

## IMPLICATIONS OF WAKAF AND GRANTS ON THE DISTRIBUTION OF ISLAMIC INHERITANCE: A CONTEMPORARY POSITIVE LAW AND FIQH PERSPECTIVE

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### Abstract

This study examines the influence of waqf and grants on the inheritance distribution system in Islamic law, from the perspective of Indonesian positive law and contemporary Islamic jurisprudence. In Islamic teachings, the distribution of inheritance (al-mirats) is regulated in detail through the provisions of the Qur'an and Hadith, and has received in-depth explanations in classical literature and jurisprudence. The phenomenon of grants and waqf, both before and after the death of the testator, creates its own dynamics due to the intersection of provisions of Indonesian positive law, such as the Compilation of Islamic Law (KHI), and classical and contemporary Islamic jurisprudence. Normatively, waqf and grants have different legal consequences that directly impact the rights of heirs, distributive justice, and potential disputes. This study uses a normative legal approach, examining relevant laws, doctrines, fatwas, and court decisions, to highlight the need for regulatory synergy to ensure justice, legal certainty, and social harmony in the distribution of inheritance in Indonesian Muslim society.

**Keywords:** Islamic inheritance, waqf, grants

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## INTRODUCTION

The discussion of inheritance distribution in Islam has always been an important topic that receives significant attention, both in normative and theoretical aspects, as well as in social practice within Muslim societies. Islamic law regulates the inheritance system (*al-mirats*) in detail based on the guidelines of the Qur'an and Hadith, which are then strengthened through the studies of classical scholars in *farā'idh* literature as the main basis for determining inheritance law. However, in the practice of inheritance in Indonesia, complex socio-historical dynamics are found, particularly in the context of granting gifts and *waqf* that occur before and after the death of the testator. This phenomenon becomes increasingly interesting when the role of positive law (especially the Compilation of Islamic Law/KHI) intersects with classical Islamic law and contemporary developments in *fiqh* (Nurohsuci, 2023).

Legally, gifts and *waqf* have different characteristics and legal implications in relation to the distribution of inheritance. A gift (*\*al-hibah\**) is the voluntary gift of a portion of one's assets to another party while the donor is still alive, while a *waqf* (*\*al-waqf\**) is the transfer of a portion of one's assets for public or religious purposes, the ownership of which is no longer private. Although both are oriented towards the act of giving, the legal consequences are different and directly affect the rights and shares of the heirs (MariNews, 2025).

From the perspective of Islamic inheritance law, giving a gift to one of the heirs in an amount exceeding one-third of the testator's total assets has the potential to create an imbalance in the distribution of inheritance. This situation often raises questions of justice and opens up the possibility of conflict among family members. According to the main schools of thought in Islam, and also emphasized by positive Indonesian jurisprudence (KHI Articles 210-211), gifts from parents to children (especially when made close to death) must be considered part of the inheritance. This limitation aims to maintain justice (*al-'adl*) and protect the civil rights of all heirs. The Compilation of Islamic Law (KHI), as a form of codification of positive law in Indonesia, has strengthened the position of gifts and *waqf* in the inheritance system. The KHI explicitly states that gifts may not exceed one-third of the total assets, unless agreed by all heirs, and gifts from parents to children must be included in the inheritance calculation. Meanwhile, the position of *waqf* is stricter, as endowed assets are irrevocable and non-inheritable, in accordance with the basic principles of *waqf* according to Shafi'i jurists and the majority of jurists. On the other hand, in contemporary Islamic jurisprudence (*fiqh*), new discourses have emerged regarding management, changes in *nadzir* (manager), and the purpose of *waqf* (*maslahah*) to ensure they remain contextual to the needs of modern society (Putri, 2022).

In the context of Indonesian positive law, the mechanisms governing *waqf* and grants are also regulated by a number of regulations, ranging from Law Number 41 of 2004 concerning *Waqf*, Government Regulation Number 42 of 2006, to Supreme Court jurisprudence, which emphasizes the importance of protecting the rights of heirs and maintaining distributive balance within the family. One important development is the requirement for permission and involvement of heirs in changing the allocation or *nadzir* of *waqf* assets, which indicates the recognition of the familial aspect and substantive justice in national law.

Grants and *waqf*, with all their associated rules and exceptions, have direct implications for three things: (1) the rights and status of heirs in obtaining a fair share; (2) the validity of the legal status of the assets granted and endowed; and (3) the potential for disputes arising after the distribution of the inheritance. This requires an in-depth and systematic study of how the normative aspects of these two instruments are interpreted and integrated into contemporary Islamic inheritance justice practices, based both on positive law (the Compilation of Islamic Law, the *Waqf* Law, and their derivative regulations) and *fatwas* from religious institutions and decisions of religious courts as representatives of contemporary Islamic jurisprudence.

The practice of gifts and *waqf* made before death often creates confusion and even the potential for manipulation of inheritance law. Gifts to heirs with the motive of ensuring that certain heirs receive a larger share are often made without regard to the principles of distributive justice and without the consent of other heirs. This situation frequently gives rise to cases in religious courts, where judges must balance the principles of substantive justice, *maqāṣid al-syarī'ah* (the Islamic principles of inheritance), and positive rules. This is reinforced by court decisions that interpret gifts as part of the inheritance, especially when made by the testator before death or during a serious illness, which is suspected to be an attempt to manipulate the distribution of the inheritance. From a *waqf* perspective, as long as the elements of sincerity and public benefit are met and do not cause

harm to the heirs, it generally does not become a source of dispute, but still requires strict administrative mechanisms for legal certainty and justice (Government Regulation No.42 of 2006).

Thus, the study of the implications of waqf and gifts on Islamic inheritance distribution, from both positive law and contemporary Islamic jurisprudence, is highly relevant and significant. This research will examine the normative construction of both institutions within the national and Islamic legal systems, analyze their intersections and differences, and provide recommendations for fairer inheritance distribution practices that are in line with modern societal developments.

## RESEARCH METHOD

Soerjono Soekanto and Sri Mamudji stated that normative legal research or library research includes five objects, namely: research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, research on comparative law, and research on legal history (Soekanto & Mamudji, 2010). Normative legal research examines law as a norm, namely by examining statutory regulations, legal doctrine, fatwas, court decisions, and the views of scholars on the topic being studied. The main type of data used is secondary data, consisting of primary legal sources (UU, KHI, fatwas, fiqh books), secondary (literature, journals), and tertiary (legal dictionaries, encyclopedias) (Putri, 2022).

## RESULTS AND DISCUSSION

Inheritance law in Islam is based on the text of the Quran (Surah An-Nisa verses 11, 12, and 176) and Hadith which affirm the system of distributing property to heirs proportionally. The thinking of classical scholars (e.g. Ibn Qudamah and Imam Nawawi) builds a foundation based on the text, while contemporary scholars such as Wahbah Az-Zuhaili synchronize classical provisions with modern social challenges (gender, economy, changing social values). Inheritance law holds the principle of *ijbari* the transfer of property occurs automatically due to the death of the heir, without the need for the consent of the heirs (Portal Hukum 2023).

Distributive justice (Aristotle, Amartya Sen, and Al-Ghazali) is a theory explaining the distribution of inheritance based on proportion of responsibility, not absolute equality. In Islam, sons receive two shares compared to daughters because the burden of supporting the family falls on them. This theory maintains social and economic balance in the family and prevents substantive gender discrimination. Deviations from the principle of justice can occur if gifts exceed the limits or waqf violate the rights of heirs.

Protection of heirs' rights is a legal operation that prevents injustice in the granting of gifts and the distribution of inheritance. Limits on the amount of gifts, the right to sue in court if rights are violated, mechanisms for canceling gifts that do not comply with regulations, and verification of court authority in waqf cases are efforts to conserve the legal rights of heirs. The theory of *legitime portie* in the Civil Code strengthens the protection of the minimum rights that heirs must receive, as also stipulated in Islamic law and national positive law (Astuti et al., 2025).

### 1. The Position of Waqf in the Distribution of Inheritance

Waqf is a legal act in which a person separates a portion of his/her assets for the benefit of worship or public welfare according to Islamic law, as stipulated in Article 215 of the Compilation of Islamic Law (KHI) and Law Number 41 of 2004 concerning Waqf. In the context of inheritance distribution, assets endowed before the distribution of inheritance are not categorized as inherited assets and therefore cannot be distributed to the heirs. The assets have transferred ownership according to Islamic law and juridical law from the testator to the beneficiary of the waqf. However, if the waqf is made through a will and its value exceeds one-third of the testator's total assets after deducting debts, the approval of all heirs is required to validate the waqf on the portion exceeding the one-third limit. If not approved, the excess must be returned and included in the inheritance distribution.

### 2. The Position of Grants in the Distribution of Inheritance

According to Indonesian positive law and the Compilation of Islamic Law (KHI), gifts given by parents to their children while they are still alive can be counted as part of the inheritance (advance inheritance). Article 211 of the KHI limits gifts given by testators to their heirs to a maximum of one-third of the total assets, to avoid creating an imbalance in the distribution of inheritance.

A gift of all or a substantial portion of an estate to one heir is invalid according to Islamic law if it creates inequality among the heirs. If the gift is given in a discriminatory manner, it is considered a violation of the principles of justice and morality within the family and can be annulled according to the jurisprudence of religious courts in Indonesia (MA RI, 2025).

### 3. Practice in Society and Problems

Empirical research, such as in Betawi society, shows that gifts are often chosen in the distribution of parental assets to maintain family unity. However, legally, gifts are distinct from inheritance and must be considered if they affect the rights of other heirs. Disputes often arise when heirs feel discriminated against due to unequal gifts, making the role of religious courts crucial in resolving such property distribution disputes (Halim, 2019).

### 4. Valid Conditions and Regulations of Waqf

For a waqf to be considered valid, it must fulfill the pillars and requirements outlined in Law No. 41 of 2004: the presence of a waqif (donor), a nazhir (owner), waqf assets, a waqf pledge, a specific purpose, and a timeframe. Compliance with formal procedures is highly emphasized to avoid future disputes, particularly regarding waqf land, which must be legally registered by the state (Indonesian Waqf Board, 2020).

### 5. Integration of KHI and Waqf Law in Settling Inheritance Disputes

Both the Compilation of Islamic Law (KHI) and Law No. 41/2004 emphasize that waqf and gifts must consider fairness among heirs, while prioritizing the rights of heirs to inherited assets not yet legally designated as waqf or gifts. The establishment of a limit of one-third (1/3) of total assets serves as a basis for preventing disputes and maintaining family harmony. Disputes over gifts or waqf exceeding this limit can be resolved in religious courts based on jurisprudential rulings and the harmonization of Islamic jurisprudence.

Waqf and grants are two important instruments in wealth distribution in Islam and social practice in Indonesia. Waqf emphasizes sustainable socio-religious benefits, while grants are voluntary gifts of wealth between individuals, usually parents and children. Both instruments directly intersect with inheritance rights and have the potential to lead to legal and social consequences if not implemented fairly.

### Legal Implications of Waqf Implementation

1. Assets that have been donated are transferred from private ownership to God's property for the benefit of the people. Legislation explicitly states that a declared waqf cannot be revoked, inherited, sold, donated, or transferred in any way by the heirs.
2. If the heirs ask for the return of assets that have been donated, they have no legal basis and could even face criminal sanctions in accordance with Article 67 paragraph (1) of the Endowment Law No. 41/2004.
3. The status of waqf assets must be legally clear (certified). Uncertified waqf assets are prone to inheritance disputes, as heirs can reclaim the assets due to the lack of written evidence of the transfer of testamentary rights to the waqf.

### Practical Implications of Waqf for Justice and Inheritance Rights

1. The implementation of waqf contributes to justice by distributing the benefits of wealth to a wider community, not just the descendants of the donor. Waqf also prevents the concentration of wealth in certain family groups and helps maintain socioeconomic inequality (Indonesian Waqf Board, 2011).
2. However, if it is not communicated openly by the donor during his/her lifetime—whether through family consultation or formal registration—waqf assets have the potential to cause conflict, especially when heirs feel they have lost their inheritance rights.
3. Clarity of legal status is crucial. Waqf assets without an authentic deed often become the subject of inheritance disputes, complicating the resolution process and leading to injustice.

### Legal Implications of Gifts on Family Harmony and Inheritance Rights

1. A gift is a voluntary gift that is valid as long as it follows the regulations, does not violate the maximum limit of one third (1/3) of assets, and does not violate the principles of inheritance justice.

2. Giving gifts in a discriminatory manner, for example only to one child or exceeding a certain proportion, can cause injustice, jealousy and disharmony between heirs.
3. The shift from gifts to "early inheritance" requires collective deliberation to avoid future disputes. Gifts agreed upon through deliberation have been shown to maintain family harmony and strengthen emotional bonds.

### The Practical Impact of Grants on Inheritance and Harmony

1. In cases where the gift is given to only some of the heirs (without full consultation), a counterclaim may arise for the assets after the heir dies, especially when they feel that there has been a reduction in inheritance rights that have been regulated by positive law.
2. On the other hand, if the giving of gifts is carried out with transparency and consideration of morality and justice (for example, according to Islamic inheritance proportions), family harmony can be maintained because all parties feel that their rights are respected—both legally and socially.
3. Grants as an instrument of family harmonization are effective if they are based on the maqashid sharia: protection of property, religion, soul, mind, and descendants, so that the values of justice and welfare are maintained.

### Protection of Heirs' Rights in the Context of Waqf and Grants

The legal protection system in Indonesia has provided clear limitations that heirs cannot reclaim assets that have been donated or submit claims for legitimate gifts.

In practice, law enforcement officers, courts, and waqf nadzir institutions play an important role in socializing, reconciling, and negating the rights of heirs without harming the rights of the public or recipients of good-faith grants. The fairness of distribution of assets through waqf and grants depends greatly on:

1. Compliance with the principles of positive and sharia law.
2. Clarity of legal status and official registration.
3. The process of communication, transparency, and family deliberation.
4. Protection of heirs' rights, and not violating the principle of proportionality of inheritance/gifts.

Disputes can be minimized if the provision of endowments and grants is carried out based on the principles of justice, deliberation, and official recording so that the welfare, family harmony, and protection of the rights of all interested parties are achieved. Discussion on the implications (legal and practical impacts) of the implementation of endowments and grants on justice, family harmony, and the rights of heirs can be focused on two approaches:

1. Indonesian positive law
2. Fiqh (Islamic law) and jurisprudence (court decisions)

In line with evolving practices in Indonesia, a **comprehensive discussion** should encompass both aspects. This is because the implementation of waqf and grants in society often overlaps and cannot be separated from national legal provisions and fiqh principles/practices.

### Reasons for the Dual Approach

1. Indonesian positive law (e.g., Waqf Law, KHI, Civil Code) provides a formal legal framework and legal protection for the community and incorporates the spirit of national justice and recognition of the validity of documents.
2. Fiqh and jurisprudence are important because the majority of waqf and grant implementations are based on religious traditions, while many religious court decisions have followed, adopted, or harmonized the two legal systems in actual practice.
3. Disputes often occur because one party does not understand or ignores one of the perspectives (either national law or fiqh), or because there is no jurisprudence as a guide.

This research is crucial because waqf and gifts are frequently used in society to manage assets before the testator passes away. However, there is still considerable overlap and potential for conflict if not properly implemented in accordance with Islamic law and state legal provisions. In Indonesian positive law (e.g., Article 211 of the Compilation of Islamic Law/KHI), gifts from parents to children can be considered inheritance, but their implementation must be clear and transparent to prevent future inheritance disputes. In Islamic jurisprudence, each school of thought has different limitations regarding gifts and waqf, especially when made in a state of *maradhul maut* (near death).

## CONCLUSION

Islamic inheritance law is based on the provisions of the Qur'an and Hadith, which establish rights and the proportional distribution of inheritance according to the status of each heir. This system is based on the principle of *ijbari*, namely, the transfer of assets from the testator to the heirs occurs automatically without requiring their consent. Classical scholars adhered to normative texts as the primary basis, while contemporary thinkers reinterpret these principles to align with modern social dynamics, including issues of economic justice and gender equality.

Distributive justice is a key focus, with inheritance and gift provisions taking into account the proportion of family responsibilities to avoid inequality or discrimination. Gifts and waqf made beyond the established limit (one-third of the estate) must obtain the consent of the heirs to maintain minimum rights and prevent potential disputes. The implementation of waqf and gifts must meet regulatory requirements and authentic deeds to avoid triggering conflict among heirs. Indonesia's contemporary positive law and Islamic jurisprudence (*fiqh*) system strictly regulates the protection of heirs' rights through religious courts, as well as legal limits on gifts and waqf that prevent the reduction of inheritance rights for entitled parties.

Clear record keeping, family communication, and adherence to positive law and Islamic jurisprudence are key to preventing inheritance conflicts and achieving family harmony. The dualistic approach in Indonesian practice makes collaboration between national regulations and Sharia principles crucial, and requires outreach and education from authorities.

The resolution of inheritance, gift, and waqf disputes should prioritize deliberation, official registration, and strengthening the principles of justice and the benefit of all parties. Harmonizing classical and contemporary inheritance laws, along with national legal provisions, will not only safeguard the rights of heirs but also promote distributive justice and social harmony within Indonesian Muslim families.

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