

RECONSTRUCTION OF GRANT PRACTICE IN INHERITANCE DISTRIBUTION: MIDDLE GROUND BETWEEN LAW AND FAMILY HARMONY

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Abstract

Grants are one of the legal instruments recognized in Indonesian positive law, Islamic law, and customary law, which has the potential to be an effective mechanism in preventing inheritance conflicts and maintaining family harmony. This research aims to reconstruct the concept and practice of grants in inheritance distribution by combining normative, sociological, and jurisprudential dimensions, in order to produce a model of substantive equitable distribution. With a normative juridical approach and socio-legal analysis, this study outlines the definitions of grants and inheritance, the legal foundations of grants, the debate between equal grants and grants according to inheritance provisions, as well as problems that arise at the practice and judicial levels. The results of the analysis show that grants have flexibility that inheritance does not have, especially because they are not limited in proportion and can be given entirely as long as they are carried out during life with the willingness of both parties. Differences of views on the form of grant justice can be harmonized through a substantive justice approach that considers legal aspects, social needs, and family values. This study recommends an integrated technical guideline that integrates grant provisions within the three legal frameworks, consistency of jurisprudence in religious courts, and increased public awareness to implement grants in a transparent and documented manner. These findings are expected to contribute to the development of family law in Indonesia, as well as a reference for inheritance dispute prevention policies based on local wisdom and the principles of justice.

Keywords: grants, inheritance, substantive justice, family law, inheritance conflict

INTRODUCTION

The division of inheritance in Indonesia's Muslim society is often a source of family tension, especially when classical fiqh principles that stipulate a double share of boys from girls meet the growing demands of justice in the modern social context.¹ The provision has its roots in QS. al-Nisā' [4]:11, which affirms that the male share is twice the female share, as explained by Sayyid Sabiq that this division is ta'abbudī and should not be changed, except in the context of a grant or will separate from the farā'id system itself.² However, in social practice, these provisions often cause a sense of injustice and internal conflicts in the family. Along with increasing awareness of the principles of gender equality and social justice values, many families are beginning to look for alternative inheritance distribution that remains in line with sharia, but is more oriented towards substantive justice and harmonious relationships between family members. One of the mechanisms that is

¹ Nurkholis Ulwi And Muhammad Harfin Zuhdi, "Inheritance Rights Of Children Born Out Of Wedlock: Analysis From The Perspective Of Shafi ' I School Of Jurisprudence And The Civil Law Code (Children Of Zina) With An Educational Approach" 9 (2024): 1263–69.

² Jamil Hakim et al., "Adopted Children in the Distribution of Inheritance According to Islamic Law in the Muna Tribe" 4, no. 2 (2024): 193–201.

widely practiced but has not been widely discussed academically is grants as a strategy to equalize the portion of inheritance.³

The use of grants in this context is certainly inseparable from legal and ethical debates. In principle, a grant is a *tabarru'* contract that is allowed and even recommended as long as it is done before death, and is done consciously without pressure or coercion. However, when grants are used as a tool to equalize inheritance, normative and social questions arise: is this the justified form of *hī*? Is this not contrary to the *rūḥ* of justice contained in Islamic law itself? On the other hand, this approach shows the flexibility of Islamic law to respond to social realities. This research departs from these questions with the aim of exploring how grants are interpreted and practiced by Muslim communities within the framework of fair and harmonious distribution of inheritance.⁴

This study aims to comprehensively analyze the practice of grants in the context of equitable distribution of inheritance, both from the perspective of Islamic law, local culture, and its social implications on family dynamics. Through a juridical-sociological qualitative approach and a literature study of classical and contemporary *fuqahā'* opinions, this study aims to map the motives, procedures, and legal and social impacts of grant strategies that aim to equalize the portion of inheritance. This research is not merely descriptive, but seeks to offer a contextual solution to the problem of inheritance in the modern Muslim family.⁵

Previous studies have positioned grants more as part of Islamic civil law, without using them as social instruments to form a more equitable distribution pattern. For example, Fitriani's research only discusses grants in a formal juridical context, while studies such as Hasbullah discuss public perceptions of grants but have not yet linked them systemically to family harmony. This gap shows that there is still a lack of studies that position grants as a distributive instrument that is able to bridge social norms and realities and this is where the contribution of this research lies.⁶

This research offers an integrative approach between normative law and social practice, by making grants not only a legal mechanism, but also an ethical strategy to realize substantive justice.⁷ The novelty of this research lies in the disclosure of the role of grants in maintaining social and emotional relationships between family members through the distribution of inheritances that are not only legal according to the law, but also felt fair by the parties. The justification for this research becomes even stronger in the context of Muslim societies that are

³ Suarto Lembong, Dhiauddin Tanjung, And Ramadhan Syahmedi Siregar, *"The Practice Of Using Inheritance Assets For Death Feast Expenses From The Perspective Of Islamic Law And The Aceh Customary Council (Majelis Adat Aceh)"* 6, no. 3 (2024): 547–54.

⁴ R M Imam Abdillah, Devika Rosa Guspita, And Eddi Rudiana Arief, *"The Complexity Of Inheritance : A Comparative Analysis Of The Distribution Of Inheritance In Islamic Sharia And The Civil Code"* 1, No. 1 (2024): 33–48.

⁵ A Tribute to the Great, Rahmawati, Rusdaya Basri, Rusdianto, *"Legitime Portie Arrangement for the Inheritance of Children Out of Wedlock According to the Civil Code and the Compilation of Islamic Law"* 6, no. 2 (2024): 214–29.

⁶ Lembong, Tanjung, And Siregar, *"The Practice Of Using Inheritance Assets For Death Feast Expenses From The Perspective Of Islamic Law And The Aceh Customary Council (Majelis Adat Aceh)."*

⁷ Disma Hariani Et Al., *"Women's Resistance To Polygamy Gender Studies On Social Dynamics And Islamic Law,"* Al Hairy: Islam Of Law 1, No. 1 (2025): 37–50.

undergoing socio-cultural transformation, where Islamic law is required to be more adaptive and oriented towards maqāṣid al-shari'ah.⁸

DISCUSSION

A. Definition of Hibah and Inheritance

A grant, in the perspective of positive Indonesian law, is defined as the gift of an object free of charge and irrevocable by the giver, which is made while the giver is still alive, as stipulated in Article 1666 of the Civil Code. This definition emphasizes the formal legal aspect of the grant as a legal act that is inter vivo, which is valid as long as the giver is still alive.⁹

In Islamic law, a grant is understood as a voluntary grant of property rights (tabarru') by a person to another party without compensation, which is done voluntarily and without coercion, based on a sincere intention to benefit the recipient.¹⁰ This understanding is rooted in the normative postulates of the Qur'an, including the words of Allah Ta'ala:

لَيْسَ الْبِرَّ أَنْ تُولُوا وَجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى وَالْيَتَامَى وَالْمَسْكِينِ 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

"It is not to turn your face towards the east and the west that is a virtue, but indeed it is to believe in Allah, the Last Day, the angels, the books, the prophets, and to give the wealth that he loves to relatives, orphans, the poor, the travelers, the beggars, and to set the righteous slave free" (QS. al-Baqarah [2]:177)

The hadith of the Prophet صلى الله عليه وسلم also emphasizes the priority of giving grants or gifts:

تَهَادُوا تَحَابُّوا

"Give each other gifts, you will surely love each other." (Narrated by al-Bukhārī in al-Adab al-Mufrad, no. 594)

Meanwhile, inheritance in positive law is regulated in Book II of the Civil Code for the general public, as well as in the Compilation of Islamic Law (KHI) for Muslims in Indonesia. Juridically, inheritance is the transfer of ownership rights over the inheritance's estate to the heirs after the heir dies, in accordance with the provisions

⁸ Abdillah, Guspita, And Arief, "The Complexity Of Inheritance : A Comparative Analysis Of The Distribution Of Inheritance In Islamic Sharia And The Civil Code."

⁹ Adeng Septi Irawan, "Initiating the Endowment Fund for Law and Justice: Efforts to Realize the Welfare and Dignity of Judges" 2, no. 3 (2024): 284–304.

¹⁰ Abdul Wahab Muhammad Vicki Azhari, "The Concept Of Property Ownership According To Abu Abra To Realize Economic Balance" 8, no. 1 (2024): 988–1000.

of applicable law.¹¹ In Islamic law, inheritance (al-mīrāt) refers to the transfer of property and rights of heirs to a lawful heir according to the Shari'a, based on the provisions of the Qur'an:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

"Allah has decreed for you about (the division of inheritance for) your children, that is, the share of a son is equal to the share of two daughters..." (QS. al-Nisā' [4]:11)

The main difference between a grant and an inheritance lies in the time of validity: a grant is made during life, whereas an inheritance occurs only after the heir dies. However, in social practice in Indonesia, this line is often blurred because grants are often used as a pre-inheritance mechanism to regulate the early distribution of wealth, both to avoid potential disputes and to maintain family harmony.¹²

Grants from a positive Indonesian legal perspective are legal acts that have final ownership consequences. Article 1666 of the Civil Code affirms a grant as the gift of an object free of charge and cannot be withdrawn, as long as it is done while the giver is still alive. This formulation emphasizes two main characteristics of hibah: first, hibah as an act of *inter vivos* law (effective while the giver is still alive), and second, hibah results in the transfer of full ownership to the recipient after the handover process is legally carried out. The irrevocable feature shows that civil law views grants not only as a moral act, but as a legal act that is binding and has the consequence of legal certainty. Therefore, the existence of a grant deed that is made officially, especially on land grants or immovable objects, is not just an administrative procedure, but an instrument of legal protection that guarantees that the grant will not be misused or disputed by other parties in the future.

In Islamic law, grants have much deeper normative roots than just legal transactions. Grants are conceived as acts of *tabarru'*, which are gifts based on voluntariness and sincerity, which elevate the spiritual value of the giver and provide real benefits to the recipient. Hibah is not just a transfer of property, but an expression of Islamic social ethics in strengthening kinship and humanitarian relations. This is reflected in the words of Allah Ta'ala in QS. al-Baqarah (2):177, which includes the giving of property to relatives, orphans, and needy groups as part of *al-birr* (true virtue), not just an ordinary philanthropic act. Thus, the grant is placed on the foundation of the values of faith, social ethics, and moral responsibility, so that its application cannot be separated from the dimensions of intention (*al-niyyah*), willingness (*al-ridhā*), and does not cause injustice or inequality in the family. The hadith of the Prophet صلى الله عليه وسلم, "*Tahaadū tahābbū* Give gifts to each other, surely you love each other," affirms the social dimension of grants as an instrument to strengthen emotional relationships and strengthen social solidarity, not just a transfer of wealth.

¹¹ Muhamad Omar Qarizada, "قواعد ميراث ذوي الارحام وفقه حنفى قواعد ميراث ذوي الارحام فى الفقه",

الحنفى/Rules Off Inheritance Off Relatives (Dhawi Al--Arham) In The Hanafi Jurisprudence Hanafi Fikḥinda Zawi'l-Erham Miras Kurallari" 6428 (2025): 235–66.

¹² Agung Prasetya, Rahmawati, Rusdaya Basri, Rusdianto, "The Regulation of Legitime Portie on the Inheritance of Children Out of Wedlock according to the Civil Code and the Compilation of Islamic Law."

Meanwhile, inheritance in Indonesian law has a fundamentally different legal construction from grants. Inheritance in the Civil Code and the Compilation of Islamic Law (KHI) is a consequence of the death of the heir, so that the transfer of assets is not carried out by the active will of the heir, but because of the legal provisions that apply after the heir dies. From an Islamic perspective, the concept of *al-mīrāt* is a shari'a decree that has an absolute normative dimension (*qat'i al-dalālah*) as stated in QS. al-Nisā' (4):11. The provision of a fixed part of inheritance, such as the two-to-one ratio between men and women, suggests that inheritance is not a manifestation of personal preference, but a structural justice that considers men's social responsibilities as breadwinners.

Comparing grants and inheritances shows a firm distinction juridistically, normatively, and temporally: grants depend on the will and intentions of the grantor during lifetime, while inheritance depends on legal provisions after the heir's death. However, in social practice in Indonesia, the dividing line is often blurred. Grants are often positioned as "accelerated inheritances," used to regulate the distribution of assets before death to avoid potential conflicts later on. The use of grants as a pre-inheritance mechanism has two implications: on the one hand, it can strengthen family harmony; But on the other hand, it can cause substantive injustice if it is done selectively, emotionally, or manipulates inheritance provisions that are theological in nature. The tension between the moral purpose of grants and the juridical function of inheritance then demands a more comprehensive legal reconstruction and ethical reading in the practice of grants in society.

B. Concept and Legal Foundations of Grants

The concept of grants in Indonesia's positive legal framework rests on two main pillars: formal legitimacy through the legislative apparatus and social recognition based on practices that live in society.¹³ In the Civil Code, grants are positioned as legal acts that must be stated in the form of authentic deeds to ensure legal certainty and avoid disputes in the future.¹⁴ The Compilation of Islamic Law (KHI) regulates grants as voluntary grants of property rights carried out during the life of the giver, without restrictions on proportions as in a will. This means that grants can be given entirely to certain parties as long as they are carried out consciously, without coercion, and handed over in real terms.¹⁵

In Islamic law, the normative foundation of grants is based on the principles of *tabarru'*, justice, and the willingness of both parties.¹⁶ QS. an-Nisā' [4]:29 emphasizes the prohibition of acquiring property illegally:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

"O you who have believed, do not consume your neighbor's property in a wrong way, except in the way of trade that takes place willingly among you..."

¹³ Irpan Suriadiata, "Reconceptualization Of The Recognition Of The Unity Of Customary Law Communities In Indonesian Legislation" 23, no. 3 (2024): 1–13.

¹⁴ Agung Prasetya, Rahmawati, Rusdaya Basri, Rusdianto, "Regulation of Legitime Portie on the Inheritance of Out-of-Wedlock Children According to the Civil Code and the Compilation of Islamic Law."

¹⁵ Iqbal Maulana, Moh Fadli, And Iwan Permadi, "Fair Term Arrangement of Cooperation Agreement with Third Party Management Rights on Customary Land" 7, No. September (2024): 285–302.

¹⁶ Agung Prasetya, Rahmawati, Rusdaya Basri, Rusdianto, "Regulation of Legitime Portie on the Inheritance of Out-of-Wedlock Children According to the Civil Code and the Compilation of Islamic Law."

The hadith of the Prophet صلى الله عليه وسلم also underlines the moral value of hibah in strengthening social relations:

تَصَافَحُوا يَذْهَبِ الْغِلُّ، وَتَهَادَوْا تَحَابُّوا، وَتَذْهَبِ الشَّحْنَاءُ

"Shake hands, and the grudge will disappear; Give gifts to one another, and you will love one another, and the hatred will be gone." (HR. Mālik in *al-Muwatta'*, no. 1413)

In addition to formal and normative foundations, grants have a strong sociological foundation in customary law in various regions in Indonesia. In many communities, grants are used to accommodate the interests of extended families, such as ensuring the sustainability of family businesses or protecting economically vulnerable family members. This is where positive law, Islamic law, and customary law meet: all three recognize grants as a legitimate asset distribution mechanism, albeit with different procedures and moral justifications. However, these differences also have the potential to cause tension if they are not harmonized, so conceptual integration between normative dimensions and sociological realities is needed so that grants can function optimally as an instrument for wealth distribution as well as a guardian of family harmony.¹⁷

The concept of grants in the Indonesian legal system stands on two main pillars: formal legitimacy through the legislative apparatus, as well as social recognition that has been rooted in community practice. In the Civil Code regime, grants are not just moral acts based on generosity, but are constructed as legal acts that have consequences of ownership and judicial protection. Therefore, the Civil Code requires an authentic form of deed for the grant of fixed objects, which is not only intended for proof, but also as an instrument to prevent disputes that have the potential to arise after the grantor dies. This means that the administrative aspect is not just a bureaucratic formality, but a mechanism of legal certainty that maintains social stability, especially in the context of family relations.

On the other hand, KHI provides a broader perspective on the rights of grantors. KHI does not limit the amount of grant value as well as wills which are limited to a maximum of one-third of the total assets except with the consent of the heirs. The freedom to grant grants even for all property, in principle, indicates the Islamic recognition of the sovereignty of ownership as long as the giver is alive (*milk al-tāmm*). However, such freedom is not absolute, because grants must not have an impact on injustice or be carried out with a motive to harm certain heirs, for example grants are made before death with the aim of manipulating inheritance law.

The normative foundation of grant in Islamic law is rooted in three fundamental principles: *tabarru'* (selfless voluntary action), *al-'adl* (substantive justice), and *al-tarādī* (willingness of both parties). QS. an-Nisā' (4):29 affirms that the transfer of property should not be achieved by unauthorized means, except through transactions on the basis of full willingness. This verse places grants in the moral realm of law, where willingness is not just a formality of a contract, but an ethical requirement to avoid manipulative expropriation of property. The hadith of the Prophet صلى الله عليه وسلم in the narration of Mālik, which states that giving gifts to each other eliminates hatred and fosters affection, expands the meaning of grants as an instrument of emotional reconciliation and strengthening social attachment in the family structure.

¹⁷ Agung Prasetya, Rahmawati, Rusdaya Basri, Rusdianto.

In addition to the juridical and normative dimensions, grants have a strong sociological character in Indonesian customary law. In many regions, grants are used as a means of maintaining the sustainability of family assets, for example business land grants to children who continue their parents' businesses or larger grants to girls in matrilineal systems such as Minangkabau. Grants are even used as an economic protection mechanism for vulnerable family members, such as chronically ill children or widowed women with no income. This social character suggests that grants serve not only as a tool for wealth distribution, but also as an instrument of social engineering to create justice in the relational context of the family.

The meeting between positive law, Islamic law, and customary law presents both a contribution and a potential for friction. All three recognize grants as a legitimate asset distribution mechanism, but with different justifications and limitations. If without harmonization, grant freedom can be abused to manipulate the terms of inheritance; But if understood integratively, grants can function as instruments of substantive justice that support social harmony. Thus, grants need to be seen not only as a legal-formal concept, but as a social-justice practice that links legal certainty with moral values and dynamic family needs. This conceptual integration is an important foundation for the reconstruction of grant law in the context of inheritance distribution in Indonesia.

C. Equal Grants or Grants with Provisions of Inheritance as Substantive Justice

The debate about the form of justice in the distribution of grants often boils down to two main views. The first view is that grants are given equally to all children regardless of gender, which is considered more socially just because it avoids envy or jealousy. The second view is that grants follow the proportion of inheritance as stipulated in Islamic law, where boys get twice as much as girls, according to the provisions of faraidh.¹⁸

Proponents of equal grants usually refer to the principle of egalitarian justice, emphasizing maqāṣid al-syarī'ah in maintaining brotherhood and family harmony.¹⁹ This argument is also in line with the spirit of the Qur'anic verses that emphasize the importance of doing justice:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ

"Indeed, Allah commands (you) to be just and to do good and to give to your relatives..."
(QS. al-Nahl [16]:90)

Meanwhile, supporters of grants with inheritance provisions emphasize consistency with the proportions of distribution that have been determined by the shari'a,²⁰ based on the word of Allah:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلَّذِ كَرِ مِثْلَ حَظِّ الْأُنثَيَيْنِ

¹⁸ Yan Luo Et Al, "Impact Of Data Distribution On Fairness Guarantees In Equitable Deep Learning" 14, no. 8 (2024): 1–14.

¹⁹ Aurora S Zhang And Anette E Hosoi, "Structural Interventions And The Dynamics Of Inequality," 2024, <https://doi.org/10.1145/3630106.3658952>.

²⁰ Sajan Maharjan, Srijoni Majumdar, And Evangelos Pournaras, "Fair Voting Outcomes With Impact And Novelty Compromises ? Unraveling Biases Of Equal Shares In Participatory Budgeting," 2024.

"Allah has decreed for you about (the division of inheritance for) your children, that is, the share of a son is equal to the share of two daughters..." (QS. al-Nisā' [4]:11).

The hadith of the Prophet ﷺ also gives important instructions so that in giving hibah, parents are fair to all their children. When a companion gave a hibah to one of his sons and not to the other,²¹ the Prophet ﷺ said:

فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ

"Fear Allah and do justice among your children." (HR. al-Bukhārī, no. 2587; Muslim, no. 1623)

From the point of view of substantive justice, both of these views have justifiable grounds.²² Grants equally accommodate distributive justice that strengthens family cohesion, while grants with inheritance provisions maintain conformity with standard sharia norms. Therefore, the most appropriate model of the grant must take into account the social context, the specific needs of the family, and the main purpose of the grant itself. This integrative approach will allow for justice that is not only legally valid, but also socially accepted and morally pleasing.²³

The debate on justice in the distribution of grants generally boils down to two hermeneutical approaches to the meaning of 'adl (justice): first, justice understood equitably through the equal distribution of grants; second, justice based on proportionality of shari'a through alignment with the provisions of the faraidh. These two approaches are not only practical, but also conceptual, as they concern how to understand justice within the horizon of Islamic law and family social practice.

Supporters of equal distribution of grants emphasize their ideas on distributive justice that does not question gender as a differentiator of rights. In this perspective, justice is not just a mechanical division of rights, but an effort to maintain *family harmony* as a social goal. This view is often associated with maqāṣid al-syarī'ah, especially hifz al-nasab (protection of kinship relations) and hifz al-māl (protection against potential ownership disputes). This egalitarian view also finds its relevance in QS. al-Nahl (16):90 which emphasizes the commandment to be fair and to give to relatives. The verse places justice not just as a legal structure, but as a social ethics that maintains family solidarity.

On the other hand, supporters of grants with inheritance provisions emphasize the argument of normative justice that is a *fixed divine ratio*, which is a formula of justice that has been determined by sharia. The proportion of men gets twice the share of women in QS. al-Nisā' (4):11 is understood not as an inequality of human values, but as a proportionate determination of men's financial

²¹ Aida Hartini Nan, "Islamic Philanthropy: An Instrument of Waqf According to Perspective *Ṣaḥīḥ Al-Bukhārī* Islamic Philanthropy : The Instrument Of Waqf According To The Perspective Of *Ṣaḥīḥ al-Bukhārī*," No. December (2024): 218–37.

²² Muhamad Ridho Taufiq Ramadhan, Habib Ismail, Khusnul Khotimah And Ramzi Durin Maulana, "Distributive Justice In The Perspective Of Islamic Law And Its A University Darunnajah Jakarta, Jakarta Indonesia B Ma' Arif University, Lampung," Al Hairy: Islam Of Law 1, No. 1 (2025): 11–23.

²³ Michele Loi And Anders Herlitz, "Fair Equality Of Chances For Prediction-Based Decisions," Consider using the three paragraphs beginning with, "Consider using the three paragraphs beginning with, 'https://doi.org/10.1017/S0266267123000342 Consider using the three paragraphs beginning with, 'Consider using the three paragraphs beginning with, 'Consider using the three paragraphs beginning

responsibilities in the classical Islamic family structure, including the obligation of maintenance, dowry, and the provision of shelter. Thus, following the proportion of inheritance in grants is seen as consistency with sharia values and an effort to avoid manipulation of inheritance law through the grant mechanism during life.

Hadith of the Prophet صلى الله عليه وسلم "Fear Allah and do justice among your children." (HR. al-Bukhārī; Muslim) is often the basis for the argument that grants should be given equally. However, scholars differ in understanding the meaning of 'adl in this context. Some mufasssir and fuqaha such as Ibn Qudāmah and al-Nawawī interpret justice not necessarily to mean nominal equality, but conformity to the needs and benefits of the recipient. For example, a child who is chronically ill or has no income can get a larger grant, without being considered to be in violation of the principle of justice.

Thus, from the perspective of *substantive justice*, both approaches are normatively valid. Grants equally emphasize the social-emotional dimension, while grants that follow inheritance provisions emphasize the normative legal dimension of sharia. This debate becomes relevant when the value of justice is faced with the concrete situation of the family, such as the presence of children who need economic protection, differences in contributions to family property, or certain customary contexts that determine a certain economic role in one of the children.

Therefore, the determination of the "fairest" grant model cannot be deduced from the normative text alone, but requires a situational analysis of the grant objectives themselves. The substantive justice approach must view grants as a means of distributing benefits, not as a technical replica of inheritance provisions. The fairness of grants must ultimately meet three indicators: legally valid, socially acceptable, and morally pleasing. These three indicators place grants not just as legal-formal instruments, but as social engineering mechanisms to achieve family balance, avoid conflict, and maintain economic sustainability across generations.

D. Problem Analysis

Problems in the practice of grants and inheritance in Indonesia can be seen from three main dimensions: normative, sociological, and jurisprudence.²⁴

First, from the normative dimension, there is overlap and unclear boundaries between grants and wills, especially when grants are made before the death of the grantor (the grant of a will). In Islamic law, grants during life are not limited in proportion, while wills are limited to a maximum of one-third of the property unless approved by the heirs. However, in practice, these differences are often ignored, creating legal loopholes that can be exploited inappropriately.²⁵ The Qur'an emphasizes the importance of maintaining clarity of the law and avoiding the acquisition of property illegally:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ
إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

²⁴ Agung Prasetya, Rahmawati, Rusdaya Basri, Rusdianto, "The Regulation of Legitimate Portion on the Inheritance of Children Out of Wedlock according to the Civil Code and the Compilation of Islamic Law."

²⁵ Ayesha Hanum Nurrahmah And Moh Imam Gusthomi, "Blurring The Lines: An Analysis Of Jurisdictional Overlap Between General Courts And State Administrative Courts In Indonesia," 2009, 713–26.

"O you who have believed, do not consume your neighbor's property in a wrong way, except in the way of trade that takes place willingly among you; and kill not yourselves; Indeed, Allah is Most Merciful to you." (QS. an-Nisā' [4]:29).

Second, from the sociological dimension, conflicts often arise due to differences in the perception of justice between heirs. Some families demand equal distribution, while others want to follow the provisions of inheritance.²⁶ These differences in perception, if not managed with good communication, can crack family relationships. The hadith of the Prophet صلى الله عليه وسلم gives a stern warning to avoid unjust acts in the division of rights:

اتَّقُوا الظُّلْمَ فَإِنَّ الظُّلْمَ ظُلُمَاتٌ يَوْمَ الْقِيَامَةِ

"Be afraid of tyranny, for it will be darkness on the Day of Judgment." (HR. Muslim, no. 2578)

Third, from the dimension of jurisprudence, there is an inconsistency in the decision of the religious court in deciding the case of grants that intersect with the heirs. Some judgments recognize grants that have been handed over as absolute valid, while others invalidate them because they are considered to be detrimental to certain heirs. The lack of technical guidelines for the distribution of grants that consider aspects of family harmony is one of the main causes of this legal uncertainty.²⁷

This analysis shows that resolving grant problems is not enough with a legal-formal approach alone, but requires integration between legal norms, socio-cultural values, and religious moral principles.²⁸ Reconstructing the concept of grants that puts family harmony on par with legal certainty can be an effective conflict prevention tool, in line with the Qur'an's message to uphold justice:

وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

"And set the scales fairly and do not diminish the balance sheet." (QS. ar-Raḥmān [55]:9)

The problem of grant practice in the context of inheritance in Indonesia does not only stop at the issue of wealth distribution, but touches on the fundamental relationship between law, social values, and family morality. The complexity arises because grants are at a sensitive point: they are made while the owner of the property is still alive, but have the potential to have an impact after he or she dies. That is why, grants are often a source of dispute after the death of the grantor, especially when the decision of the grant is considered not to reflect a sense of justice among the heirs. The complexity can be read through three main dimensions.

First, from the normative aspect, the main problem lies in the blurring of the boundary between pure grants and grants that substantially resemble wills (wills). In principle, a grant takes effect as soon as the ownership changes when the gift is

²⁶ Lembong, Tanjung, and Siregar, "The Practice Of Using Inheritance Assets For Death Feast Expenses From The Perspective Of Islamic Law And The Aceh Customary Council (Majelis Adat Aceh)."

²⁷ Purnama Hidayah Harahap Et Al., "Religious Court Decisions Regarding The Revocation Of Grant (Hibah) In The Perspective Of Islamic Jurisprudence" 17, no. 2 (2023): 233–48.

²⁸ N Associate Author, "Ethos Construction In Muslim Communities : An Anthropological And Sociological Perspective," No. I (2024): 279–89.

made while the will is only valid after the giver dies and is limited to a maximum of one-third of the property unless approved by the heirs. However, the practice of grants in Indonesia is often carried out before death with the motive of arranging inheritance, so that factually grants are used as a mechanism to avoid the limitations of wills. This condition creates room for manipulation, for example the transfer of assets to one of the heirs or certain parties before death to override the provisions of inheritance. Thus, grants can be used as a means of acquiring property in a way that is formally legal, but in substance has the potential *to be gharar* (exploitation of loopholes). In this context, the Qur'anic warning is relevant so that property is not transferred in an invalid way:

لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ

"Thou shalt not eat thy neighbor's property in a wrong way..." (QS. an-Nisā' [4]: 29).

Second, from the sociological dimension, differences in perceptions about the concept of justice trigger latent conflicts in the family. For some families, equal distribution is more equitable because it is considered to serve to maintain brotherhood and avoid jealousy. However, other groups view that justice must follow the proportions of inheritance law. This clash of perspectives is often exacerbated by a lack of communication within the family when the grant is made, so that the grant is only clear in the document, but not clear in the perception of the heirs who are the subject of the impact. At this point, grants that aim to give benefits can actually turn into a source of *mazhālim* (tyranny). The Prophet صلى الله عليه وسلم warned:

اتَّقُوا الظُّلْمَ فَإِنَّ الظُّلْمَ ظُلُمَاتٌ

"Avoid tyranny, for tyranny will become darkness on the Day of Judgment." (HR. Muslim, no. 2578)

Third, in terms of jurisprudence, the inconsistency of religious court decisions shows the absence of a strong standard of interpretation of the position of grants in the inheritance system. Some of the decisions affirm that the grants that have been handed over are valid and cannot be canceled, even if they harm certain heirs. On the other hand, other decisions cancel grants on the grounds that they cause injustice or do not meet the elements of sharia validity, especially when the grantor is in a state of severe illness. The absence of technical guidelines that combine the basis of fiqh, the interests of the heirs, and the benefit of the family results in long-term legal uncertainty. The implication is that grants are not only theoretically debated, but also become an arena of pragmatic disputes that drain family energy and legal resources.

This analysis shows that the issue of grants in the context of inheritance cannot be solved through a juridical-formal approach alone. Grants must be reconstructed as an instrument of justice that has two concurrent functions: legal certainty and the prevention of family conflicts. The reconstruction requires integration between sharia norms, socio-cultural values that uphold harmony, and moral rules to uphold justice-based on benefits. In line with the principles of the Qur'an:

وَأَقِمْوَا الْوِزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

"Establish the scales justly and do not diminish the measure of justice." (QS. ar-Rahmān [55]: 9)

Thus, the reconstruction of the concept of grants that are more responsive to social reality can be a *conflict prevention tool*, not just a mechanism for distributing wealth, but a means of maintaining family integrity as one of the noble goals of sharia.

CONCLUSION

This research confirms that grants have strategic potential as a social engineering instrument to prevent inheritance conflicts and strengthen family harmony, as long as they are managed in a transparent, fair manner, and based on applicable legal principles. Conceptually, grants are clearly distinguished from inheritance, both in terms of the timing of implementation and the legal basis, but in social practice in Indonesia this limit is often blurred. The findings of the study show that positive law, Islamic law, and customary law both recognize the validity of grants, although they differ in normative procedures and justifications.

The analysis shows that the debate between equal grants and grants following the provisions of inheritance is actually a dialectic between social justice and normative justice. The integration of the two through a substantive justice approach can result in a model of division that is not only legally valid, but also socially acceptable. The problems that arise, both normative, sociological, and jurisprudential, require the harmonization of regulations and practices in the field. Thus, the reconstruction of the concept of grants as a conflict prevention tool that combines legal certainty and family harmony is an urgent need in the reform of family law in Indonesia.

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