasi Hukum Islam (KHI) dan hukum adat, bahwa hibah yang diberikan orang tua kepada anak dapat hitung sebagai warisan. Kedua, kedudukan seorang anak penerima hibah dari orang tua menurut hukum KHUPerdata, KHI dan hukum adat tidak menjadikannya terhalang untuk menerima warisan.

**Key words:** *Grant, Inheritance, Indonesian Law.*

## Introduction

Every individual's life will inevitably go through several phases.<sup>1</sup> Throughout this process, humans are given rights and responsibilities that form a chain between themselves, their families, and the surrounding community. However, even after a person's death, they still have legal influence and consequences on their family and the surrounding community.<sup>2</sup>

The urgency of law is highly important as a balance in fulfilling the needs of humans to go through every phase of life, without disregarding the well-being of individuals in both the worldly and the hereafter.<sup>3</sup> Hasbi Ash Shiddieqy categorizes law into two parts: First, the law related to obligatory religious practices that cannot be substituted by others in their implementation. Second, the law connected to customs or transactions among humans, involving human rights and often

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<sup>1</sup> The phase in question refers to the process of human creation in the world until death. The phases include: first, the phase of a person being in the realm of the uterus or fetus. It is in this realm of the womb that the formation of human remains goes through several stages: nutfah, 'alaqah, mudghah, izam and lahm, nasy'ah and nafkhurruh. Al-Mu'minin (23): 14. Second, the phase of a person being transformed into the realm of the world and burdened with the responsibility of being a leader upfront of the earth. Third, the phase when a person has left life in the world and is affixed to the realm of barzakh. Badan Litbang dan Diklat Kementrian Agama RI, *Penciptan Manusia Dalam Perspektif al-Qur'an dan Sains* (Jakarta: Lajnah Pentashihan Mushaf al-Qur'an, 2016), p. 86-133.

<sup>2</sup> The legal influence and consequences for the deceased who leaves behind a family include debts, wills, and inheritance. Meanwhile, the legal consequences left for the community involve the care of the deceased.

<sup>3</sup> Because in principle, the purpose of law making in Islam must boil down to the benefit of human life both in the world and in the world with a barometer of peace, happiness and prosperity. Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Jakarta: Raja Grafindo Persada, 1996), p. 61. Hamim Ilyas, *Fikih Akbar: Prinsip-Prinsip Teologis Islam Rahmatan Lil 'Alamin* (Jakarta: PT Pustaka Alvabet, 2018), p. 7.

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associated with contracts and property. One of these matters is the issue of grants and inheritance.<sup>4</sup>

Grants is a contract that is not intended for seeking profit, but rather given to someone else without any expectation of reciprocation. It is voluntary in nature and is done during the lifetime of the give grants.<sup>5</sup> On the other hand, inheritance is the transfer or transition of a person's assets to the rightful recipient according to the designated shares, and it is implemented upon the death of the deceased.<sup>6</sup>

One of the muamalah issues that often leads to conflicts or disputes, is considered sensitive, and can cause family division in society is the matter of inheritance.<sup>7</sup> Because during the pre-Islamic period, there were no specific rules addressing inheritance.<sup>8</sup> Only customary or tribal rules existed. This can be proven by the direct commandment of inheritance division from Allah SWT through the text of the Qur'an.

Islamic inheritance laws were revealed as a correction to the rules of pre-Islamic inheritance. The verses regarding inheritance are most commonly found in Surah An-Nisa'. Among them are verse 7, verses 11-14, and verse 176. Each verse explains matters related to inheritance. However, the verses that specifically explain the exact share of each heir are verses 11 and 12. Other verses serve as supporting evidence that the inheritance law must be enforced.<sup>9</sup> Interestingly, the issues of grants and inheritance in society often still become a cause of disputes, especially grants given by parents to their heirs. This indicates a lack of understanding of grants and their correlation with inheritance as a whole. Sometimes, the problems of grants and inheritance are not considered as significant within the realm of knowledge, as these issues are seen as common occurrences in daily life within

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<sup>4</sup> Hasbi Ash-Shiddieqy, *Pengantar Hukum Islam* (Semarang: Pustaka Rizki Putra, 1997), p. 547.

<sup>5</sup> The scholars of the four schools defined grants with different redactions: first, the Hambali school defined grants as grants for the granting of ownership of a property, known or unknown to others while still alive, with customary pronouncement. Second, the Hanafi school defines grants as the giving of an object without promising an instant reward. Third, the Maliki school, a grant is to give possession of a substance, without expecting a reward to the person given, and it can also be called a gift. Fourth, the Shafi'i school defines grants with the understanding of giving something of one's own consciously and given while alive. Abdurrahman al-Jaziri, *al-Fiqh 'ala al-Madzaahib al-'Arba'ah*, Juz ke-III, (Kairo: Muassasah al-Mukhtar, 2000), p. 209-210.

<sup>6</sup> Muhammad Ajib, *Fiqh Hibah dan Waris* (Jakarta: Rumah Fiqih Publishing, 2019), p. 31.

<sup>7</sup> Georg Fertig, "The Invisible Chain : Niche Inheritance and Unequal Social Reproduction in Preindustrial Continental Europe.", *Pergoman: History of the Family*, Vol. 8 (2003), p. 13.

<sup>8</sup> Defined by Rifa'i Arief as the rules and points that discuss the heirs, the parts that have been determined for them, and how to distribute the relics to the heirs who are entitled to receive them. See Suparman Usman dan Yusuf Somawinata, *Fiqh Mawaris: Hukum Kewarisan Islam* (Jakarta: Gaya Media Pratama, 1997), p. 15.

<sup>9</sup> Muhammad Thaha Abul Ela Khalifah, *Hukum Waris: Pembaian Warisan berdasarkan Syari'at Islam* (Solo: Tiga Serangkai, 2007), p. 22.

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society. When issues of grants and inheritance arise in society, people often do not know how to resolve them peacefully,<sup>10</sup> leading to disputes that are taken to the legal realm in court.<sup>11</sup>

Considering the aforementioned issues, the author aims to delve deeper into the study of grants and their relationship with inheritance from the perspective of Indonesian law, in order to prevent envy and disputes among families in society. The research problem formulation in this study is as follows: What is the correlation between parental grants to children and inheritance from the perspective of Indonesian regulations? What is the position of the recipient of the grant in inheritance according to Indonesian regulations?

### Method

This type of research when examined from its focus of study, falls under normative-legal research. Normative-legal research is a type of research that is based on its main materials, which discuss doctrines or principles in the field of law.<sup>12</sup> The regulations discussed in this research are related to the relationship between grants and inheritance according to Indonesian legislation. As for the methodology and data collection, this type of research belongs to literature study.<sup>13</sup>

This research approach belongs to the legislative approach. The legislative approach involves using regulations and legislation,<sup>14</sup> meaning that research in the field of legal dogmatics cannot be separated from legislation.<sup>15</sup> In this approach,

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<sup>10</sup> Peaceful settlement is defined as maintaining friendship (kinship), because the best way to resolve disputes in inheritance is to be done by means of peace. An-Nisā' (4):1.

<sup>11</sup> Zainuddin Ali, *Pelaksanaan Hukum Waris di Indonesia* (Jakarta: Sinar Grafika, 2010), p.15.

<sup>12</sup> The principles referred to here are based on the understanding of Law No. 10 of 2014, Articles 5 and 6, regarding the formation of laws. According to these articles, the formation of laws must be based on the principles of protection, humanity, nationalism, familial ties, justice, equal legal and governmental status, and legal certainty. Meanwhile, Bambang Sunggono provides two definitions of principles: first, principles are in the form of high legal norms that are binding in many aspects. Second, principles can be in the form of norms alone. Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2003), p. 90.

<sup>13</sup> Literature studies are research with the main material of the library as a research process. Andi Prastowo, *Memahami Metode Penelitian: suatu Tinjauan Teoritis dan Praksis* (Yogyakarta: Ar-Ruz Media, 2016), p. 34.

<sup>14</sup> A decision made by a government administrative official that is specific and concrete, such as a presidential decision, ministerial decision, or regent's decision, cannot utilize the legislative approach. Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010), p. 96-97.

<sup>15</sup> In general, the approach in normative law consists of: first, a statute approach is used to discuss norm issues. Second, the conceptual approach. This approach is usually used to analyze and decipher the void of norms. Third, the historical approach. This approach is used to trace past-made rules of law, both written and unwritten. Fourth, a comparative approach. This approach is used to analyze the law by using a comparison of laws. I Made Pasek Diantha, *Metodologi Penelitian Hukum*

researchers search for legislative rules related to the issue under investigation,<sup>16</sup> namely grants in the Indonesian Civil Code, the Indonesian Civil Procedure Code, and customary law.

The data sources used in this research include primary data sources and secondary data sources. Primary data sources refer to authoritative materials related to the research theme.<sup>17</sup> They include the Indonesian Civil Code, the Compilation of Islamic Law, and customary law. On the other hand, secondary data sources are supporting materials related to the research theme,<sup>18</sup> such as books, law journals, and relevant legal dictionaries. In this case, they are relevant to the research theme, which is the correlation between grant recipients and inheritance.

The data collection technique in this research involves the author searching for theories related to the research theme. These theories are obtained from literature sources and are examined and reviewed to become important data for this research. To analyze the collected data and ensure that the results are able to address the research problem formulated by the author at the beginning, the author uses the descriptive analysis method.

## Discussion

### Overview of Grants and Inheritance

As we know, Islam provides various meanings that can be found regarding grants and inheritance. The word "grants" in language is interpreted as giving and providing.<sup>19</sup> In terms of terminology, "grants" is defined as a contract involving the transfer of ownership of property from one person to another while the grantor is still alive without any specific intention.<sup>20</sup> Therefore, "hibah" can be defined as a contract of giving someone else's property to another person while still alive, without expecting any reward or compensation.<sup>21</sup> The grants are found in the Qur'an and al-Hadith as follows:

وَأَنْفِقُوا مِنْ مَّا رَزَقْنَاكُمْ مِّن قَبْلِ أَنْ يَأْتِيَّ أَحَدَكُمُ الْمَوْتُ فَيَقُولَ رَبِّ لَوْلَا أَخَّرْتَنِي إِلَىٰ أَجَلٍ قَرِيبٍ  
فَأَصَّدَّقَ وَأَكُن مِّنَ الصَّالِحِينَ

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*Normatif dalam Justifikasi Teori Hukum* (Jakarta: Kencana, 2017), p. 56-62. Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2010), p. 46-47.

<sup>16</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2019), p. 14.

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2010), p. 142.

<sup>18</sup> Burhan Ashshof, *Metode Penelitian Hukum* (Jakarta: PT Rineka Cipta, 1996), p. 66.

<sup>19</sup> Mardani, *Hukum Kewarisan Islam Indonesia* (Jakarta: Raja Grafindo, 2014), p.125. Lihat juga Ahmad Rofiq, *Hukum Perdata Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 2013), p. 375. Khairuman Pasaribudan Suhardi K Lubis, *Hukum Perjanjian Dalam Islam* (Jakarta: Sinar Grafika, 2001), p. 133.

<sup>20</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 1998), p. 467.

<sup>21</sup> Sayyid Sabiq, *Fiqh Sunnah*, Jilid III (Beirût: Dâr al-Fath, 1995), p. 317.

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And spend [in the way of Allah] from what we have provided you before death approaches one of you and he says: o my God, why did you not delay me for a brief term so I could have given charity and been among the righteous.<sup>22</sup>

هُنَالِكَ دَعَا زَكَرِيَّا رَبَّهُ قَالَ رَبِّ هَبْ لِي مِنْ لَدُنْكَ ذُرِّيَّةً طَيِّبَةً إِنَّكَ سَمِيعُ الدُّعَاءِ

That is where Zakariya prayed to his Lord and said: o my God grant me from yourself a good offspring. Indeed You are the Hearer of supplication.<sup>23</sup>

وَأَتَى الْمَالَ عَلَىٰ حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ أُولَئِكَ الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ الْمُتَّقُونَ

And [they are] those who give what they love to charity, to their relatives, to orphans, to the needy, to the traveler, and those who ask [for help], and [for freeing] slaves, and establish prayer and give zakah. And [they are] those who fulfill their promise when they promise, and [they are] those who are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous.<sup>24</sup>

عن ابي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم قال تهادوا تحابوا

From Abu Hurairah r.a of the prophet Muhammad SAW said: reward each other, undoubtedly you all love each other<sup>25</sup>

عن ابن عباس رضي الله عنهما قال قال النبي صلى الله عليه وسلم العائد في هبته

كالكلب يقى ثم يعود في قيئه

From Ibn Abbas r. a he said: Rosulullah SAW said: those who withdraw their grants are like vomiting dogs and then the dog licks their own vomit.<sup>26</sup>

In implementing a grant, there are certain pillars (requirements) to ensure that the grant given is considered valid and legally binding. The pillars of a grant are as follows:<sup>27</sup> (a) grantor (*al-wāhib*), is the person who gives the grant, (b) grantee (*al-mauhublah*), is the person who receives the grant, (c) property being granted (*al-mauhub*), is the property being transferred as a grant, (d) *Sighat* is anything that implies and leads to delivery and acceptance.

<sup>22</sup> Al-Munāfiqūn (63): 10.

<sup>23</sup> Al-Imrān (3): 36.

<sup>24</sup> Al-Baqarah (2): 177.

<sup>25</sup> Muhammad bin Ibrahim al-Bukhari, *Shāhih Bukhari* (Beirut: Dar al-Fikr, 1995) jilid IV, p. 193.

<sup>26</sup> Ibnu Hajar al-Asqalani, *Bulūghul al-Marām min Adilatul al-Ahkām* (Beirut: Dār al-Islāmiyah, 1999), p. 193.

<sup>27</sup> Wahbah Az-Zuhailī, *Fiqh Islām wa Adilatuhu*, Jilid ke-V (Damaskus: Dār al-Fikr, 1885), p. 145.

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While inheritance is linguistically defined as a transfer or transition. In terminology, inheritance refers to the rules governing the transfer of property given to heirs upon the death of the deceased. In another term, inheritance is also known as "faraid".<sup>28</sup> Many experts in faraid provide different definitions regarding faraid, but at the substantive level, they agree that the knowledge of faraid is the study of the detailed provisions regarding the share of each heir as stated in the Qur'an, about the heirs and their respective shares, and how to calculate them.

In inheritance, there are pillars and conditions that must be present to ensure its legal validity and compliance with applicable regulations. The following are the pillars and conditions that must be present in inheritance: (a) tirkah, is the estate of the mayit after all the costs of the care of the corpse, the repayment of the debt and the execution of the will, (b) the heir, is the person who dies and leaves the estate or relics, (c) the heir, is the person who is entitled to receive the estate of the estate carried out by the marriage bond, the descendants and the person who has a relationship of guardianship rights with the heir. The basis for inheritance in Islam is the Qur'an as follows:

لِرِّجَالٍ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

For men there is a right of part of the estate of the father's mother and her relatives, and for women there is a right of part (also) of the estate of the father's mother and her relatives, either a little or a lot according to the established section.<sup>29</sup>

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ زَيْنٍ ءَابَاؤُكُمْ وَأَبْنَاؤُكُمْ لَاتتَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

God (Allah) has ordained for you regarding (the division of inheritance for) your children. It is as follows: the share of a male child is equal to the share of two female children. And if they are all females, more than two, then they shall receive two-thirds of the wealth left behind. If there is only one female child, then she shall receive half of the inheritance. And for the two parents, each of them shall receive one-sixth of the wealth left behind, if the deceased had children. If the deceased had no children and is inherited by the parents alone, then the mother shall receive one-third. If the deceased had siblings, then the mother shall receive one-sixth. These divisions mentioned above shall be implemented after the fulfillment of any will made by the deceased or the repayment of their debts. Regarding

<sup>28</sup> Faraid has six different meanings, namely: al-qat'u (decree or certainty), al-taqdir (provision), al-inzal (lowering), al-tibyan (explanatory), al-'atha' (giving), al-ihlal (halalization). Muhammad Lutfi Hakim, *Fiqh Mawaris I* (Kalimantan: IAIN Pontianak Press, 2020), p. 1.

<sup>29</sup> An-Nisā' (4): 7.

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your parents and children, you do not know which of them is closer (in benefiting) to you. This is a decree from Allah. Indeed, Allah is All-Knowing, Most Wise.<sup>30</sup>

Although there are differences in the implementation of grants and inheritance, they are closely related, especially when the grant is given by parents to their heirs. This is because it will determine the position and share of the inheritance received by the heirs who are recipients of the grant. Further explanation will be provided by the author in the sub-topic of discussion.

### The Correlation Grants with Inheritance Perspective of Positive Law and Customary Law in Indonesia

The civil code (KUHPerdata), defines "grant" as an agreement whereby the grantor, during their lifetime, voluntarily and irrevocably transfers an object for the benefit of the recipient of the gift. The law does not recognize any other form of gift apart from those granted between living individuals.<sup>31</sup> The message implied in this article, that a grant is an agreement made while the beneficiary is still alive and that it is carried out on a voluntary basis at the time of the grant/surrender to the grantee. It is said to be voluntary, because if the grant is made on the basis of coercion/threat then it is void before the law.<sup>32</sup> Because, basically the grantor has the right to manage and give his wealth to anyone.<sup>33</sup>

Grants (*hibah*) has a correlation with inheritance. This is because the act of gifting is considered as providing an input (*inbreng*) to the recipient of the gift.<sup>34</sup> This is in line with the civil code (KUHPerdata), which states that such input should be taken into account by the rightful heirs (children, grandchildren, and so forth) of the deceased individual who left behind the inherited property, unless explicitly exempted from calculation.<sup>35</sup> Therefore, according to the civil code, parents who give gifts to their children can be considered as providing an input. The implication is that the child who receives such a gift has been taken into account as part of the inheritance or is considered to have received an inheritance.<sup>36</sup>

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<sup>30</sup> An-Nisā' (4): 11.

<sup>31</sup> Pasal 1666 Kitab Undang-Undang Hukum Perdata (KUHPerdata) about grants.

<sup>32</sup> A parent's grant to a child may be withdrawn by the grantor if: first, the conditions under which the grant has been made are not met. Second, If the grantee has been guilty of committing or assisting in a crime aimed at taking the soul of the beneficiary or some other crime against the beneficiary. Third, the grantee mocks of providing a living allowance to the beneficiary, after this person has fallen into poverty. Pasal 377 Kitab Undang-Undang Hukum Perdata.

<sup>33</sup> Abdul Manan, *Pokok-Pokok Hukum Perdata* (Jakarta: Raja Grafindo, 2004), p. 188.

<sup>34</sup> Abdul Manan, *Pokok-Pokok Hukum Perdata...* h. 188.

<sup>35</sup> Pasal 1086-1099 Kitab Undang-Undang Hukum Perdata (KUHPerdata).

<sup>36</sup> The point is that if the grantor is related by blood, later if the grantor dies, he will automatically become the heir, while the grantee will become the heir. Look Muhammad Idris Ramulyo, *Hukum Perdata Indonesia* (Jakarta: Raja Grafindo, 2011), p. 60.

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This perspective refers to the intestate inheritance system where there is a direct line of descent between the deceased and the heirs, allowing the calculation of gifts as part of the inheritance to facilitate the distribution of the inherited property. In other words, gifts that have been previously given can be seen as an advance payment towards the inheritance share when the deceased passes away. This is because the process of giving gifts by parents to their children can be considered as an inheritance for the future, either in full or with certain conditions. The grant given, must be through an authentic deed, meaning that the granting process must be proved by a notarial deed, otherwise the consequence is that the grant is null and void.<sup>37</sup> Given that a grant is a unilateral grant related to the heirs of the grantor, it is necessary to have an authentic deed so that unwanted problems do not occur.

Meanwhile, the Compilation of Islamic Law (KHI) confirms that grants given by parents to children can be counted as inheritance.<sup>38</sup> That is, the gifts of parents to their children can be counted as inheritance. Such a rule is ideal, but in reality it encounters obstacles related to when grants/ grants can be counted as inheritance and when grants / grants are not counted as inheritance. Therefore, this provision of al-ammah needs to be followed by provisions that are at-tafsil in nature so that there is no dispute.<sup>39</sup>

The goal is not to cause ambiguous attitudes of parents to overestimate their favorite children with other biological children, so as to avoid an attitude of envy for other children and the creation of a justice that the property is their common right.<sup>40</sup> This is in line with a hadith of the history of imam Muslims. If, the parent's grant to his children should be in the same amount:

حَدَّثَنَا أَحْمَدُ ابْنُ عَثْمَانَ النَّوْفَالِيُّ حَدَّثَنَا أَزْهَارُ حَدَّثَنَا ابْنُ عَوْنٍ عَنِ الشَّعْبِيِّ عَنِ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ  
 نَحَلَنِي أَبِي نُحْلًا ثُمَّ أَتَى بِي إِلَى رَسُولِ اللَّهِ ص. م. لِي شَهِدَهُ فَقَالَ أَكُلَّ وَلَدِكَ أَعْطَيْتَهُ، ذَا قَالَ لَا قَالَ  
 أَلَيْسَ تُرِيدُ مِنْهُمْ الْبِرَّ مِثْلَ مَا تُرِيدُ مِنْ ذَا قَالَ بَلَى قَالَ فَإِنِّي لَا أَشْهَدُ قَالَ ابْنُ عَوْنٍ فَحَدَّثْتُ بِهِ مُحَمَّدًا  
 فَقَالَ إِنَّمَا نَحَدَّثْنَا أَنَّهُ قَالَ قَارِبُوا بَيْنَ أَوْلَادِكُمْ

Ahmad bin Utsman An Naufali narrated to us, Azhar narrated to us, Ibn 'Aun narrated to us from Asy Sya'bi from An-Nu'man bin Basyir, he said: "My father once gave me a gift, then he brought me to meet the Messenger of Allah (peace be upon him) so that he could be a witness. Then he (the Prophet) said: 'Do you give each of your children the same as you gave him?' My father replied: 'No.' He (the Prophet) said: 'Do you not desire that they

<sup>37</sup> Subekti. R, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 2011), p. 440. *Kumpulan Kitab Undang-Undang Hukum* (Jakarta: Wacana Intelektual, 2016), p. 378.

<sup>38</sup> Pasal 211, Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI). Muhammad Saifullah, *Hukum Islam Solusi Permasalahan Keluarga* (Yogyakarta: UII Press, 2005), p. 227.

<sup>39</sup> Muhammad shalih al-Utsaimin, *Panduan wakaf, Hibah dan Wasiat* (Jakarta: Pustaka Imam Syafi'i, 2008), p. 120.

<sup>40</sup> Sukris Sarmadi, *Hukum Waris Islam di Indonesia* (Yogyakarta: Aswaja Pressindo, 2013), p. 140.

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show the same obedience to you as you desire from him?' My father replied: 'Certainly.' He (the Prophet) said: 'Therefore, I will not be a witness to this.' Ibn 'Aun said, 'Then I narrated this to Muhammad, and he said, 'The only thing we have narrated is that he (the Prophet) said: 'Make the distribution equal among your children.'<sup>41</sup>

Islamic civil law in Indonesia (KHI), responds to this by taking the middle ground that grants should be counted as inheritance. That is, that the parent may give property to his child by taking into account the part of the inheritance which later if the grantor dies, then for the child (who is given the grant) the amount of inheritance is deducted according to the amount of the grant he obtained when the grantor is still alive and vice versa.<sup>42</sup>

Some scholars argue that, the provision of parental grants to children should be equally balanced without discriminating based on gender or condition. However, the exaggeration of giving among children has justified reasons. Such as, the condition of one of the children is less qualified and physically disabled. So in this situation, the overestival of giving between children can be justified. Therefore, if a parent gives property in order to provide a help to his less qualified child, it is a must and justified in Islam. For in the parents' property given to the child there is a child's right to the parents' property and is obliged to get help not only from the parents but also the help of the siblings.<sup>43</sup>

Referring to Article 171 letter (c) of the Compilation of Islamic Law (KHI), that the heir is a person who is related by blood or marriage to the heir and he is not hindered. This is emphasized in the Compilation of Islamic Law (KHI) in article 174 that the heirs are children, fathers, grandmothers, grandchildren and uncles.<sup>44</sup>

Teer Har defines that a grant is a gift given to his son while still living willingly without expecting a return. Meanwhile, the purpose of grants according to customary law is to prevent disputes and disputes due to the division of parental property later in the day.<sup>45</sup> Grants in customary law are usually made by giving to the child with the consideration that the child will be entitled to receive him in the future. In customary law there is a custom where the share of the firstborn is greater than that of other children or vice versa, the share of the youngest child is greater than other children because he has a large portion of responsibility in taking care of the parents.<sup>46</sup>

In addition to the above view, in customary law the grant given by the parents to their children is considered to have received an inheritance. This has become a habit in Indonesian society, although the gift is still limited to grants. Then after the grantor dies,

<sup>41</sup> Muslim Ibn Al-Hajjaj, *Sahih Muslim*, juz III (Beirut: Darul Fikr,1983), p. 213.

<sup>42</sup> Rachmad Budiono, *Pembaruan Hukum Waris Indonesia* (Malang: Citra Aditya Bakti, 2009), p.183. Faizah Bafadhal, "Analisis Tentang Hibah Dan Kaitanya Dengan Kewarisan Dan Pembatalan Hibah Menurut Peraturan Perundang-Undangan di Indonesia" *Jurnal Ilmu Hukum*, Dosen Hukum Keperdataan Fakultas Hukum Universitas Jambi. pp. 20-22.

<sup>43</sup> Muhammad Shalih al-Utsamin, *Op.Cit*, p. 25

<sup>44</sup> Instruksi Presiden Nomor 1 tahun 1991 tentang Kompilasi Hukum Islam (KHI).

<sup>45</sup> Teer Har, *Asas-Asas dan Susunan Hukum Adat* (Jakarta: Pradnya Paramita, 2010), p. 208.

<sup>46</sup> Nico Ngani, *Perkembangan Hukum Adat Indonesia* (Yogyakarta: Pustaka Yustisia, 2012), p. 48. Umar Haris, Muhammad Yusuf, "Kedudukan Ahli Waris Yang Penerima Hibah Orang Tua Terhadap Ahli Waris Lainnya Pada Proses Pembagian Waris" *Jurnal Yuridis*, Volume: 4:2 (Desember 2017). p. 224-226.

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the grant is taken into account with the share of the children concerned, if the child concerned has not received his share of rights on a grant basis. It is clearly apparent that this grant has a very close correlation with inheritance. In the principle of customary law, grants that have been granted can be withdrawn if the grants made are imposed on a condition or are not in accordance with existing provisions.<sup>47</sup>

### Position of the Heirs of Grant Recipients According to Positive Law and Customary Law in Indonesian.

In the Civil Code, grants given by parents to children/heirs, can be considered as a down payment in receiving an inheritance. That is, when the heir dies the property that the heir gives to the child / heir can be calculated as the beneficiary of the inheritance either in full or unconditionally.<sup>48</sup> Thus, the position of the child/heir who receives the grant property according to the Civil Code does not prevent him from receiving the inheritance in the future of the grantor's armpit.

Whereas in the Compilation of Islamic Law (KHI), the grants given cannot be from 1/3 of the inheritance. That is, that the grant may be granted by the parent/heir to the child/heir, but must not exceed 1/3 of the grantor's property.<sup>49</sup> The granting rules are intended to facilitate the calculation of the estate later when the heir dies. Thus, according to the author argues that the grant received by the child in the Compilation of Islamic Law (KHI) can still be heirs, but all the gifts received by the child/heir of the grantee are considered as inheritance which is then worthy of deliberation by other heirs in determining the future parts of the inheritance.<sup>50</sup>

In customary law, the grant that the parent gives to the child can also be taken into account as an inheritance. This is based on the provisions of applicable customary law. For example, a grantee's child is imposed a condition to take care of both his parents or siblings. However, in customary law the position of a grantee's child/heir to the grantee does not prevent him from receiving an inheritance.

## Conclusion

Based on the discussion above, the author concludes the correlation between gifts (hibah) and inheritance from the legal perspective in Indonesia as follows: Firstly, the status of a recipient of a gift is generally considered to have received an inheritance based on both legal provisions and societal customs in Indonesia. The Civil Code (KUHPerdta) considers that gifts have a close connection to inheritance, and therefore, they are taken into account as part of the estate. From the perspective of customary law, the recipient is considered to have received an inheritance, while in the Compilation of Islamic Law (KHI),

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<sup>47</sup> Azni, *Eksistensi Hibah dan Posibilitas Pembatalanya dalam Perspektif Hukum Islam Dan Hukum Positif di Indonesia* (Riau: Fakultas Dakwah dan Komunikasi UIN Sultan Syarif Kasim), p. 100

<sup>48</sup> Pasal 1086, Kitab Undang-Undang Hukum Perdata (KUHPerdta).

<sup>49</sup> Pasal 210 ayat (1), Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI)

<sup>50</sup> Pasal 211, Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam (KHI)

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the gift can be counted as part of the inheritance. Thus, based on these three legal sources, a recipient of a direct gift from their parents can be considered as a potential heir in the future. Secondly, the status of a recipient of a gift from parents does not hinder them from receiving an inheritance later on. However, the recipient of the gift is considered to have already received a share of the inheritance, either in full or in a different manner.

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