

Legal Certainty of Oral Grants in Islamic Inheritance Disputes A Juridical Analysis of the Revocation of Hibah after the Grantor's Death

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ABSTRACT

This study examines the legal certainty of oral hibah in Islamic inheritance disputes and analyzes the juridical implications of revoking hibah after the grantor's death. Existing studies have generally focused on the validity of hibah under Islamic law or inheritance disputes separately, while limited attention has been given to the legal uncertainty arising from oral hibah claims after the death of the grantor and the need for a comprehensive legal reconstruction. The novelty of this study lies in proposing a legal reconstruction model that integrates Islamic inheritance principles, evidentiary law, and economic law considerations to strengthen legal protection for hibah recipients. This research employs normative legal methods using statutory, conceptual, and case approaches. Data were collected through an examination of legislation, the Compilation of Islamic Law, judicial decisions, classical and contemporary Islamic legal doctrines, and relevant scholarly literature. The findings indicate that although oral hibah is substantively valid under Islamic law when its pillars and conditions are fulfilled, its enforcement frequently encounters evidentiary obstacles that generate legal uncertainty and inheritance disputes. From an economic law perspective, such uncertainty may undermine property rights protection, family asset distribution, and socio-economic stability. The study proposes a legal reconstruction through mandatory evidentiary reinforcement, formal acknowledgment mechanisms involving notaries and village authorities, and clearer regulations governing the status and revocation of oral hibah after the grantor's death. These measures provide practical guidance for judges, notaries, local authorities, and policymakers

in ensuring legal certainty, preventing inheritance conflicts, and harmonizing maqashid al-sharia with Indonesia's national legal system.

Keywords: Oral Hibah, Legal Certainty, Inheritance Dispute, Islamic Law.

INTRODUCTION

The issue of hibah (inter vivos grants) in Islamic inheritance law continues to generate complex legal disputes in Muslim societies, particularly when the grant is conducted orally without written documentation or authentic legal evidence. In many Indonesian Muslim families, oral hibah is commonly practiced based on trust, kinship, and religious morality rather than formal legal procedures. However, legal problems frequently emerge after the death of the grantor when heirs attempt to revoke the hibah and classify the granted property as inheritance assets. This condition creates legal uncertainty concerning ownership rights, evidentiary validity, and legal protection for hibah recipients within the framework of Islamic inheritance law and national positive law (Fadillah et al., 2023; Wahyuni, 2021). The absence of written proof often places oral hibah in a vulnerable legal position, especially when disputes are brought before religious courts.

In Islamic jurisprudence, hibah is recognized as a lawful transfer of property conducted voluntarily during the lifetime of the grantor. The legitimacy of hibah is closely related to principles of justice, maslahat, and protection of family welfare (Saputra et al., 2021). Nevertheless, classical and contemporary Islamic scholars differ regarding the permissibility of revoking hibah, particularly when the grantor has passed away and the heirs seek to reclaim the object of hibah. Sharif and Said (2022) emphasized that maqasid sharia principles require legal mechanisms capable of protecting both social harmony and individual ownership rights in hibah transactions. Similarly, Hidayat et al. (2022) explained that disputes concerning cancellation of hibah frequently arise due to the lack of authentic legal evidence and differing interpretations among Islamic legal schools regarding revocation rights.

Several previous studies have discussed hibah from various perspectives. Adhani and Atmaja (2020) examined the cancellation of hibah caused by the impoverishment of the grantor and focused primarily on the grantor's economic protection. Bashori and Ichsan (2021) analyzed judicial cancellation of hibah in religious courts but limited their discussion to procedural judicial considerations. Hasanah (2022) explored inheritance disputes caused by negligence of hibah recipients within Islamic and positive law perspectives, while Fadillah et al. (2023) studied legal certainty regarding land grants without written documents in relation to the Civil Code and the Compilation of Islamic Law. Furthermore, Prakoso et al. (2024) investigated legal certainty in waqf without authentic deeds,

emphasizing the importance of formal documentation in Islamic property transactions. Although these studies contribute significantly to the discourse of Islamic property law, they generally focus on cancellation procedures, formal legality, or ownership disputes separately.

The existing literature demonstrates a significant research gap regarding the juridical consequences of revoking oral hibah after the death of the grantor within Islamic inheritance disputes. Previous studies have not comprehensively examined the intersection between oral hibah practices, inheritance claims by heirs, evidentiary weaknesses, and legal certainty from both Islamic jurisprudence and Indonesian positive law perspectives. Moreover, limited attention has been given to how oral hibah creates normative tension between familial trust-based traditions and modern legal requirements demanding formal written evidence. Consequently, the legal status of oral hibah remains ambiguous and often produces inconsistent judicial interpretations in inheritance disputes (Wahyuni, 2021; Hasanah, 2022).

The novelty of this research lies in its integrated juridical analysis of the revocation of oral hibah after the grantor's death by combining Islamic inheritance law, legal certainty theory, and maqasid sharia perspectives. Unlike previous studies that mainly discuss cancellation of hibah or formal grant documentation independently, this research specifically focuses on oral hibah as a socio-legal phenomenon that frequently occurs in Muslim communities yet lacks adequate legal protection. This study also offers a reconstruction of legal protection mechanisms for oral hibah recipients in order to minimize inheritance conflicts and strengthen legal certainty within Islamic family law. In this regard, legal certainty is not merely interpreted through formal legality but also through substantive justice and social protection principles as emphasized in legal philosophy discourse (Ali, 2023; Mangesti & Tanya, 2014).

This research is important because inheritance disputes involving oral hibah continue to increase alongside the persistence of informal family property transfers in Indonesian society. The absence of legal documentation often leads to prolonged family conflicts, uncertainty of ownership status, and overlapping claims between hibah recipients and heirs. Therefore, this study aims to analyze the legal position of oral hibah in Islamic inheritance disputes, examine the juridical implications of revoking hibah after the grantor's death, and formulate a legal protection framework capable of ensuring justice, legal certainty, and social harmony within Islamic inheritance law.

RESEARCH METHODS

This study employed a qualitative juridical research method with an interdisciplinary approach to analyze the legal certainty of oral hibah in Islamic

inheritance disputes, particularly concerning the revocation of hibah after the death of the grantor. Qualitative research was considered appropriate because this study sought to understand legal phenomena comprehensively through interpretation of legal norms, judicial reasoning, and social realities related to oral hibah practices within Muslim communities. According to Ratnaningtyas et al. (2023), qualitative research emphasizes an in-depth understanding of social and legal phenomena through descriptive and interpretative analysis. Furthermore, Kaelan (2010) explained that interdisciplinary qualitative legal research enables the integration of normative Islamic principles, legal philosophy, and sociological realities in examining religious legal issues.

This research applied a normative juridical approach supported by conceptual and statutory approaches. The normative approach was used to examine legal norms concerning hibah in Islamic law, the Compilation of Islamic Law, and relevant civil law provisions governing grants and inheritance disputes. The conceptual approach was utilized to analyze theories of legal certainty, legal protection, justice, and maqasid sharia related to oral hibah and inheritance conflicts. In addition, this study explored legal doctrines and judicial interpretations concerning the cancellation or revocation of hibah after the death of the grantor. Sugiyono (2017) stated that qualitative legal research allows researchers to construct systematic interpretations based on legal documents, theories, and social realities to produce comprehensive legal conclusions.

The sources of data in this study consisted primarily of secondary legal materials, including legislation, legal doctrines, journal articles, books, and previous research relevant to hibah, inheritance law, and Islamic jurisprudence. Primary legal materials included the Compilation of Islamic Law, provisions of the Indonesian Civil Code related to grants, and Islamic legal principles derived from fiqh literature. Secondary legal materials were obtained from academic journals, books on Islamic inheritance law, legal philosophy, and scholarly publications discussing legal certainty and hibah disputes. Data collection techniques were conducted through documentation and literature review by identifying, classifying, and analyzing relevant legal materials systematically.

The data were analyzed using descriptive-analytical methods through legal interpretation and content analysis. The researcher interpreted legal norms and judicial concepts related to oral hibah and evaluated their implementation within inheritance dispute practices. The analysis process involved data reduction, data presentation, and conclusion drawing to formulate legal arguments concerning the legal status of oral hibah and the juridical implications of its revocation after the grantor's death. Through this method, the study aimed to produce a comprehensive legal analysis capable of contributing to the development of

Islamic inheritance law and strengthening legal protection for hibah recipients in Indonesia.

RESULTS AND DISCUSSION

Concept and Legal Basis of Hibah in Islamic Law

Hibah in Islamic law is fundamentally understood as a voluntary transfer of ownership from one person to another conducted during the lifetime of the grantor without expecting compensation. The concept of hibah reflects the principles of generosity, social solidarity, and justice that are strongly emphasized within Islamic legal teachings. In Islamic jurisprudence, hibah is categorized as part of mu'amalah law, which regulates human interactions and property relations. The legitimacy of hibah is derived from the Qur'an, Hadith, and the consensus of Islamic scholars who recognize the permissibility and virtue of transferring property voluntarily to strengthen kinship and social welfare. Islamic law views hibah not merely as a material transaction but also as a moral and spiritual act intended to create harmony and mutual assistance within society. Therefore, hibah possesses both legal and ethical dimensions in Islamic legal philosophy, particularly concerning the protection of family welfare and social justice (Saputra et al., 2021; Anshori, 2018; Ali, 2023).

The legal basis of hibah in Islamic law can be traced to several Qur'anic principles encouraging Muslims to give wealth sincerely and compassionately to relatives and others in need. The implementation of hibah is also supported by Prophetic traditions emphasizing the importance of mutual giving to strengthen affection among Muslims. Classical Islamic jurists established several essential pillars of hibah, namely the grantor, recipient, object of hibah, and declaration of transfer (ijab and qabul). These elements must be fulfilled to ensure the validity of the hibah transaction. In practice, Islamic jurisprudence does not strictly require written documentation as an absolute condition for the validity of hibah because oral statements accompanied by transfer of possession may already constitute a valid grant. Nevertheless, contemporary legal systems increasingly emphasize formal evidence and written documentation to prevent future disputes and ensure legal certainty. This development demonstrates the interaction between traditional Islamic legal values and modern evidentiary systems in Muslim societies (Ismail Pane et al., 2022; Zainuddin, 2017; Abdullah, 2020).

Within the Indonesian legal framework, hibah is regulated through the Compilation of Islamic Law and several provisions of civil law that recognize grants as lawful property transfers. The Compilation of Islamic Law provides normative guidance concerning hibah, including limitations intended to maintain fairness among heirs and prevent inheritance disputes. Islamic law permits parents to grant property to their children during their lifetime; however, such transfers must still consider principles of justice and family balance. Amin (2016)

explained that hibah granted by parents to children may function as an anticipatory mechanism in inheritance distribution, although it should not create injustice toward other heirs. This interpretation reflects the broader objective of Islamic law in preserving social harmony and preventing future family conflicts. Consequently, the concept of hibah in Islamic law cannot be separated from maqasid sharia principles emphasizing justice, benefit, and legal protection for all parties involved (Amin, 2016; Sharif & Said, 2022; Gaffar et al., 2021).

The philosophical foundation of hibah also demonstrates the close relationship between law and morality within Islamic legal thought. Islamic law does not merely regulate legal validity but also evaluates ethical propriety in property distribution. The principle of *maslahat* becomes central in determining whether a hibah transaction fulfills social justice and family welfare objectives. According to Abduh and Hamidah (2021), Islamic legal reasoning based on *maslahat* emphasizes the realization of public benefit and prevention of harm in legal implementation. This perspective is relevant in hibah disputes because the legality of a grant should also consider its social consequences for heirs and family members. Legal philosophy scholars similarly argue that law must embody moral values and substantive justice rather than relying solely on procedural formalism. Therefore, the legal basis of hibah in Islamic law integrates normative legality with ethical and social considerations to create balanced legal protection within family property relations (Abduh & Hamidah, 2021; Mangesti & Tanya, 2014; Ali, 2023).

Although hibah is legally recognized in Islamic law, disputes frequently arise concerning the cancellation or revocation of hibah, particularly after the death of the grantor. Islamic jurists differ regarding the permissibility of withdrawing hibah once ownership has been transferred to the recipient. Some scholars allow limited revocation under exceptional circumstances, while others prohibit it entirely to protect ownership rights and legal certainty. Contemporary disputes commonly emerge when heirs attempt to reclaim property previously granted orally by deceased parents and categorize it as inheritance property. Such conflicts become increasingly complex when the hibah lacks authentic written documentation. Studies by Adhani and Atmaja (2020) and Bashori and Ichsan (2021) reveal that many hibah disputes in Indonesian courts originate from unclear evidence and differing interpretations regarding revocation rights. This condition demonstrates that oral hibah, although religiously permissible, often encounters juridical challenges in modern legal systems demanding formal evidentiary standards.

The issue of legal certainty in oral hibah has become increasingly significant in contemporary Islamic legal practice. Modern legal systems prioritize documentation and authentic deeds as mechanisms for protecting ownership rights and minimizing disputes. Fadillah et al. (2023) argued that the absence of

written proof frequently weakens the legal standing of hibah recipients in inheritance disputes, particularly regarding land ownership. Similar concerns are also reflected in discussions on legal protection and evidentiary responsibility within notarial practice, emphasizing the importance of formal legal instruments in ensuring certainty and protection of rights (Permana et al., 2024; Widyadhana et al., 2024). Therefore, while Islamic law substantively recognizes oral hibah, the contemporary legal context requires stronger evidentiary mechanisms to harmonize religious principles with the demands of legal certainty and justice in inheritance disputes.

Legal Position of Oral Hibah in Indonesian Islamic Inheritance Law

The legal position of oral hibah in Indonesian Islamic inheritance law remains a complex and frequently debated issue because it intersects between religious legitimacy, social customs, and formal legal requirements. In many Indonesian Muslim communities, oral hibah is commonly practiced based on familial trust and verbal agreements without written documentation or authentic legal deeds. From the perspective of Islamic jurisprudence, oral hibah may be considered valid as long as the essential pillars of hibah are fulfilled, including the existence of the grantor, recipient, object of hibah, and transfer of ownership through consent and acceptance. However, within the context of modern legal systems, the absence of formal evidence often creates legal uncertainty and difficulties in proving ownership rights when disputes arise among heirs after the death of the grantor. Consequently, the legal status of oral hibah occupies an ambiguous position between substantive religious validity and procedural legal certainty in Indonesian inheritance law (Saputra et al., 2021; Ismail Pane et al., 2022; Fadillah et al., 2023).

The Compilation of Islamic Law in Indonesia recognizes hibah as a lawful transfer of property conducted during the lifetime of the grantor. Nevertheless, the Compilation does not comprehensively regulate the evidentiary mechanisms for oral hibah, particularly in inheritance disputes brought before religious courts. This normative limitation often results in varying judicial interpretations regarding the legal force of oral grants. Amin (2016) explained that hibah within Islamic family law can function as a substitute mechanism for inheritance distribution among children, especially when conducted by parents before death. However, when such hibah lacks formal documentation, disputes frequently emerge concerning whether the transferred property should remain under the ownership of the recipient or be returned as inheritance assets for redistribution among heirs. This situation demonstrates that Indonesian Islamic inheritance law still faces challenges in harmonizing religious traditions of oral transactions with

the demands of formal evidentiary standards required in judicial proceedings (Amin, 2016; Bashori & Ichsan, 2021; Hasanah, 2022).

The issue of legal certainty becomes increasingly important in oral hibah disputes because modern legal systems prioritize written evidence and authentic deeds as instruments of legal protection. Legal certainty is one of the fundamental objectives of law to ensure predictability, protection of rights, and fairness in legal relationships. In the context of hibah, legal certainty is necessary to prevent overlapping claims between hibah recipients and heirs after the death of the grantor. Fadillah et al. (2023) emphasized that hibah transactions involving land without written documentation frequently create uncertainty concerning ownership status because religious validity alone is often insufficient to establish legal proof before courts or land administration authorities. Similarly, Wahyuni (2021) argued that legal certainty in hibah arrangements requires clear procedural and evidentiary mechanisms to prevent arbitrary interpretations and inheritance conflicts. Therefore, although oral hibah may be accepted normatively within Islamic law, its practical implementation in Indonesia remains vulnerable without formal legal evidence.

The position of oral hibah in Indonesian law is also closely related to broader principles of legal protection and evidentiary responsibility. Modern legal systems emphasize the importance of authentic deeds and written agreements as preventive legal mechanisms to minimize disputes and strengthen the enforceability of rights. In this regard, notarial institutions play an essential role in providing evidentiary certainty and legal protection for parties involved in property transfers. Studies concerning legal protection in notarial practices indicate that formal legal documentation functions not only as proof of ownership transfer but also as a safeguard against future legal conflicts (Firmansyah, 2024; Permana et al., 2024). The urgency of documentary evidence is further reinforced in inheritance matters where disputes among heirs often involve competing claims over family assets. Consequently, the absence of written hibah deeds weakens the legal standing of recipients and increases the possibility of judicial revocation or reinterpretation of ownership rights after the grantor's death (Widyadhana et al., 2024; Yetniwati et al., 2021).

From the perspective of Islamic legal philosophy, the recognition of oral hibah reflects the flexibility and social orientation of Islamic law in accommodating community traditions and interpersonal trust. Islamic law historically developed within societies where oral agreements and witness testimony played central roles in legal transactions. However, contemporary legal developments require adaptation to increasingly complex property relations and evidentiary standards. Abdullah (2020) explained that the implementation of Islamic legal principles in modern state systems often involves harmonization

between religious norms and legislative requirements to ensure legal effectiveness and certainty. Similarly, Anshori (2018) argued that the philosophy of hibah in Indonesia should not merely focus on religious permissibility but also on the realization of justice, benefit, and legal protection for all parties. Thus, the contemporary legal position of oral hibah must be understood not only through doctrinal Islamic legality but also through its practical implications within modern legal institutions.

Disputes concerning oral hibah frequently arise when heirs challenge the validity of grants after the death of the grantor and attempt to classify the hibah property as inheritance assets. Judicial practice demonstrates that courts often evaluate oral hibah based on witness testimony, physical control over property, and social acknowledgment within the family environment. Nevertheless, the absence of written proof remains a significant obstacle in establishing legal certainty. Studies by Hidayat et al. (2022) and Adhani and Atmaja (2020) reveal that revocation or cancellation of hibah frequently occurs due to evidentiary weaknesses and disputes over fairness among heirs. This situation illustrates that oral hibah, despite being socially accepted and religiously permissible, remains juridically fragile in the Indonesian inheritance law system. Therefore, stronger legal mechanisms and clearer regulations are necessary to protect hibah recipients while maintaining harmony between Islamic legal values, family justice, and the principles of legal certainty in contemporary Indonesian society.

Juridical Analysis of the Revocation of Hibah after the Grantor's Death

The revocation of hibah after the death of the grantor constitutes one of the most controversial issues in Islamic inheritance law because it involves competing claims between the rights of hibah recipients and the inheritance rights of heirs. In principle, hibah in Islamic law is intended as a voluntary and binding transfer of ownership conducted during the lifetime of the grantor. Once the hibah fulfills its legal pillars and the object has been transferred to the recipient, the ownership status should legally shift from the grantor to the recipient. However, in practice, many disputes emerge when heirs challenge the validity of the hibah after the grantor's death, particularly when the hibah was performed orally without authentic written evidence. Such disputes often result in legal uncertainty concerning whether the transferred property should remain under the control of the hibah recipient or be reclassified as inheritance property subject to redistribution among heirs. This juridical conflict demonstrates the tension between Islamic legal doctrine, social customs, and evidentiary standards within Indonesian inheritance law (Bashori & Ichsan, 2021; Hasanah, 2022; Fadillah et al., 2023).

From the perspective of Islamic jurisprudence, scholars differ regarding the permissibility of revoking hibah after ownership has been transferred. Some Islamic jurists generally prohibit the withdrawal of hibah because it contradicts principles of legal certainty and protection of ownership rights. Nevertheless, limited exceptions are recognized in certain circumstances, particularly regarding parental hibah granted to children. Islamic legal literature acknowledges that parents may possess a restricted right to revoke hibah granted to their children under specific conditions, provided such revocation does not create injustice or harm. However, after the death of the grantor, the authority to revoke hibah becomes legally problematic because ownership rights are no longer directly attached to the deceased grantor. Consequently, heirs attempting to reclaim hibah property frequently face juridical challenges in proving that the hibah was invalid or incomplete. This issue becomes even more complex when oral hibah lacks documentary evidence and depends solely on witness testimony or family acknowledgment (Hidayat et al., 2022; Syaifudin, n.d.; Saripah & Nurmila, 2020).

The juridical analysis of hibah revocation must also consider the relationship between hibah and inheritance law within the Indonesian legal system. The Compilation of Islamic Law recognizes hibah as a lawful property transfer distinct from inheritance distribution. Therefore, property that has validly become the object of hibah should no longer constitute part of the inheritance estate after the death of the grantor. However, practical disputes arise when heirs argue that the hibah violated principles of fairness or exceeded permissible limitations under Islamic law. Wahyuni (2021) emphasized that excessive hibah or hibah causing harm to other heirs may generate legal conflicts because Islamic inheritance law prioritizes justice and proportionality among family members. Similarly, Sulasina et al. (2020) demonstrated that inheritance disputes involving hibah frequently emerge due to perceptions of inequality in family property distribution. Consequently, judges in religious courts often face the difficult task of balancing the validity of hibah with the protection of inheritance rights and family justice.

The absence of written evidence significantly influences judicial consideration in disputes concerning revocation of hibah after the grantor's death. In Indonesian legal practice, courts generally require strong evidentiary foundations to establish ownership rights, particularly regarding immovable property such as land and houses. Oral hibah may possess religious validity, but its juridical enforceability often depends on witness testimony, possession status, and supporting evidence. Budify et al. (2020) explained that disputes concerning cancellation of hibah deeds frequently revolve around evidentiary weaknesses and procedural irregularities in property transfer. Likewise, Fajrimustika and Arsin (2023) noted that ownership disputes over property originating from hibah

often arise because of unclear legal documentation and overlapping inheritance claims. Therefore, in cases where oral hibah cannot be sufficiently proven, courts may reinterpret the property as part of the inheritance estate. This condition illustrates the fragile juridical position of oral hibah within contemporary inheritance dispute mechanisms.

The revocation of hibah after the death of the grantor must also be analyzed through the perspective of legal protection and legal certainty. Legal certainty requires that property rights transferred through lawful mechanisms receive protection against arbitrary interference or reinterpretation. According to Hadjon (1987), legal protection constitutes a fundamental principle of law aimed at safeguarding individual rights and preventing abuse of authority. In the context of hibah disputes, legal protection should extend to hibah recipients who have obtained ownership in good faith during the grantor's lifetime. However, without authentic deeds or formal legal evidence, hibah recipients frequently encounter difficulties defending their ownership rights against inheritance claims brought by heirs. Contemporary discussions concerning evidentiary responsibility and notarial protection further emphasize the necessity of formal legal instruments in ensuring legal certainty within property transactions (Permana et al., 2024; Yetniwati et al., 2021). Consequently, the absence of documentation weakens the legal position of oral hibah recipients despite the substantive validity of the grant under Islamic law.

From the perspective of *maqasid sharia*, the revocation of hibah after the grantor's death should be evaluated based on broader objectives of justice, social harmony, and prevention of harm. Islamic law seeks not only to regulate ownership transfer but also to maintain family stability and avoid prolonged disputes among heirs. Sharif and Said (2022) argued that *maqasid sharia* principles require legal arrangements capable of preserving property rights while simultaneously protecting social welfare and family cohesion. If the revocation of hibah results in oppression, hostility, or uncertainty for recipients who have possessed and managed the property for years, such revocation may contradict the ethical objectives of Islamic law. Similarly, Abduh and Hamidah (2021) emphasized that *maslahat*-oriented legal reasoning prioritizes the realization of benefit and the prevention of social harm in legal decision-making. Therefore, juridical analysis of hibah revocation should not rely solely on procedural legality but must also consider substantive justice and the social consequences of judicial decisions.

In contemporary Indonesian society, disputes concerning revocation of hibah after the grantor's death reflect broader challenges in harmonizing Islamic legal traditions with modern legal systems. Traditional Muslim communities often rely on oral agreements and familial trust in property transactions, whereas

modern legal institutions demand formal documentation and procedural certainty. Abdullah (2020) explained that contemporary implementation of Islamic law within state legal systems requires adaptation to legislative and institutional frameworks that guarantee legal effectiveness and predictability. Accordingly, the juridical position of oral hibah requires clearer regulation and stronger evidentiary mechanisms to prevent inconsistent judicial interpretations. The development of legal instruments such as witness deeds, notarial statements, and formal registration procedures may provide a more balanced solution between respecting Islamic legal traditions and ensuring legal certainty in inheritance disputes. Therefore, strengthening legal protection for oral hibah recipients is essential to minimize inheritance conflicts and maintain justice within Indonesian Islamic family law.

Reconstruction of Legal Protection for Oral Hibah to Prevent Inheritance Disputes

The reconstruction of legal protection for oral hibah in Indonesia must begin with the recognition that oral grants remain a living legal reality within Muslim communities. In many families, especially in rural and traditional societies, hibah is conducted based on trust, kinship, and religious morality without written documentation. Although Islamic law substantively recognizes the validity of hibah when the pillars and conditions are fulfilled, the absence of formal evidence often creates legal uncertainty after the death of the grantor. This condition becomes increasingly problematic when heirs reinterpret the transferred property as inheritance assets and subsequently challenge the hibah before the Religious Court. Therefore, the reconstruction of legal protection should not merely focus on procedural formalism but must integrate substantive justice, *maqashid al-sharia*, and legal certainty into a harmonized legal framework. In this context, law should function as an instrument of social protection that preserves justice, benefit, and family harmony while preventing arbitrary revocation of rights that were previously transferred through hibah. (Ali, 2023; Mangesti & Tanya, 2014; Hadjon, 1987).

One important reconstruction concerns the strengthening of evidentiary mechanisms for oral hibah within Indonesian Islamic inheritance law. Current legal practice tends to prioritize written deeds and authentic documents as the strongest evidence in civil disputes, whereas oral hibah generally relies upon witness testimony, family acknowledgment, and long-term possession of property. As a consequence, recipients of oral hibah frequently occupy a vulnerable legal position despite having controlled and utilized the property for years before the grantor's death. The legal system therefore requires a more adaptive evidentiary approach that accommodates sociological realities within Muslim communities. Testimony from family members, community leaders,

village officials, and evidence of continuous possession should be granted stronger probative value in inheritance disputes involving oral hibah. Such reconstruction would reflect the principle of legal protection and substantive justice because Islamic law itself does not absolutely require written deeds for the validity of hibah. Instead, the essence of hibah lies in the clear intention of transfer and actual delivery of ownership. (Fadillah et al., 2023; Permana et al., 2024; Widyadhana et al., 2024; Saputra et al., 2021).

The reconstruction of legal protection must also encourage preventive legal mechanisms through the optimization of notarial and religious administrative functions. Although oral hibah may remain legally recognized, the state should actively encourage grantors to document hibah through simple written statements, village certificates, or notarial deeds to minimize future disputes among heirs. In this regard, legal awareness becomes essential because many inheritance conflicts emerge not from the invalidity of hibah itself, but from the absence of reliable legal evidence. The role of notaries, village authorities, and religious institutions should therefore be expanded as facilitators of legal certainty for Muslim families conducting hibah transactions. Digital legal administration and cyber notary mechanisms may also become innovative alternatives in recording hibah agreements, especially in contemporary society where legal documentation increasingly relies upon electronic systems. Such reconstruction would create stronger preventive protection while maintaining accessibility for lower-income communities that may face difficulties obtaining formal deeds. (Kinasih, 2024; Firmansyah, 2024; Yetniwati et al., 2021; Permana et al., 2022).

From the perspective of *maqashid al-sharia*, the reconstruction of legal protection for oral hibah should prioritize the preservation of property rights (*hifz al-mal*) and family harmony. Islamic law fundamentally discourages injustice and conflict among heirs, particularly when disputes arise from greed or unequal interpretation of ownership status after the death of the grantor. The revocation of hibah by heirs after the grantor's death often contradicts the ethical and spiritual values underlying Islamic philanthropy because hibah is intended to strengthen affection, social solidarity, and economic welfare within the family. Consequently, judges in Religious Courts should adopt a more progressive and contextual interpretation when examining oral hibah disputes by considering good faith, social recognition, and factual possession of property rather than relying solely upon documentary evidence. Such an approach would better realize *maslahah* principles within Islamic law because legal certainty should not sacrifice substantive justice and social benefit. (Sharif & Said, 2022; Abduh & Hamidah, 2021; Gaffar et al., 2021; Ismail Pane et al., 2022).

Another reconstruction involves harmonizing the relationship between hibah and inheritance law within the Compilation of Islamic Law (KHI). Existing

regulations still leave ambiguity regarding the legal boundaries between hibah and inheritance distribution, particularly concerning grants made by parents to children. In practice, heirs often argue that oral hibah constitutes a disguised inheritance distribution that should be recalculated as part of the estate. This ambiguity creates inconsistent judicial decisions and weakens legal certainty. Therefore, clearer regulatory guidelines are needed concerning the legal status, evidentiary standards, and revocation limits of oral hibah after the death of the grantor. The KHI should explicitly affirm that hibah validly executed during the grantor's lifetime cannot automatically be transformed into inheritance property merely because no written deed exists. Such clarification would reduce interpretative conflicts while strengthening the protection of legitimate hibah recipients. (Amin, 2016; Bashori & Ichsan, 2021; Hidayat et al., 2022; Wahyuni, 2021).

The reconstruction of legal protection should further incorporate comparative insights from broader Islamic legal development and contemporary legal systems. Several Muslim jurisdictions increasingly integrate Islamic substantive principles with modern evidentiary procedures to ensure both legal certainty and social justice. Indonesia may adopt a balanced approach by maintaining recognition of oral hibah under Islamic law while simultaneously strengthening procedural safeguards through registration, witness authentication, and community verification systems. Such integration reflects the dynamic character of Islamic law, which historically adapts to societal transformation without abandoning its normative foundations. The modernization of hibah regulation should therefore not eliminate traditional legal practices but instead institutionalize mechanisms capable of protecting vulnerable parties from future inheritance disputes. (Abdullah, 2020; Anshori, 2018; Zainuddin, 2017; Saripah & Nurmila, 2020).

The reconstruction of legal protection for oral hibah requires a comprehensive legal paradigm that combines religious legitimacy, procedural certainty, and social justice. Oral hibah should not be viewed merely as an informal transaction lacking legal force, but as a legitimate manifestation of Islamic legal culture that deserves adequate legal protection. The state, judiciary, religious institutions, and society must collaboratively create a legal environment capable of preventing inheritance conflicts while respecting the moral objectives of Islamic law. Through clearer regulations, stronger evidentiary mechanisms, preventive documentation systems, and contextual judicial interpretation, oral hibah can obtain greater legal certainty without losing its cultural and religious authenticity. Such reconstruction would not only reduce inheritance disputes but also strengthen public trust in the Indonesian Islamic legal system as a system capable of harmonizing normative doctrine with contemporary social realities.

CONCLUSION

This study concludes that oral hibah remains substantively valid under Islamic law when its essential pillars and legal requirements have been fulfilled. Nevertheless, the absence of written or authentic evidence frequently creates legal uncertainty in inheritance disputes following the grantor's death, particularly when heirs challenge the transfer of ownership and seek to reclassify the granted property as part of the inheritance estate. The findings demonstrate that the revocation of an effectively executed hibah after the grantor's death is inconsistent with the principles of legal certainty, justice, and *maqashid al-sharia*, especially where factual ownership has already been transferred during the grantor's lifetime.

The novelty of this study lies in the development of a legal reconstruction framework that integrates Islamic inheritance principles, evidentiary law, and economic law perspectives to strengthen legal protection for recipients of oral hibah. Theoretically, this study contributes to the discourse on legal certainty by demonstrating that the validity of oral hibah should not be assessed solely through formal evidentiary standards but also through substantive justice and the protection of property rights. Practically, the proposed framework provides guidance for judges in adjudicating inheritance disputes, for notaries and village authorities in strengthening evidentiary documentation, and for policymakers in formulating clearer regulations concerning oral hibah and its revocation.

This study is limited by its normative legal approach and reliance on legal doctrines, legislation, and judicial decisions without incorporating empirical data from legal practitioners or disputing parties. Future research should employ socio-legal and empirical approaches to examine the implementation of oral hibah in judicial practice, evaluate the effectiveness of evidentiary mechanisms, and explore comparative regulatory models across Muslim-majority jurisdictions. Such studies would further enrich efforts to harmonize Islamic legal values, legal certainty, and social justice within contemporary inheritance law systems.

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