

Reevaluating Inheritance Distribution in Indonesia: The Role of Hibah as a Preventive Measure

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Abstract

This study examines the understanding of wealth distribution during the testator's lifetime under Article 187, paragraphs (1) and (2) of the Compilation of Islamic Law. The purpose is to understand the distribution of wealth during the testator's lifetime and the construction of the implementation of wealth distribution during the testator's lifetime as a legal option. This research employs a qualitative approach using juridical-normative methods. The data sources consist of articles in the Compilation of Islamic Law (KHI) that regulate Islamic law in Indonesia. The findings reveal that understanding wealth distribution during the testator's lifetime is a legal option based on two considerations: first, wealth distribution after the testator's death may lead to conflicts; second, it may cause unfairness among heirs. The construction of wealth distribution implementation involves three aspects: 1) verifying the estate of the deceased, 2) validating the expenses incurred by the testator, and 3) distributing wealth to the heirs through four legal options, namely: the testator and heirs agree to a settlement, the testator considers gifts previously given to the heirs as part of the inheritance, the testator revokes gifts previously given to their children, and the testator distributes the inheritance according to the provisions of inheritance law.

Keywords: Inheritance Distribution; Hibah; Testator's Lifetime; Islamic Family Law in Indonesia.

Introduction

The inheritance distribution among heirs upon the testator's death frequently leads to disputes that may disintegrate family unity. It is not uncommon for families to experience collapse and even enmity among members due to inheritance-related conflicts.¹ Such disputes often stem from perceived injustices in the allocation of inheritance shares, leading to dissatisfaction among one or more heirs.² This dissatisfaction frequently becomes the root cause of disagreements and, in extreme cases, may even escalate into acts of violence, including homicide, when one or more heirs attempt to seize the portion of others.³

Islamic inheritance law has thoroughly and meticulously regulated the matter within the Qur'an and the Hadith of Prophet Muhammad (peace be upon him), stipulating the appropriate time for inheritance distribution, identifying the rightful heirs along with the legal grounds and conditions for inheritance, and determining the specific shares allotted to each heir—whether they are entitled individually or collectively. Moreover, Islamic law also delineates the types of property that may be inherited, including assets acquired during the testator's

¹ Zainal Arifin Haji munir, “Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok,” *Mazahib* 20, no. 2 (January 12, 2022): 225–50, <https://doi.org/10.21093/mj.v20i2.3774>.; Moh. Mujibur Rohman and Siti Muafatun, “Hacking Muhammad Syahrūr’s Hudūd Theory and Its Relevance to the Inheritance of Sangkolan Madurese People,” *Jurnal Ilmiah Al-Syir’ah* 19, no. 2 (December 29, 2021): 182–99, <https://doi.org/10.30984/jis.v19i2.1625>.

² Elfia Elfia, Surwati Surwati, and Bakhtiar Bakhtiar, “The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia,” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 75–94, <https://doi.org/https://doi.org/10.29240/jhi.v8i1.5480>.; Zainal Arifin Haji Munir, “Wealth Distribution among Sasak Communities Through Inheritance: A Quest for Justice,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (October 14, 2023): 1627, <https://doi.org/10.22373/sjkh.v7i3.10835>.

³ Musda Asmara, Rahadian Kurniawan, and Linda Agustian, “Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial,” *De Jure: Jurnal Hukum Dan Syar’iah* 12, no. 1 (2020): 17–34, <https://doi.org/ttp://dx.doi.org/10.18860/j-fsh.v12i1.7580>.; Zainuddin Mappong and Lili Lili, “Right to Self Submission to Western Inheritance Law for the Heirs Of Islamic Religion Whom the Property Leaver Has Different Religion,” *Journal of Law and Sustainable Development* 11, no. 2 (July 17, 2023): e423, <https://doi.org/10.55908/sdgs.v11i2.423>.

lifetime and those gained posthumously due to actions taken during the testator's life.⁴

The distribution of assets by inheritance differs from that of *hibab* (grant) and *wasiat* (bequest). A *hibab* is a gratuitous transfer made while the owner is still alive.⁵ In contrast, a *wasiat* is a voluntary bequest executed posthumously, either to an individual or an institution. In contrast, inheritance involves the transfer of assets and rights from a deceased individual to their heirs.⁶ These three forms of asset distribution each have distinct legal foundations, proportions, beneficiaries, and conditions related to timing.⁷

Asset distribution in the form of *hibab* is carried out solely at the discretion of the property owner, based on free will, and without intervention from other parties. The recipients may include legal heirs without requiring the donor's death or non-heirs.⁸ Such distribution is only valid while the donor is alive and in good health, not suffering from a terminal illness. If the *hibab* is granted to children, it must be distributed equally, without favoritism; however, if given to non-heirs, the permissible limit is up to one-third of the donor's total estate.⁹

Distribution by *wasiat*, on the other hand, is also based solely on the owner's volition but is strictly intended for non-heirs. It takes effect only after the owner's death and is limited to a maximum of one-third of the total estate, ensuring that the heirs still receive their rightful portions of inheritance.¹⁰

⁴ Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 241–57, <https://doi.org/10.18592/sjhp.v24i1.12916>; Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 1–23.

⁵ Ibnu Qudamah, *Al-Mughni* (Beirut: Daar al-Kitab al Arabi, n.d.), 246.

⁶ Sholeh Fauzan, *Tabqiqat Al Mardhiyah Fi Al-Mabahits Al-Fardhiyabo Title* (Riyadh: Maktabah al-Ma'arif, n.d.), h. 24.

⁷ Abu Bakar Al-Husaini, *LKifayah Al-Akhyare* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), h. 454.

⁸ Ibn Rusyd, *Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid* (Amman: Baitul Afkar ad-Dauliyyah, 2004); Muhammad bin Ali Al-Shaukani, *Fath Al-Qadir* (Beirut: Dar al-Fikr, 1986).

⁹ Abdullah bin Ahmad Ibn Qudamah, *Al-Mughni* (Cairo: Maktabah al-Kaherah, 1968); Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia."; Syahrul Mubarak Subeitan, "Ketentuan Waris Dan Problematikanya Pada Masyarakat Muslim Indonesia," *Al-Mujtahid: Journal of Islamic Family Law* 1, no. 2 (2021): 113–24.

¹⁰ Abdul Ghofur Anshori, *Filsafat Hukum Hibab Dan Wasiat Di Indonesia* (UGM PRESS, 2018); Hasyim Sofyan Lahilote and Syahrul Mubarak Subeitan, "Multicultural Transformation in Waqf Land Registration: Role of Waqf Pledge Deed Officials in Manado, Indonesia," *Kawanua International Journal of Multicultural Studies* 5, no. 1 (2024): 1–15, <https://doi.org/https://doi.org/10.30984/kijms.v5i1.667>.

Inheritance-based distribution, meanwhile, follows the explicit mandates of the Qur'an—particularly Surah An-Nisā (4): verses 7, 11, 12, and 176—and not the personal wishes of the testator or the desires of the heirs. Assets may only be passed to individuals who meet the causal and conditional requirements to be recognized as heirs. Distribution occurs only after the death of the testator has been confirmed—whether factually (*haqiqi*), legally (*hukmi*), or presumed (*taqdiri*). The shares must strictly adhere to the proportions set forth by Allah in the Qur'an and as codified in the Islamic Family Law of Indonesia.¹¹

The form of inheritance distribution among some segments of the Indonesian Muslim community has undergone significant changes, particularly in disregarding the prescribed timing and conditions for inheritance distribution—namely, the apparent death of the property owner, which legally qualifies them as a testator.¹² Certain members of the Muslim community in Indonesia, driven by affection and love for their children, have opted to distribute their assets while still alive, despite Islamic legal tradition requiring distribution after death. It is often done as a preventive measure, either by partially or entirely distributing the estate, to avoid future disputes among heirs and to prevent any potential injustice in the allocation of inheritance shares.

Munawir Sjadzali, who served as Minister of Religious Affairs from 1983 to 1988 and again from 1988 to 1993, noted that the inheritance provisions outlined in the Qur'an—especially those related to the shares of sons and daughters as stated in Surah An-Nisā' (4):11—have increasingly been disregarded by many Indonesian Muslims. He observed a growing practice of distributing property equally among children during the owner's lifetime, regardless of gender distinctions. Sjadzali further stated that many religious court judges in regions such as South Sulawesi and South Kalimantan—areas known for their strong religious adherence—had reported cases where inheritance distribution was

¹¹ Rohman and Muafatun, “Hacking Muhammad Syahrūr’s Hudūd Theory and Its Relevance to the Inheritance of Sangkolan Madurese People”; Rahmad Setyawan et al., “Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia,” *Jurnal Ilmiah Al-Syir’ah* 22, no. 1 (2024): 25–40, <https://doi.org/10.30984/jis.v22i1.2968>.

¹² Misbahul Munir Makka et al., “Analysis of Inheritance Restrictions in Islamic Law: Slander in the Perspective of Qiyas Musawi and Legal Istibath,” *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 1 (2024): 1–11, <https://doi.org/https://journal.aye.or.id/index.php/JSLE/article/view/1>.

carried out in ways that deviated significantly from Qur'anic directives, often not qualifying as valid inheritance under Islamic law.¹³

The Compilation of Islamic Law (Kompilasi Hukum Islam, or KHI) has introduced legal modifications regarding the timing and some conditions for inheritance distribution, accommodating the prevailing practice among Indonesian Muslims of distributing assets while the owner is still alive.¹⁴ This modification is formally regulated in the KHI, which states that if a person leaves behind an estate, individuals may be appointed as executors of the distribution during their lifetime, or by those who would become heirs after their death. However, this legal modification is not absolute or binding; rather, it serves as a tentative legal option or an alternative approach to be considered by the owner during their lifetime or future heirs.

The use of the term "may" (*dapat*) in Article 187 paragraph (1) of the KHI implies two possible modes of implementation: first, that heirs may not distribute assets before the owner's death, and second, that the property owner or future heirs may carry out the distribution, provided the owner has passed away.¹⁵

This legal modification in Indonesia's Islamic family law represents an interpretative departure from the traditional inheritance rules in the Qur'an and Hadith, aiming to address contemporary social realities. Scholars classify lifetime distributions of what will later become inheritance into two categories. First, suppose the distribution occurs while the owner is in good health and not afflicted with a terminal illness. In that case, it is considered a *hibab* (gift), not an inheritance, and is therefore permissible (*mubah*). Second, if the distribution is made while the owner is seriously ill and facing a likely death, scholarly opinions diverge. Most scholars argue that such a distribution does not qualify as *hibab*, but instead falls under the category of *wasiat* (bequest). However, some scholars maintain that it remains a *hibab*, not a *wasiat*, even under such circumstances.¹⁶

Despite the differences in scholarly opinion regarding whether the lifetime distribution of assets intended as inheritance falls under the legal category

¹³ H. Munawir Sjadzali, *Kontekstualisasi Ajaran Islam* (Jakarta: Kerjasama Ikatan Persaudaraan Haji Indonesia (IPHI) dengan Yayasan Wakaf Paramadina, 1995), h. 88.; Yasin Yetta, Ahmad Rajafi, and Syahrul Mubarak Subeitan, "Understanding the Implications of Marriage Law Amendments: Marriage Dispensation Cases in Indonesian Religious Courts," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 121–36, <https://doi.org/https://doi.org/10.29240/jhi.v9i1.8979>.

¹⁴ Nur Alia et al., "Understanding and Implementing Islamic Law: Challenges and Solutions in Modern Contexts," *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 2 (2024): 72–82, <https://journal.aye.or.id/index.php/JSLE/article/view/16>.

¹⁵ Pasal 187 ayat (1) KHI.

¹⁶ Ibnu Hajar Al-Asqalani, *Al-Isabah Fi Tamyiz Al-Sabab* (Beirut: Dar Al-Fikr, 2003).; Ibnu Hajar Al-Asqalani, *Fath Al-Bari* (Beirut: Dar al-Fikr, 2000).; Rusyd, *Bidayat Al-Mujtabid Wa Nihayat Al-Muqtasid*.

of *hibah* (grant) or *wasiat* (bequest), this issue warrants critical examination as a form of alternative legal reform or as a legal option for asset distribution in Indonesia. This study focuses on the role of *hibah* as a preventive mechanism in inheritance distribution, a topic that has not been widely explored in existing literature. Unlike previous studies, such as those by Kamis and Abd. Wahab, who assessed the level of *hibah* awareness in Malaysia;¹⁷ Hidayah, who examined legal pluralism in inheritance law in Aceh;¹⁸ Tono et al., who analyzed the relationship between Minangkabau customary law and Islam in inheritance;¹⁹ Sukiati et al., who studied the practice of *hibah* as a substitute for inheritance;²⁰ and Amirullah, who investigated the legal position of *hibah* in the Compilation of Islamic Law²¹—this research explores *hibah* as a solution to mitigate inheritance-related family disputes.

The study examines how *hibah* can be integrated into Indonesia's Islamic family law framework and proposes a more flexible concept of *hibah* as a strategic estate planning tool to prevent future tensions. It also highlights the significance of *hibah* in reducing inequality in inheritance distribution while strengthening the understanding of its impact on inheritance shares and how its inclusion in inheritance law modifications aligns with the Islamic legal principle of justice.

This research adopts a qualitative approach with normative juridical analysis. The data sources include provisions in the Compilation of Islamic Law related to inheritance law, particularly articles concerning methods of inheritance distribution. The study is framed within the broader context of Islamic legal

¹⁷ Nur Syaedah Kamis and Norazlina Abd. Wahab, "Investigating the Level and Determinants of Hibah Knowledge: A Study among Muslims in Kedah, Malaysia," *Journal of Islamic Accounting and Business Research* 13, no. 3 (March 2022): 486–513, <https://doi.org/10.1108/JIABR-05-2020-0167>.

¹⁸ Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over Adat, Islam, and the State Inheritance Laws," *Women's Studies International Forum* 103 (March 2024): 102881, <https://doi.org/10.1016/j.wsif.2024.102881>.

¹⁹ Sidik Tono et al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, 2019, 39–55, <https://doi.org/doi.org/10.31436/shajarah.v0i0.931>.

²⁰ Sukiati, Muhammad Hidayat, and Muhamad Hasan Sebyar, "Analyzing the Practice of Hibah in Lieu of Inheritance among the Indonesian Muslim Community," *Al-Ulum* 23, no. 1 (June 2023): 132–52, <https://doi.org/10.30603/au.v23i1.3440>.

²¹ Amirullah Amirullah, Lomba Sultan, and Supardin Supardin, "Eksistensi Hibah Yang Diperhitungkan Sebagai Warisan (Telaah Pasal 211 Kompilasi Hukum Islam)," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 8, no. 2 (December 2021): 37–45, <https://doi.org/10.24252/al-qadau.v8i2.22896>.

norms. It is expected to contribute meaningfully to academic discourse and the practical implementation of asset distribution to rightful heirs under Islamic family law. Moreover, the study seeks to provide a constructive model for distributing assets during the property owner's lifetime, grounded in *maslahah* (public benefit) principles and justice for children and family members in Indonesia. In addition, it is anticipated to benefit legal practitioners in the Religious Courts in resolving family law disputes concerning inheritance, whether in petitions or contentious cases.

Discussion

The Concept of Inheritance Distribution in Islam

The distribution of assets in Islamic inheritance law (*fara'id*) has been legislated by Allah (SWT) in a detailed manner through the Qur'an and the Hadith. The rules governing inheritance distribution have been extensively discussed and examined in classical Islamic jurisprudence (*fiqh*) literature under the chapter of *fara'id*, as well as in contemporary texts on Islamic inheritance law. Islamic inheritance law is a discipline that studies and regulates the distribution of a deceased person's estate, commonly referred to by the terms *al-mawārīth* or *al-farā'id*.

Linguistically, according to Arabic lexicons, *al-mawārīth* is the plural form derived from the Arabic root word (المِيرَاثُ) *al-mīrāth* (verbal noun), which originates from the verb (وَرِثَ) *waritha*, (يَرِثُ) *yarithu*, meaning "to inherit," and related forms such as (إِرْثَانٌ) *irthan* and (مِيرَاثَانٌ) *mīrāthan*, denoting the transfer of ownership from one person to another. Meanwhile, the term *al-farā'id* is the plural of *farīdah*, which comes from the root word *fa-ra-ḍa* (*farḍ*), meaning an obligation or a prescribed command (*al-amr*).²²

In Islamic jurisprudence (*fiqh*), the term *al-mawārīth* or *al-farā'id* refers to a branch of knowledge that studies who is entitled to receive an inheritance, who is not, and the specific shares allocated to each rightful heir. According to Shaykh Muhammad Ali al-Shabuni, inheritance refers to the transfer of ownership from

²² Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap* (Pustaka Progressif, n.d.), h. 1124.

a deceased person to their surviving heirs, including money, daily necessities, or *shar'ī* (Islamic legal) rights.²³

From a legal standpoint, *al-mawārith* or *al-farā'id* is the body of law governing who inherits, who is excluded from inheritance, the share each heir is entitled to, and the distribution procedures.²⁴ M. Arsjad Th. Lubis defines Islamic inheritance law as a set of regulations that govern the distribution of an estate and includes the calculation formulas to determine each heir's share. From a regulatory perspective, *al-mawārith* or *al-farā'id* is a legal system that governs the transfer of ownership of the deceased's estate (*tirkah*), determines the eligible heirs, and sets out their respective shares, as codified in Article 171 letter (a) of the Compilation of Islamic Law (KHI).

Inheritance distribution in Islamic law can only be carried out if all essential pillars (*arkān*)²⁵ and conditions (*shurūṭ*)²⁶ are fulfilled. These include the confirmed death of the testator, the confirmed survival of the heirs at the time of death, and the fact that the deceased left behind inheritable assets. The clarity of death—whether actual (*ḥaqīqī*), legal (*ḥukmī*), or presumptive (*taqdīrī*)—is the principal element for initiating the process of inheritance distribution to heirs who fulfill the legal requirements and are not barred due to any impediment. These impediments may be of two types: the presence of another heir with a closer degree of kinship (*mahjūb*) or the existence of disqualifying attributes (*mamnū*), as determined by Islamic law.²⁷

Abd Shomad and Prawitra affirm that no inheritance can be distributed unless the death of the testator is established with certainty, whether through actual death or judicial declaration confirming legal or presumptive death.²⁸

Sayyid Sabiq emphasizes that all the essential pillars of inheritance must be fulfilled, including the presence of the key element—the deceased testator. If

²³ Muhammad Ali Ash-Shabuni, *Al-Mawaris Fi Al-Syari'ah Al-Islamiyyah Fi Dhaw'i Al-Kitab Wa Al-Sunnah* (Jakarta: Dar al-Kutub al-Islamiyah, 2010), h. 29.

²⁴ Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: Rajawali Press, 2015).

²⁵ Fathur Rahman, *Ilmu Waris* (Bandung: PT. Alma'arif, n.d.), h. 36.

²⁶ Fathur Rahman, h. 79-81.

²⁷ Laras Shesa, Oloan Muda Hasim Harahap, and Elimartati Elimartati, "Eksistensi Hukum Islam Dalam Sistem Waris Adat Yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian Al-Takharujj," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 2021): 145, <https://doi.org/10.29240/jhi.v6i1.2643>.

²⁸ Abd Shomad Prawitra Thalib, *Hukum Waris Islam Di Indonesia* (Jakarta: Program Magister Kenotariatan Fakultas Hukum Universitas Airlangga bekerjasama dengan Lutfansah Mediatama, 2013), h. 42.

any pillar is lacking, the inheritance process cannot proceed.²⁹ According to Indonesia's Islamic family law, a testator has left behind heirs and inheritable property at the time of death, or is declared legally deceased by a Religious Court.³⁰ The deceased may either be someone whose death has been confirmed factually (*ḥaqīqī*) or someone legally declared deceased (*ḥukmī* or *taqdīrī*) through a court ruling.³¹

The legal basis for inheritance distribution in Islam is found in Surah An-Nisā (4): verse 7, which states that male and female heirs are entitled to shares of inheritance from their parents and close relatives, regardless of the amount, following the shares prescribed by divine law.

Surah An-Nisā (4):11 explains the reasons underlying the inheritance rights of sons and daughters, which are based on consanguineous kinship (*nasabiyah*). The verse outlines that two daughters are entitled to two-thirds ($2/3$) of the estate, a single daughter is entitled to one-half ($1/2$), and when sons and daughters inherit together, the share of a male heir is equivalent to that of two females (2:1 ratio). It further clarifies that sons and daughters, as heirs, are not subject to any legal impediments to receiving their shares, whether partially excluded (*mahjūb nuqṣān*) or completely excluded (*mahjūb ḥirmān*), due to the presence of other heirs.

The verse also specifies the basis for the inheritance rights of both parents, which likewise derive from blood relations (*nasabiyah*). If the deceased has children, the father and mother are entitled to one-sixth ($1/6$) of the estate. If no children exist, the mother receives one-third ($1/3$), and the father inherits the remainder as a residuary heir (*'aṣabah*). The mother's share is one-sixth ($1/6$) if two or more siblings survive the deceased. The father and mother are generally not barred from inheritance in full (*mahjūb ḥirmān*), except in cases of partial exclusion when coexisting with children or, for the mother, in the presence of two or more siblings.

²⁹ Sayid Sabiq, *Fiqh Al-Sunnah* (Semarang: Toha Putera, 1972), h. 426.

³⁰ Pasal 171 huruf b KHI.

³¹ Alfian Muhammadiyah and Abdul Fajri Kolopita, "The Position of Girls in Obstructing Brother's Inheritance: A Sunni and Shia Fiqh Perspective and the Supreme Court's Jurisprudence," *Al-Mujtabid: Journal of Islamic Family Law* 4, no. 1 (June 2024): 1, <https://doi.org/10.30984/ajifl.v4i1.2477>.

Finally, the verse asserts that the distribution of inheritance can only occur after the testator's debts have been settled and any wills (*waṣīyah*) have been executed following Islamic law.³²

Surah An-Nisā (4):12 addresses the inheritance rights of the husband (widower) from the estate of a deceased wife and the wife (widow) from the estate of a deceased husband, based on marital ties (*sababiyah* or *muṣaharah*). A husband is entitled to one-half (1/2) of his deceased wife's estate if she did not leave behind any children, whether from him or a previous marriage. If children exist, the husband receives one-quarter (1/4). Conversely, one wife is entitled to one-quarter (1/4) of the estate if her deceased husband had no children, but receives one-eighth (1/8) if he did have children.³³

The verse also clarifies that neither the husband nor the wife is subject to complete exclusion (*mahjūb ḥirmān*), even if other heirs, such as children, parents, or siblings, are present. However, partial exclusion (*mahjūb nuqṣān*) applies when children are involved.

Regarding uterine siblings (those who share the same mother), the verse states that if there is only one such sibling, male or female, they are entitled to one-sixth (1/6) of the estate. If there are two or more uterine siblings, they collectively receive one-third (1/3). However, such siblings are entirely excluded (*mahjūb ḥirmān*) from inheritance when close heirs such as sons or fathers are present. As with other verses, the distribution must occur only after fulfilling the testator's will and settling all outstanding debts.

Surah An-Nisā (4):176 discusses the inheritance rights of full or paternal half-siblings (those with the same father or both parents) when the deceased has neither children nor a surviving father—a situation known as *kalālah*. If there is only one sister, she is entitled to one-half (1/2) of the estate. If there is one brother and no sister, he inherits the entirety of the estate. If there are two or more sisters, they jointly receive two-thirds (2/3). When brothers and sisters inherit together, the share of one male is equal to that of two females (2:1 ratio), consistent with other inheritance rulings in Islamic law.³⁴

³² Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Urusan Agama Islam dan Pembinaan Syariah, 2012), h. 101-102.

³³ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 102-103.

³⁴ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 139-140.

Hibah as a Solution to Family Conflicts in Inheritance Distribution in Indonesia

Islamic family law in Indonesia has introduced legal modifications to the provisions governing the distribution of assets that will become inheritance after the death of the property owner (testator), including adjustments to the timing and specific conditions for inheritance distribution. The codification of Islamic family law in Indonesia, through the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), accommodates the customary practice among Indonesian Muslims of distributing assets during the owner's lifetime.

Hibah (grant) is a form of asset distribution that may eventually constitute inheritance and has become widespread in Indonesian Muslim society. Fundamentally, the property owner retains full authority and discretion over their assets and may determine the beneficiaries at will, provided such actions do not violate or diminish the rights of the legal heirs as stipulated under inheritance law.³⁵ This practice, however, stands in stark contrast to the formal provisions of Islamic inheritance distribution, wherein the specific shares of each heir are predetermined: for instance, a male heir is entitled to a portion equal to that of two female heirs; each parent is entitled to one-sixth; a husband receives one-half if the wife dies without children, and one-quarter if she leaves children; a wife receives one-quarter if the husband dies childless, and one-eighth if he leaves children. Accordingly, asset distribution by way of *wasiat* (bequest) to a legal heir is prohibited, as it contradicts the Hadith of the Prophet Muhammad (peace be upon him), which states: "There is no *wasiat* for an heir."³⁶

Any distribution of assets during the owner's lifetime that is intended to become inheritance does not qualify under the legal framework of *waris* (inheritance) but falls instead under the category of *hibah*, since it does not fulfill the essential elements (*arkān*) or conditions (*shurūṭ*) required for the process of inheritance transfer as prescribed in the Qur'an and the Hadith.

The institutionalization of lifetime asset distribution as a legal mechanism for property that would otherwise be inherited upon death is thus a legal alternative or option available to the owner and prospective heirs. This option aims to prevent *mafsadah* (harm) to the family or heirs that could arise from

³⁵ Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia."

³⁶ Ibn Qudamah, *Al-Mughni*.

posthumous distribution or to promote *maṣlaḥah* (benefit) and welfare through proactive distribution during the owner's lifetime.

As one of the forms of asset distribution that anticipates inheritance, *hibab* has been legally accommodated within Indonesia's Islamic inheritance framework, particularly in Article 187, paragraph (1) of the Compilation of Islamic Law. This provision grants a legal option to the property owner or potential heirs to distribute assets—assets that would otherwise become inheritance—while the owner is still alive.³⁷ Article 187(1) introduces a new legal mechanism that permits inheritance-like distribution during the owner's lifetime on the condition that the owner's death is not yet realized, thereby classifying such a distribution as a *hibab* rather than a traditional inheritance.

The legal option provided in Article 187 paragraph (1) of the Compilation of Islamic Law (KHI), as reflected in the phrase "may appoint several individuals," is non-absolute and tentative, allowing for three alternative implementations. *First*, during their lifetime, the property owner or prospective heirs may act independently as executors of asset distribution. *Second*, the property owner or future heirs may appoint several individuals to distribute the asset. *Third*, the property owner or potential heirs may not distribute assets until after the owner's death.

The first and second options fall within the *hibab* (grant) distributions of assets intended to become inheritance. These options may be exercised if the posthumous distribution is expected to give rise to disputes (*ikhtilāf*) and perceptions of injustice among the heirs. However, suppose asset distribution after the owner's death does not result in any disputes or inequities among the heirs. In that case, the third option must be chosen—namely, refraining from distributing the assets during the owner's lifetime or before death. Although the first and second options involve forms of distribution that do not fully conform to the traditional rules of inheritance, such *hibab* distributions are legally permissible (*mubāḥ*) as long as they do not harm the interests of rightful heirs—those who would otherwise receive their shares through inheritance upon the owner's death.³⁸

The legal justification for such *hibab* distribution of prospective inheritance assets can be grounded in the principle of *maṣlaḥah mursalah* (public

³⁷Pasal 187 ayat (1) KHI.

³⁸ Sabiq, *Fiqh Al-Sunnah*.

interest). Imam Mālik, in applying this doctrine to situations involving potential harm (*mafsadah*), outlines three essential conditions:³⁹ *First*, the *maṣlaḥah* must serve as an independent legal basis that aligns with the overarching objectives (*maqāṣid*) of Islamic law; *second*, the *maṣlaḥah* must be rational and reasonable, such that it is acceptable to the intellect and recognized by rational-minded individuals; and *third*, the use of *maṣlaḥah* as legal reasoning must aim to alleviate or prevent hardship and potential harm.

Hibah as a Solution to Prevent Disputes in Inheritance Distribution

The distribution of assets that are intended to become inheritance, if carried out through *hibah* (grant) during the lifetime of the property owner to those who are expected to become heirs, may be undertaken when there are reasonable concerns that posthumous distribution under inheritance law may lead to disputes among heirs. These concerns may include: (1) when one of the potential heirs believes they are entitled to a larger share due to their contributions during the owner's lifetime; (2) when one of them feels they are being wronged due to another party's deceit; (3) when an heir is unaware of the falsehood they believe; (4) when someone deliberately fabricates information to benefit from others unjustly; and (5) when a lack of understanding causes differing interpretations of the disputed matter.

These five concerns, which may trigger conflict among heirs following the owner's death, can be effectively addressed through the proactive distribution of assets through *hibah* during the owner's lifetime. The potential for such conflicts is rooted in human nature, which makes these concerns plausible. As explained in Surah Āli' Imrān (3):14, Allah (SWT) reveals that humankind is naturally inclined to love and desire things such as women, children, wealth in gold and silver, fine horses, livestock, and cultivated fields. However, these are merely worldly pleasures, while the true and lasting joy lies with Allah alone.⁴⁰

When inheritance distribution is delayed until after the owner's death and is likely to provoke disputes, a more prudent course of action is to perform the distribution while the owner is still alive. It allows the property owner to participate directly and mitigate any of the five potential causes of dispute.

³⁹ Yanta Sudiben and Eka Putra, "Teori-Teori Hukum Islam Istihsan, Masalah Mursalah Dan Istishab," *Istishab: Journal of Islamic Law* 1, no. 02 (2020): 135–51.

⁴⁰ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 64.

In essence, the lifetime distribution of assets is permissible under the principle of harm prevention (*daf 'al-ḍarar*), which aligns with the theory of *Sadd al-dharī'ah*—the concept of closing the door to harm. This principle supports preventive measures to avert the negative consequences of distributing assets after the owner's death.⁴¹ Suppose inheritance distribution after death is likely to cause harm (*ḍarar*) or damage (*sayyi'ah*). In that case, such outcomes contradict the higher objectives of Islamic law (*maqāṣid al-sharī'ah*), which aim to achieve benefit (*naf'*) and goodness (*ḵhayr*), and to avoid harm and injustice.⁴²

'Izzuddin ibn' Abd al-Salām, in his seminal work “*Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*”, asserts that the entire body of Islamic law (*sharī'ah*) was established to bring about *maṣlahah* (benefit/public interest).⁴³ He further explains that human actions produce two possible outcomes: some yield benefit (*maṣlahah*), while others result in harm (*mafsadah*), affecting worldly and spiritual dimensions. When human actions lead to both benefit and harm—whether in religious or worldly matters—the preferred course of action is the one that maximizes benefit while minimizing harm.

Sa'id Ramadhan al-Buthi, a prominent scholar and professor at the Faculty of Sharī'ah, University of Damascus, explains that the concept of *maṣlahah*, as intended by Allah (SWT) for His servants, relates to the preservation of essential elements: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), progeny (*ḥifẓ al-nasl*), and wealth (*ḥifẓ al-māl*).⁴⁴ Therefore, if the posthumous distribution of inheritance fails to achieve these benefits as outlined in the objectives of Islamic law (*maqāṣid al-sharī'ah*), an alternative mechanism such as *hibah* should be considered.

The distribution of assets through *hibah* (grant) can serve as a means to realize justice and reduce conflict, particularly those that may lead to loss of life. It contributes to the protection of life (*ḥifẓ al-nafs*) and allows families to focus

⁴¹ H. Abd. Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2011), h. 325-326.

⁴² Abu Hamid Muhammad bin Muhammad Al-Ghazali, *Al-Mustashfa Min 'Ilm Al-Ushul, Juʿ I* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), h. 286.

⁴³ 'Izzuddin bin 'Abd. Al-Salam, *Qawa'id Al-Abkam Fi Musalib Al-Anam* (Dar al-Jail, 1980), h. 11.

⁴⁴ Muhammad Sa'id Ramadhan Al-Buthi, *Dhawabith Al-Maslahah Fi Asy-Syari'ah Al-Islamiyyah* (Beirut: Muassasah ar-Risalah, 1990), h. 27.

on religious devotion, thereby also fulfilling the aim of preserving religion (*ḥifẓ al-dīn*).⁴⁵

Furthermore, *hibah* asset distribution can help minimize stress-inducing family conflicts that adversely affect family members' mental and physical health. Providing adequate grants to rightful heirs removes uncertainty about their future, thereby reducing anxiety and psychological tension—thus supporting the preservation of intellect (*ḥifẓ al-‘aql*).

When assets are distributed as *hibah*, the donor maintains control over how those assets are used, especially in cases where heirs may not yet be capable of managing them responsibly. It ensures that the assets are used rationally and in alignment with the ethical guidelines of the *sharī‘ah*, thereby fulfilling the goal of preserving wealth (*ḥifẓ al-māl*).

Moreover, *hibah* offers the opportunity for the donor to provide both financial and practical support to the beneficiaries, ensuring that the inheritance contributes to the welfare of future generations—for instance, through education or entrepreneurship—thus fulfilling the objective of preserving lineage (*ḥifẓ al-nasl*).⁴⁶

Suppose the distribution of assets—intended initially as an inheritance—is carried out through *hibah* and leads to tangible benefits and the realization of the *maqāṣid al-sharī‘ah*. In that case, such a course of action should indeed be pursued. Allah (SWT) commands adherence to what is best, as stated in Surah *Az-Zumar* (39):17–18⁴⁷ and 39:55⁴⁸, and calls for steadfastness upon the best guidance, as noted in Surah *Al-A‘rāf* (7):145. This principle is further supported by a foundational maxim in Islamic jurisprudence: "*Daf ‘al-mafāsīd muqaddam ‘alā jalb al-maṣāliḥ*" – Preventing harm takes precedence over attaining benefit.⁴⁹

Hibah as a Solution to Prevent Injustice in Inheritance Distribution

The distribution of assets during the lifetime of the owner in the form of *hibah* (grant) serves not only a social function but also as a means of spiritual

⁴⁵ Muhammad Ali Ash-Shabuni, *Pembagian Waris Menurut Islam* (Gema Insani, 1995).

⁴⁶ Anang Hadi Kurniawan and Ade Darmawan Basri, "Analisis Terhadap Pembagian Harta Warisan Ditinjau Dari Hukum Perdata Dan Hukum Islam," *Alauddin Law Development Journal* 2, no. 2 (January 2020): 257–62, <https://doi.org/10.24252/aldev.v2i2.15400>.

⁴⁷ Kementerian Agama RI., *Al-Qur‘an Dan Terjemahnya*, h. 661.

⁴⁸ Kementerian Agama RI., *Al-Qur‘an Dan Terjemahnya*, h. 667.

⁴⁹ H. A. Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2010), h. 29.

closeness (*taqarrub*) to Allah (SWT). It helps strengthen kinship ties with recipients, as all heirs receive their portions simultaneously based on principles of justice—either according to allocations determined by the owner or through mutual agreement. However, *hibah* can also give rise to negative emotions such as jealousy, envy, resentment, and even hatred, which may lead to familial conflict and division. It often occurs when the distribution is perceived as unequal or unjust, particularly in grants to children or family members.

Unjust distribution through *hibah* may occur when, during their lifetime, the owner gives portions of the estate to confident children or family members while others receive nothing before the owner's death. Injustice may also arise if a husband grants his property to his first wife while his second wife receives nothing until his death. Similarly, if a father grants his property solely to his son based on the reasoning that sons contribute more to the family's income than daughters, or vice versa—if a daughter is granted assets while the son receives nothing under the assumption that he will later receive a double share of the inheritance—this may also create inequity.

Given the potential for *hibah* asset distribution to cause such inequities among children and family members, any remaining estate—which would automatically become inheritance upon the owner's death—should be distributed fairly following the principles of *ijbārī* (compulsory) and proportional justice, as outlined in Article 187 paragraph (1) of the Compilation of Islamic Law (KHI). By distributing the remainder of the estate through *hibah* following this provision, double distribution to certain heirs—who may have already received assets during the owner's lifetime—can be avoided.

When property owners distribute their assets via *hibah*, they are required to do so fairly, particularly toward their children. It aligns with the teachings of Prophet Muhammad (peace be upon him), who encouraged parents to treat their children equally in gift-giving. It is reflected in a Hadith narrated by al-Ṭabarānī and al-Bayhaqī from Ibn' Abbās (RA), in which the Prophet stated:

"Equalize the gifts you give to your children; and if you are to show preference, then let it be in favor of the daughters." (Narrated by al-Ṭabarānī and al-Bayhaqī)

The recommendation to equalize gifts among children, as emphasized in the Hadith, suggests that all children should receive *hibah* on equal terms while also considering the obligations of the donor to support dependents whose basic needs must be fulfilled. Conversely, if the donor distributes their entire estate to

their children while neglecting others with rightful claims—such as elderly parents—this act of giving may be deemed *ḥarām* (forbidden). The juristic principle underlying this prohibition is the maxim: "Al-wasīlah ilā al-ḥarām ḥarāmun" – Any means leading to what is forbidden is itself forbidden.⁵⁰

The term "justice" (*ʿadālah*)⁵¹ originates from the Arabic root word *ʿadala*, derived from *al-ʿadl*, which linguistically connotes *al-sawīyyah*—meaning equality or balance—and is the opposite of *al-zulm* (injustice) and *al-jawr* (oppression).⁵² The word *al-ʿadl* appears in the Qur'an repeatedly—28 times in various grammatical forms—whether as imperative commands or declarative statements.⁵³ These references occur in diverse contexts and with different connotations, but all emphasize a clear, straight path for establishing justice. This usage is consistent with the meaning of *sharīʿah*, which signifies a clear and manifest-path that guides humanity toward salvation in this world and the Hereafter.

Allah (SWT) affirms in Surah Ash-Shūrā (42):13:⁵⁴

"He has ordained for you the same religion which He enjoined upon Noah, Abraham, Moses, and Jesus: that you should uphold the religion and not be divided therein."

In Surah Al-Mā'idah (5):48, Allah (SWT) reveals that the Qur'an was sent down to Prophet Muhammad (peace be upon him) as the bearer of truth, to affirm and safeguard previous scriptures and to command that judgment be rendered according to its directives. Allah prohibits following the whims of those disbelieving in the Qur'an and abandoning the truth. Surah Al-Jāthiyah (45):18 commands the Prophet and his followers to adhere strictly to the religious code (*sharīʿah*) revealed in the Qur'an and forbids compliance with the desires of those ignorant of divine law. Furthermore, Surah An-Naḥl (16):90 establishes a foundational *sharīʿah* command: act justly, act kindly toward relatives, and refrain from indecency and wrongdoing.⁵⁵

Sayyid Qutb explains that justice must be transparent and impartial, never restricted to specific individuals based on ethnicity, nationality, or religion. Those

⁵⁰ Djazuli. h. 32.

⁵¹ Ali Parman, *Kewarisan Dalam Al-Qur'an; Suatu Kajian Hukum Dengan Pendekatan Tafsir Tematik* (Jakarta: PT. Raja Grafindo Persada, 1995), h. 10.

⁵² Lawis Ma'luf, *Al-Munjid* (Beirut, 1937), h. 491.

⁵³ Amir Syarifuddin, *Hukum Kewarisan Dalam Islam* (Jakarta: Kencana, 2004), h. 19.

⁵⁴ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 694-695.

⁵⁵ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 377.

who embody justice consistently walk the straight path, treating others equally, upholding truth, and avoiding partiality or imbalance in any direction.⁵⁶ Granting each individual what is right is considered an act of justice. According to Ibrahim Mustafa in his lexicon *al-Mu'jam*, justice is also defined as fulfilling one's obligations. Just treatment is a fundamental right that ensures no person receives undue privilege over others.⁵⁷

Said bin Jubayr, a hadith scholar, outlined four contextual meanings of justice:⁵⁸

1. In legal terms, it means "acting justly";
2. In speech, it denotes truthfulness and honesty;
3. It can also signify redemption or compensation;
4. In another context, it may refer to polytheism (shirk).

Al-Jurjānī defines justice as steadfast adherence (*istiqāmah*) to the path of truth while avoiding all acts that may corrupt one's faith.⁵⁹ 'Abdurrahmān as-Sa'dī elaborates on the notion of divine justice, asserting that true justice must encompass Allah's and His servants' rights. In this view, justice involves the complete execution of obligations commanded by Allah, particularly in matters concerning property and human life.⁶⁰ Scholars from the Ḥanbalī school and some from the Ḥanafī school have diverging views from other jurists, arguing that justice in the context of gift-giving to children must align with the inheritance framework prescribed in the Qur'an.⁶¹

Scholars hold differing opinions about the concept of justice in *hibah* (grant), each offering interpretations from distinct perspectives. These differences must be contextualized within the evolving nature of social life, which inevitably influences the allocation of property and the rights attached to it. Justice in this context does not necessarily mean equal quantity or uniform distribution. Instead,

⁵⁶ Winarto, "Term-Term Keadilan Dalam Perspektif Al-Quran," *Syariat* III (2017), h. 2.

⁵⁷ Ibrahim Mustafa, *Al-Mu'jam Al-Wasit* (Theheran: al-Maktabag al-Ilmiyyah, 1934), h. 539.

⁵⁸ Azyumardi dan Nina Armando Azra, *Ensiklopedi Islam Jilid I* (Jakarta: Ichtar Baru van Hoeve, 2005), h. 82.

⁵⁹ Al-Jurjani, *At-Ta'rifat* (Beirut: Darul Kutub al-'Ilmiyah, 1983), h. 147.

⁶⁰ Abdurrahman As-Sa'di, *Taisīrul Karīm Ar-Rahmān Fi Tafīr Kalāmil Mannān* (Beirut: Muassasah Risalah, 2000), h. 447.

⁶¹ Wahbah Al-Zuhailiy, *Al-Fiqh Al-Islami Wa Adillatub, Juz V* (Suriah: Dar al-Fikr al-Mu'ashir, 1418 H./1997 M), h. 652.

the donor must consider each recipient's specific needs and their respective social circumstances.⁶² The Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) emphasizes that judges in the Religious Courts (Pengadilan Agama), in adjudicating cases that fall under their absolute jurisdiction—including inheritance disputes—must earnestly consider the living legal values present within society. It ensures that court decisions, whether in voluntary (non-contentious) applications or contentious litigation, are rendered that reflect and align with the prevailing sense of justice within the community.⁶³

The Construction of Hibah as a Form of Asset Distribution for Inherited Property in Indonesia

Construction refers to a structure's framework, design, or layout—such as a bridge, house, or other building.⁶⁴ Distribution is channeling or delivering something to several individuals or locations.⁶⁵ Inheritance refers to something passed down, such as property, reputation, or legacy assets.⁶⁶ Thus, the construction of asset distribution during the testator's lifetime refers to the implementation model for transferring the testator's property and legal rights to the heirs while the testator is still alive. This practice is regulated under Indonesian Islamic family law and is formally outlined in several articles of Book II of the Compilation of Islamic Law (Kompilasi Hukum Islam, or KHI).

Validation of the Deceased's Estate, Including Movable and Immovable Assets, as the Property and Rights of the Testator During Their Lifetime

Before conducting property distribution during the testator's lifetime in the form of *hibah* (grant) concerning assets that will later become inheritance, specific preparatory steps must be undertaken by the property owner, the prospective heirs, or designated individuals appointed to distribute the distribution. These steps include Recording all movable and immovable assets, as well as the owner's legal rights, into a comprehensive estate inventory;⁶⁷

Validating and, where necessary, appraising the value of these assets in monetary terms. The verification of ownership over both physical assets and legal

⁶² Makka et al., "Analysis of Inheritance Restrictions in Islamic Law: Slander in the Perspective of Qiyas Musawi and Legal Istinbath."

⁶³Pasal 299 KHI.

⁶⁴ Departemen Pendidikan Nasional, *Kamus Besar Babasan Indonesia. Edisi III* (Jakarta: Balai Pustaka, 2005), h. 590.

⁶⁵ Departemen Pendidikan Nasional, *Kamus Besar Babasan Indonesia. Edisi III*, h. 270.

⁶⁶ Departemen Pendidikan Nasional, *Kamus Besar Babasan Indonesia. Edisi III*, h. 1269.

⁶⁷Pasal 187 huruf a KHI.

rights is crucial to prevent the commingling of the owner's property with that of others. Whether involving property acquired prior to marriage (*harta bawaan*), jointly acquired marital assets (*harta bersama*), or items belonging to third parties that are merely in the owner's possession, such as entrusted goods or deposits.

Mixing ownership rights and property with others can potentially lead to unlawful claims over such property (*bāṭil*). In Surah An-Nisā' (4):29, Allah (SWT) explicitly forbids believers from unjustly consuming one another's wealth, except through mutually agreed upon trade. This prohibition is echoed in a fundamental legal maxim of Islamic jurisprudence: "It is impermissible for anyone to take another person's property without a lawful basis recognized by the Sharī'ah."⁶⁸

The unlawfully acquired property includes wealth obtained through theft, extortion, robbery, and corruption.⁶⁹ On the other hand, wealth that may be lawfully acquired includes zakat funds from qualified muzakkī (those obligated to give zakat) or property that a wife may rightfully take from her husband as *nafaqah* (maintenance) to meet the essential needs of herself and her children, such as food, clothing, and shelter.⁷⁰

Validation of Expenses Incurred During the Testator's Lifetime for Their Posthumous Interests

The personal expenses of a property owner during their lifetime are considered obligations and responsibilities that must be fulfilled by the heirs and charged to the estate.⁷¹ These expenses must be calculated and settled before distribution to rightful beneficiaries occurs.⁷² They include costs related to the management and completion of funeral rites,⁷³ debt repayment—including expenses incurred for medical treatment and care⁷⁴—and the execution of the owner's bequests (*waṣīyyah*).⁷⁵

The handling and finalization of funeral arrangements, up to the burial, is a right of the deceased and must be financed from the estate, provided it is done

⁶⁸ H. A. Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2010), h. 146.

⁶⁹ H. Zainuddin Ali, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2007), h. 62-67.

⁷⁰ Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*, 2010, h. 146.

⁷¹ Pasal 175 ayat (1) KHI.

⁷² Pasal 187 ayat (1) huruf b KHI.

⁷³ Pasal 187 ayat (1) huruf b KHI.

⁷⁴ Pasal 175 ayat (2) KHI.

⁷⁵ Pasal 175 ayat (1) KHI.

without extravagance not to diminish the rightful shares of the heirs. As stated in Surah Al-Furqān (25):67, Allah (SWT) explains that those who spend should neither wastefully nor stingily, but rather moderately—between the two extremes.⁷⁶ The responsibility for settling the deceased's debts, including medical and caregiving costs, rests with those entitled to the estate and must be adjusted according to the total value of the assets left behind.⁷⁷ Regarding the execution of a *waṣiyyah*, it must not exceed one-third of the estate unless all heirs unanimously consent to increase the amount beyond that limit.⁷⁸

Distribution of Inheritance to the Eligible Heirs

The distribution of assets during the property owner's lifetime is carried out after deducting necessary expenditures that have been formally validated for the owner's benefit and set aside as preparation for the eventuality of their death. Any remaining portion of these validated expenditures is still considered part of the estate and must be distributed to those entitled to receive it.⁷⁹ The shares distributed to eligible recipients must continue to adhere to the rules of inheritance distribution as established under Islamic inheritance law in Indonesia, as codified in Book II of the Compilation of Islamic Law (KHI), Articles 176 through 182.

When the property has already been distributed during the owner's lifetime in the form of *hibah* (grant), and such distribution does not violate the principles of justice, Indonesia's Islamic family law—as articulated in the inheritance provisions of the KHI—allows for legal modifications in the method of distributing inheritance, whether during the owner's life or posthumously. These legal modifications provide three lawful alternatives for asset distribution that may be selected in cases where the standard distribution method fails to reflect justice.

First, distribution may be carried out through mutual agreement (*ṣulḥ*) and reconciliation, provided the beneficiaries are fully aware of their rightful shares as prescribed by Islamic inheritance law.⁸⁰ Reconciliation in inheritance matters effectively prevents heirs' dissatisfaction concerning their Qur'anic and

⁷⁶ Kementerian Agama RI., *Al-Qur'an Dan Terjemahnya*, h. 511.

⁷⁷ Pasal 175 ayat (2) KHI.

⁷⁸ Pasal 195 ayat (2) KHI.

⁷⁹ Pasal 187 ayat (2) KHI.

⁸⁰ Pasal 183 KHI.

Prophetic entitlements and accounts for previous *hibah* that may have been granted to certain heirs.

The virtue of reconciliation is illustrated in a report where the Prophet Muhammad (peace be upon him) rests with his wife, Umm Salamah, at their home near the mosque in Madinah and overhears a quarrel outside. Upon investigating, he found two brothers disputing over the inheritance of their deceased parents, some of which had already been consumed, and no witnesses could verify which of them had taken more.⁸¹ The Prophet (peace be upon him) said:

"I am merely a human being like you. We bring our disputes to us, and one of us may be more eloquent in presenting his argument than the other, so we judge according to what We hear. However, if we award someone something that is not rightfully theirs, it is as if we have given them a piece of the Hellfire."

Hearing this, the two brothers wept and said to one another, "Your right is my right." The Prophet then said,

"If so, then share it between you justly, recognize the truth, and forgive one another." (Narrated by Abū Dāwūd)⁸²

Second, if reconciliation cannot be reached, the following legal option is to account for the previous *hibah* distributions⁸³ that have already taken place and integrate them into the inheritance calculations.

Third, if neither reconciliation nor adjustment through prior *hibah* can be implemented, the final option is to revoke the previously given *hibah*.⁸⁴ This revocation is based on the Hadith narrated by al-Nu'mān ibn Bashīr (RA), who once declared from the pulpit: "My father gave me something, and 'Amrah bint Rawāḥah said, 'I will not be satisfied until you make the Prophet (peace be upon him) a witness to it.' So he went to the Prophet and said, 'I have given my son something, and his mother asked me to make you a witness, O Messenger of Allah.' The Prophet asked, 'Have you given all your children the same?' He replied,

⁸¹ Haji Munir, "Wealth Distribution among Sasak Communities Through Inheritance: A Quest for Justice."

⁸² Satria Effendi M. Zen and Satria Effendi, *Problematika Hukum Keluarga Islam Kontemporer (Analisis Yurisprudensi Dengan Pendekatan Ushuliyah)* (Prenada Media, 2004), h. 293-294.

⁸³ Pasal 211 KHI.

⁸⁴ Pasal 212 KHI.

'No.' Then the Prophet said, 'Fear Allah and be just with your children.' Bashīr then returned and revoked his gift." (HR. al-Bukhari dan Muslim).⁸⁵

Fourth, if reconciliation (first method) is not reached and the second and third methods cannot be implemented, distribution must revert to the provisions established in the Qur'an and Hadith. However, before applying asset distribution strictly according to Islamic inheritance law, the property owner is advised to first grant a portion of their assets (*hibah*) to those entitled heirs who have not yet received a gift—or even to those who have, in cases where strict adherence to the formal rules of inheritance would still result in injustice.⁸⁶

The applicable legal provisions for inheritance distribution are outlined in Articles 176 to 182 of the Compilation of Islamic Law (KHI) and the Qur'anic verses Surah An-Nisā (4):11, 12, and 176. If *hibah* is not extended to balance potential injustices toward heirs—whether or not they have previously received a gift—then distributing assets strictly according to these formal rules might result in perceived inequity. In such cases, this practice would conflict with a Hadith narrated by al-Ṭabarānī and al-Bayhaqī from Ibn' Abbās (RA), in which the Prophet Muhammad (peace be upon him) said:

*"Equalize the gifts you give to your children, and if you are to favor one, then let that preference be given to the daughter."*⁸⁷

Most hadith scholars interpret this Hadith as establishing that equal treatment in gift-giving between sons and daughters is recommended (*sunnah*) rather than obligatory (*wājib*).⁸⁸ Regarding both the quality and quantity of *hibah* granted to sons and daughters, jurists differ:

1. Scholars such as Muḥammad ibn al-Ḥasan, Aḥmad, Ishāq, and others argue that equality in *hibah* should follow the distribution model of inheritance, as it reflects the children's rightful shares after the parent's death.
2. Other scholars maintain that *hibah* should be granted equally to male and female children without distinction. They base this on the textual strength of the Hadith, further reinforced by narration from 'Abdullāh ibn' Abbās (RA):

⁸⁵ Abu Abdillah Ahmad bin Muhammad bin Isma'il al-Bukhari Imam al-Bukhari, *Shabih Al-Bukhari*, Juz IX (Semarang: Maktabah wa Mathba'ah Toha Putra, 2003), h. 341.

⁸⁶ Rohman and Muafatun, "Hacking Muhammad Syahrû's Hudûd Theory and Its Relevance to the Inheritance of Sangkolan Madurese People."

⁸⁷ al-Thabrani dan al-Bayhaqī.

⁸⁸ Abu al-'Ala Muhammad 'Abd al-Rahman ibn 'Abd al-Rahim Al-Mubarakfuri, *Tubfah Al-Ahwadzî Syarh Al-Jami' AITurmudzi*, Juz IV, (Beirut: Dar alKutub al-'Ilmiyah, n.d.), h. 507.

"Treat your children equally in giving. If I were to favor one, I would favor the daughter."⁸⁹

From both textual and contextual interpretations of the Hadith, it may be concluded that the equal distribution of *hibah* between sons and daughters carries the legal status of *sunnah mu'akkadah* (highly recommended). It is based on two important considerations:

1. To prevent jealousy and potential conflict among children, which could escalate into broader familial discord.
2. Avoid disobedience or resentment toward parents by children who may feel discriminated against or unjustly treated.

The asset distribution methods described above represent legal alternatives (*ikhtiyārāt ḥukmiyyah*) to address injustices in the distribution of inheritance to rightful heirs. These methods may be exercised during the testator's lifetime or after death, whether initiated by the testator or the heirs. Additionally, these mechanisms may be applied within the dispute resolution framework at the Religious Courts.

Conclusion

Based on the above descriptions related to the distribution of assets in the form of grants to assets that will become inheritance assets, the law is permissible (*mubah*) with the conclusion; First, the distribution of assets that will become inheritance assets in the form of grants is a legal option with two considerations: 1) if the distribution of assets is carried out after the death of the testator causing conflict, 2) if it causes injustice among the heirs; Second, the construction of the distribution of assets during the lifetime of the owner of the assets is three: 1) to validate the assets in the form of movable and unentitled objects as the property and rights of the testator during his lifetime, 2) to validate the expenditure during the testator's lifetime for the benefit of the owner of the assets after death, 3) to distribute the assets to the entitled persons, in four ways as a legal option as follows: a. the owner of the assets with the entitled persons can distribute the assets by agreeing to make peace on the condition that after the entitled persons know their respective shares, if the agreement to make peace is unsuccessful, then b. the owner of the assets takes into account the grants that have been made previously, if they cannot make peace and cannot take into account the grants before the distribution of assets, then c. the owner of the property can withdraw the grant to the people who have been granted the property, if all of these

⁸⁹ Abu Bakr Ahmad ibn al-Husain ibn 'Ali ibn Musa Al-Baihaqi, *Sunan Al-Baihaqi Al-Kubra*, Juz' VI (Makkah al-Mukarramah: Maktabah Dar al-Baz, n.d.), h. 177.

methods cannot be carried out, then the last method carried out by the owner of the property is d. to distribute the property based on the provisions of Islamic inheritance law by first granting it to people who, if the distribution of the property is carried out based on the provisions of inheritance law, would result in injustice.

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