



## Oral Land Grants in the Perspective of Legal Certainty and Heir Protection

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### Abstract

This study analyzes two key issues: (1) the legal regulation of grants under Indonesian positive law, particularly the differences between the provisions in the Civil Code (KUHPerdara) and the Compilation of Islamic Law (KHI); and (2) the legal considerations of judges in cases involving oral land grants, as reflected in Selong District Court Decision No. 49/Pdt.G/2024/PN.Sel. The research is motivated by the practice of oral grants, which remain common in rural communities such as Aikmel District and often lead to disputes due to the absence of written evidence. This creates a dilemma between fulfilling the formal requirements of land law and the social realities of the community. The method used is normative legal research with three approaches: statutory, conceptual, and case-based. Sources of legal material include primary, secondary, and tertiary legal materials, analyzed using qualitative techniques. The findings show that the Civil Code requires a notarial deed as a condition for the validity of a grant, so oral grants are deemed not to meet formal legal requirements. Conversely, the Compilation of Islamic Law provides flexibility, allowing oral grants to be valid as long as they fulfill the pillars of grants under Islamic law. In the Selong District Court decision, the judge recognized oral land grants as valid based on witness testimony, actual delivery, and the absence of objections from other heirs. This decision affirms that in judicial practice, judges may prioritize principles of justice and substantive facts over administrative formalities.

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### Introduction

Indonesia, as a state governed by law, has the obligation to protect the interests of society and regulate relationships between individuals, groups, and the government.<sup>[1]</sup> In this context, law functions as a norm that governs human behavior to create social order, where any violation results in sanctions.<sup>[2]</sup> One common legal relationship in society is the grant of land, which involves the transfer of ownership rights from the donor to the recipient as part of social interaction.<sup>[3]</sup>

Under Indonesian positive law, grants are explicitly regulated in various statutory provisions. One of the main provisions is Article 1682 of the Civil Code (KUHPerdara), which states that a grant is invalid unless made by notarial deed, except for certain grants regulated in other articles. This provision emphasizes that every grant agreement, particularly concerning immovable property such as land, must be executed in an authentic deed to have valid legal force. This principle is reinforced by Article 37 of Government Regulation No. 24 of 1997 on Land Registration, which stipulates that any transfer of land rights can only be registered if evidenced by a deed made by a Land Deed Official (PPAT).

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<sup>1</sup> Zainal Asikin, "Menganahil Filsafat Hukum," First Edition, Pustaka Bangsa, Mataram, 2018, pp. 65-66.

<sup>2</sup> Abdul Mukthie Fadjar, "History, Elements, and Types of the Rule of Law," Setara Press, Malang, 2016, p. 33.

<sup>3</sup> Nida Gania, "Cancellation of a Deed of Gift of Joint Property Without the Wife's Consent Based on Bandung District Court Decision Number 530/Pdt. G/2017/PN. Bdg," Indonesian Notary, Vol. 1, No. 04, (2020), p. 4

Thus, the use of authentic deeds in land grants serves an important purpose: ensuring legal certainty, clarifying ownership status, and protecting the rights of the parties involved.

In addition, grants are also regulated in the Compilation of Islamic Law (KHI), particularly Articles 171(g), 209, and 210. These provisions emphasize the importance of formal legality and the determination of the Religious Court to legitimize grants and ensure their implementation in accordance with principles of justice and legal certainty.

When comparing the Civil Code and KHI, a fundamental normative conflict emerges. The Civil Code strictly requires grants to be made in authentic deeds before a notary, without limiting the amount of property that may be granted. Conversely, KHI does not require a notarial deed; instead, it requires two witnesses and a court determination, while imposing a strict limitation that the value of the grant must not exceed one-third of the donor's total assets. This difference illustrates the dualism of legal systems in Indonesia, where Muslims are subject to KHI provisions, while the Civil Code applies nationally to all citizens.

The flexibility in KHI, which does not mandate a notarial deed, allows for oral grants based on trust and family values. Such practices remain common in rural communities, such as Aikmel District, where Islamic law and customary traditions are strongly influential. In these communities, grants are often carried out simply, witnessed by religious leaders or family members, without formal administrative procedures. However, oral grants frequently cause legal problems after the donor's death, as the absence of written evidence can trigger disputes between recipients and heirs who feel disadvantaged.

This situation creates a dilemma for judges: whether to apply positive law requiring authentic deeds under the Civil Code, or to consider social justice based on KHI and local customs. The tension between legal certainty and social justice is evident in Selong District Court Decision No. 49/Pdt.G/2024/PN.Sel, where the panel of judges rejected the heirs' lawsuit and recognized oral grants of land as valid, despite conflicting with the principle of legality in the national land law system.

Based on these facts, two main legal issues arise: first, the position of the five children as substitute heirs under Article 841 of the Civil Code, particularly when land rights are transferred without their consent or involvement; second, the validity of oral land grants within Indonesia's agrarian law system, given that the Civil Code and Government Regulation No. 24 of 1997 explicitly require authentic deeds for any transfer of land rights.

## 2. Method

Research methods are systematic approaches designed to solve specific problems or provide answers to research questions. In this thesis, the study focuses on several key aspects: the type and approach of research, the methods applied, the sources of legal materials, techniques for collecting legal materials, and strategies for analysis.

This study employs normative legal research, meaning the problem is examined from a legal perspective by analyzing

primary and secondary legal materials in relation to the issues at hand.<sup>[4]</sup> The research explores the regulation of land grants under Indonesian law and examines judicial considerations in Selong District Court Decision No. 49/Pdt.G/2024/PN.Sel concerning oral land grants. Three approaches are used:

1. Statutory Approach – analyzing all laws and regulations relevant to the legal issue.<sup>[5]</sup>
2. Conceptual Approach – exploring legal doctrines and scholarly views to identify concepts and principles relevant to the issue.
3. Case Approach – examining judicial decisions related to the issue that have permanent legal force.

Legal materials analyzed include primary, secondary, and tertiary sources, collected through documentary study (articles, journals, books, websites). The analysis uses qualitative methods, interpreting legal materials through deductive reasoning—moving from general principles to specific conclusions. Interpretation methods applied include:

- Extensive interpretation – expanding the meaning of terms in legislation.
- Anticipatory/futuristic interpretation – addressing legal issues based on rules not yet in force.
- Teleological interpretation – seeking the purpose or intent behind legislation.

## 3. Discussion

Indonesian positive law, particularly as derived from the Civil Code (KUHPerdara), provides a comprehensive regulation concerning gifts (*hibah*) as one form of agreement made during the donor's lifetime. These provisions are contained in Articles 1666 through 1693. All of these articles demonstrate the legislator's effort to establish clear boundaries regarding the requirements, nature, form, and legal consequences of a gift, so as to prevent abuse of rights or disputes among family members after the donor's death.

Article 1666 of the Civil Code defines a gift as an agreement in which a person, during his or her lifetime, transfers an object gratuitously and irrevocably to another party, with the intention of benefiting the recipient. This definition emphasizes two essential characteristics of a gift: its gratuitous nature and its irrevocability. Because of its gratuitous character, a gift is regarded as a unilateral agreement; that is, obligations are imposed solely upon the donor, while the recipient bears no material obligations in return. Consequently, the relationship between the parties in a gift differs significantly from that in reciprocal agreements such as sale or exchange.

Nevertheless, a gift (*hibah*) remains a legal act that cannot be carried out lightly and must not be regarded as an ordinary social gesture such as everyday gift-giving. A gift constitutes a legal act that permanently transfers rights over an object. Therefore, both formal and material requirements must be fulfilled for a gift to be valid under the law and to have binding force upon the parties as well as third parties.<sup>[6]</sup>

The first requirement to be met is the donor's legal capacity. Article 1667 of the Civil Code stipulates that the donor must be an adult and legally competent. This requirement is intended to ensure that the donor understands the legal

<sup>4</sup> Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada, Jakarta, 2010, p. 3.

<sup>5</sup> Amiruddin & Zainal Asikin, *Introduction to Legal Research Methods*, PT. Raja Grafindo Persada, Jakarta, 2020, p. 164

<sup>6</sup> Deannira Patrisya Tumbelaka, *et al.*, "Legal Review of Land Donation Letters from Parents to Children Made Without a Deed of Land Ownership (PPAT) or Notary Public Deed," *Lex Crimen*, Vol. 12 No. 4, 2024, p. 1.

consequences of the act undertaken. A person who is underage or legally incompetent is deemed incapable of making decisions that permanently affect his or her property. Thus, the requirement of legal capacity functions as a form of legal protection for the donor while also ensuring that the recipient acquires rights from an authorized party.

The second requirement is that a gift must be executed in the form of a notarial deed. Article 1682 of the Civil Code stipulates that any gift not made by notarial deed is null and void by operation of law, except for certain categories of gifts expressly exempted by statute. The requirement of a notarial deed serves as a reinforcement of the principle of legal certainty, since a notarial deed possesses authentic evidentiary force. This is consistent with Article 37 paragraph (1) of Government Regulation No. 24 of 1997, which provides that any transfer of rights over land may only be registered if evidenced by a deed executed by and before a Land Deed Official (PPAT). The notarial deed thus functions to ensure legal certainty and to protect both the donor and the donee from potential disputes in the future.<sup>[7]</sup>

The third requirement is acceptance by the donee. Article 1683 of the Civil Code provides that a gift only produces legal consequences once the donee expressly declares acceptance of it. Such acceptance may be incorporated into the deed of gift itself or recorded in another authentic deed, provided that the donor is still alive. If acceptance is made subsequently, the gift becomes effective from the moment the donor is notified of such acceptance. This provision demonstrates that a gift does not automatically take effect merely because the donor has made a declaration in the deed. A gift only becomes operative if the donee consents to the transfer, thereby placing the donee in an active position to determine the validity of the transfer of rights.

The fourth requirement concerns donees who lack legal capacity. Article 1685 of the Civil Code stipulates that if the object of the gift is intended for a child still under parental authority, acceptance of the gift shall be made by the parent exercising such authority. This requirement not only ensures legal certainty regarding the act of acceptance but also protects the child who is not yet able to act independently.<sup>[8]</sup> Thus, the law safeguards the possibility of granting a gift to a child, but requires that it be carried out through a lawful mechanism of representation as prescribed by statute.

Based on these four requirements, one condition that must be emphasized and examined in depth within the context of gifts under the Civil Code is the requirement of an authentic deed. The existence of such a deed is not merely an administrative formality, but rather a fundamental element in upholding legal certainty, providing protection for the parties, and preventing various forms of abuse or disputes that may arise in the future.

From the foregoing discussion, it can be concluded that within the Indonesian legal system under the Civil Code, oral gifts cannot be justified and have no legal standing. Oral gifts are not only weak in terms of evidentiary value but also lack a valid legal basis. Consequently, a party claiming the existence of an oral gift does not possess sufficient legal grounds to seek recognition of such a gift. Therefore, the presence of an authentic deed in the context of gifts is not a

mere formality, but an essential component of the civil law system, which emphasizes legal certainty, the protection of civil rights, and evidentiary clarity in every legal act that results in the transfer of rights over property.

### **Regulation of Gifts (Hibah) in the Compilation of Islamic Law (KHI)**

The regulation of gifts in the Compilation of Islamic Law (KHI) constitutes an important part of the Islamic family law system in Indonesia, even though the number of provisions governing it is relatively limited compared to those on inheritance or marriage. Nevertheless, the rules contained in Article 171 letter g and Articles 210 through 214 of the KHI provide a sufficient normative framework to regulate the practice of gifts within the Muslim community. These provisions not only set forth the definition, requirements, and procedures for the implementation of gifts, but also emphasize the balance between an individual's freedom to transfer property and the obligation to safeguard the rights of heirs.

KHI defines a gift in Article 171 letter g. According to this provision, a gift is the voluntary transfer of an object without compensation from one person to another who is still alive, for the recipient to own fully. This definition highlights several essential elements that characterize a gift: the element of transfer, voluntariness, the absence of compensation, and the complete transfer of rights to the donee. Thus, KHI positions a gift as a unilateral legal act, arising solely from the donor's will without requiring consideration or reciprocal performance, as is found in transactions such as sale, lease, or other bilateral agreements.

Article 210 of the KHI sets forth the requirements for the validity of a gift, which encompass not only the donor's legal capacity but also limitations on the property that may be gifted. Paragraph (1) of this article stipulates that a gift is valid only if made by a person who is at least 21 years of age, of sound mind, and acting without coercion. The minimum age requirement of 21 is intended to ensure that the donor possesses full legal capacity, so that the decision to transfer part of his or her property is not made impulsively or without careful consideration.

The requirement of sound mind is equally important, since a gift constitutes a legal act that may significantly affect the financial condition and welfare of the family. If a person makes a gift while unconscious, mentally impaired, or under duress, such a gift may be annulled or deemed invalid. KHI also emphasizes that a gift must be given without coercion, as voluntariness is the very essence of the act of gift itself.

Article 210 paragraph (2) stipulates that the maximum portion of property that may be gifted is one-third of the donor's total assets. This limitation is intended to ensure that the act of gift does not result in injustice toward heirs who are entitled to their share of inheritance in the future. The rule is consistent with the principles of Islamic law, which prohibit excessive transfer of property to certain parties in a manner that disregards the needs of the family. In classical *fiqh* literature, scholars such as Muhammad Ibn al-Hasan even assert that a person who donates all of his property is considered legally incompetent or reckless, as such conduct

<sup>7</sup> Salim Hs., "Deed Making Techniques One: Theoretical Concepts, Notary Authority, Form, and Minutes of the Deed," PT. Raja Grafindo Persada, Jakarta, 2015, p. 80

<sup>8</sup> Deannira Patrisya Tumbelaka, *et al.*, "Legal Review of Land Donation Letters from Parents to Children Made Without a Deed of Land Ownership (PPAT) or Notary Public Deed," *Lex Crimen*, Vol. 12 No. 4, 2024, p. 10

may cause harm to the family left behind. Thus, the one-third limitation prescribed in KHI is not merely an administrative requirement, but rather an effort to maintain balance between an individual's right over his property and the moral and legal obligation to protect the rights of heirs.

Article 211 of the KHI provides that gifts given by parents to their children may be taken into account as part of the inheritance. This provision carries significant implications for the resolution of inheritance disputes, which often arise due to unequal distribution of gifts among siblings. For example, a father may grant a parcel of land to his youngest child out of affection or appreciation, while giving nothing to his other children. Upon the father's death, such a gift may be considered as part of the inheritance already received by the youngest child, so that the distribution can be recalculated to avoid disadvantaging the other children.<sup>[9]</sup>

This provision illustrates that the Compilation of Islamic Law (KHI) seeks to uphold the principle of distributive justice within the family. It also prevents manipulative practices in which a donor attempts to transfer a disproportionate share of property to one particular party with the intention of reducing the inheritance rights of other heirs. By incorporating gifts into the inheritance framework, KHI underscores that gifts between parents and children must be carried out proportionally, fairly, and in a manner that does not generate jealousy capable of undermining family unity.

In principle, a gift cannot be revoked once it has been given. However, Article 212 of the KHI provides an exception whereby parents are permitted to revoke gifts granted to their children under certain circumstances. This provision reflects the distinctive nature of the parent-child relationship in Islamic law, which differs from gift relations between parties without blood ties.

Article 213 of the KHI establishes special rules concerning gifts made by individuals who are gravely ill or in a state approaching death. In such circumstances, a gift is considered valid only if it receives the consent of the heirs. This requirement represents the cautious approach of Islamic law in addressing situations prone to manipulation, ensuring that property transfers at the end of life do not unfairly prejudice the rights of heirs.

From the entirety of the provisions in the Compilation of Islamic Law (KHI) regulating gifts, it can be understood that Islamic law in Indonesia places *hibah* in a position closely related to wills (*wasiat*). Both serve as mechanisms for transferring rights over property with a maximum limitation of one-third. However, gifts and wills remain fundamentally different in terms of their effective timing: a will only takes effect after the testator's death, whereas a gift takes effect during the donor's lifetime.

From the perspective of justice theory, the regulation of gifts in KHI appears consistent with Aristotle's concept of distributive justice, which emphasizes the fair allocation of rights, as well as Rawls's theory of social justice, which prioritizes the protection of vulnerable parties. The limitation of gifts to a maximum of one-third of the donor's total assets exemplifies an effort to realize distributive justice. Without such a limitation, a donor might transfer all of his property to a particular party, thereby neglecting the legitimate rights of heirs. Such a situation could generate jealousy, injustice, and family conflict. Classical scholars, including Muhammad Ibn

al-Hasan, also stressed that donating one's entire property is an improper act that may undermine family welfare. From Rawls's perspective, the one-third limitation protects heirs as a vulnerable group from unilateral decisions by the donor, thereby balancing individual freedom to give with the protection of family rights.

### **Analysis of Oral Gifts (Hibah) under the Civil Code and the Compilation of Islamic Law**

The regulation of gifts in Indonesian positive law reveals a fundamental distinction between two prevailing legal frameworks, namely the Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata) and the Compilation of Islamic Law (KHI). Both legal foundations recognize that a gift constitutes a legal act that produces legal consequences for both donor and donee, particularly because a gift is essentially a voluntary act involving the transfer of ownership rights to another party.

Although both frameworks converge on the recognition that a gift is a valid legal act with juridical consequences, their approaches begin to diverge when addressing formal and material aspects, especially concerning the validity of gifts made without a deed or solely in oral form. The Civil Code places written formalities as an inseparable element of the validity of a gift, whereas the KHI provides broader scope for the validity of gifts not embodied in written form, provided that the substantive requirements prescribed are fulfilled.

Within the Civil Code, the provisions on gifts are systematically arranged, including the definition and formal requirements that must be satisfied. Article 1666 of the Civil Code defines a gift as an agreement whereby a person, gratuitously and irrevocably, transfers an object to another. This formulation demonstrates that a gift is understood as a unilateral agreement of a final nature, which therefore cannot easily be revoked without lawful grounds as stipulated by statute.

To ensure the validity of a gift, Article 1682 of the Civil Code stipulates that a gift may only be executed by notarial deed, and the original deed must be retained by the notary as a public official authorized to produce authentic instruments. Meanwhile, Article 1683 affirms that a gift is deemed complete only after the donee expressly declares acceptance. These two provisions demonstrate that the Civil Code requires not only the donor's intention but also the donee's consent, as well as proof through an authentic document that clearly reflects the will of both parties.

Such formal requirements are absolute and constitute essential conditions for the formation of a gift. If a gift is not embodied in a notarial deed, it is considered null and void by operation of law for failure to meet formal requirements. In other words, even if there is material intent to transfer an object, the law regards the gift as never having existed. The Civil Code's emphasis on authentic deeds is inseparable from the primary objective of civil law: to establish legal certainty and prevent disputes.

A notarial deed possesses full evidentiary force before the court, ensuring that when disputes arise in the future, the parties have strong proof.<sup>[10]</sup> In the context of immovable property, the requirement of a notarial deed is not only mandated by the Civil Code but also serves as an administrative prerequisite for title registration at the land

<sup>9</sup> Helmi Karim, "Provisions of the Compilation of Islamic Law Concerning Limitations in Granting Grants," *Jurnal Hukum Islam*, Vol. 1 No. 1, 2015, p. 30.

<sup>10</sup> Abdul Ghofur Anshori, *Indonesian Notary Institution, Legal and Ethical Perspectives*, UII Press, Yogyakarta, 2009, pp. 13-14.

office. Accordingly, oral gifts are not legally recognized, whether from the perspective of the Civil Code or land administration procedures.

In contrast to the Civil Code, which emphasizes the importance of authentic deeds as a requirement for the validity of gifts, the Compilation of Islamic Law (KHI) provides a simpler and more flexible framework. Gifts in KHI are regulated in Article 171 letter g and Articles 210 through 214. Article 171 letter g defines a gift as the voluntary transfer of an object without compensation from one person to another who is still alive, for the recipient to own fully. This formulation highlights the nature of gifts as legal acts arising from the donor's willingness, without any obligation of reciprocity.

Furthermore, Article 210 paragraph (1) of the KHI stipulates that a gift may be made by a person who is at least 21 years of age, of sound mind, and acting without coercion. The limitation imposed is a maximum of one-third of the donor's total assets, and the gift must be executed in the presence of two witnesses. This rule is intended to balance individual freedom in transferring part of one's property with the protection of heirs' interests so that they are not disadvantaged.

Interestingly, KHI does not require the execution of an authentic deed as a condition for the validity of a gift, unlike the Civil Code. The presence of witnesses is sufficient for a gift to be legally recognized under Islamic law. This means that oral gifts are permissible, provided that the requirements are met—namely, the presence of witnesses, the donor's legal capacity, and a clearly defined object of the gift. Thus, Islamic law prioritizes substantive justice over procedural formalities.

In practice, however, gifts executed in written form or by deed remain strongly recommended. This is crucial for ensuring legal certainty and avoiding disputes in the future, particularly if heirs or other parties challenge the validity of the gift. With a written document, evidentiary strength in court is significantly enhanced. Therefore, although the Compilation of Islamic Law (KHI) permits gifts to be made orally, in practice the execution of a deed of gift is regarded as safer and provides stronger legal protection for all parties involved.

Based on the two legal frameworks concerning oral gifts, there is a clear divergence in perspective between the Civil Code (*KUHPerdata*) and the Compilation of Islamic Law (KHI). The Civil Code emphasizes legal certainty, requiring that gifts be executed in the form of a notarial deed to be legally valid. Such a deed functions both as authentic evidence and as strong legal protection for the donor and the donee, thereby preventing future disputes.

By contrast, KHI places greater emphasis on substantive justice and procedural simplicity. Under KHI, a gift may be made orally provided that it is witnessed by two individuals who observe the transfer process. With the presence of witnesses, the gift is considered valid and legally binding, even without a written deed. Nevertheless, in judicial practice, written evidence is generally regarded as stronger than oral testimony, meaning that gifts executed through official documentation are typically easier to prove and enforce.

This divergence reflects the fundamental characteristics of each legal system. The Civil Code, rooted in the European

civil law tradition, emphasizes formalism, legality, and certainty, thereby making written procedures an indispensable requirement. By contrast, the Compilation of Islamic Law (KHI), grounded in Islamic legal principles, adopts a more flexible approach that resonates with Indonesian social traditions, where gifts are often made in a simple manner with witnesses serving as validation.<sup>[11]</sup>

The differences in the regulation of gifts between the Civil Code and the KHI are often perceived as normative contradictions that may generate tension in legal practice. However, upon closer analysis, not all such differences should be understood as hierarchical conflicts that place one set of rules above the other. Within the Indonesian legal system, which embraces legal pluralism, these differences frequently reflect a deliberate differentiation of spheres of applicability designed to accommodate the diverse legal needs of society.

As part of the civil law tradition, the Civil Code is structured to provide a high degree of legal certainty through formal requirements, including the obligation to execute authentic deeds for every act of gift. Such formalities serve not only as evidentiary instruments but also as administrative mechanisms ensuring that every transfer of property is properly recorded and accountable.

### 3.2. The Judge's Legal Considerations Regarding the Oral Grant of Land Rights According to the Selong District Court Decision Number 49/PDT.G/2024/PN.SEL

In Decision No. 49/Pdt.G/2024/PN.Sel, the jurisdiction of the Selong District Court in examining and adjudicating the case *a quo* was based on legal considerations concerning absolute judicial competence, particularly by reference to the Civil Chamber Formulation No. 3 of the Supreme Court Circular Letter No. 4 of 2016 on the Implementation of the Formulations of the 2016 Plenary Meeting of the Supreme Court Chambers as Guidelines for Judicial Duties.

This formulation affirms that ownership disputes as referred to in Article 50 paragraph (2) of Law No. 3 of 2006 on Religious Courts fall within the jurisdiction of the Religious Courts insofar as the ownership dispute arises from the first transaction conducted by one of the heirs with another party. However, if the ownership dispute arises from the second transaction and subsequent ones, jurisdiction to examine and adjudicate the dispute shifts to the general courts.

In a *quo* case, based on the judges' considerations on the merits, the disputed object land was no longer directly connected to the legal relationship between the decedent and the heirs. The land rights had undergone a series of transfers, beginning with a gift (*hibah*) from the decedent to another party during his lifetime, followed by subsequent gifts, issuance of a certificate of ownership, and ultimately sale to a third party. Therefore, the dispute in this case is more appropriately classified as a general civil dispute concerning the validity and legal consequences of the transfer of land rights, rather than an inheritance dispute under the jurisdiction of the Religious Courts. On this basis, the panel of judges concluded that the Selong District Court possesses absolute jurisdiction to examine, adjudicate, and decide the *a quo* case.

After elaborating in detail on the subject matter of Decision No. 49/Pdt.G/2024/PN.Sel, this section analyzes the legal reasoning (*ratio decidendi*) employed by the panel of judges

<sup>11</sup> ndi Annisa Nurliam Mamonto, *Comparative Civil Law*, PT. Literasi Nusantara Abadi Group, Malang, 2023, p. 88.

in rendering the decision. Such analysis is essential to uncover the juridical arguments underlying the ruling, while also assessing the extent to which the judges' considerations align with positive law principles and prevailing doctrinal thought.

The practice of oral conveyance of property has long been a customary tradition, whereby parents in earlier generations would transfer assets or grant gifts (*hibah*) to their children or relatives verbally. This practice originates from customary law, which places family solidarity and trust as the primary foundations of legal acts.<sup>[12]</sup>

This issue forms the basis of the dispute in a *quo* case. The plaintiff argued that the late Haji Zaenuddin, who passed away in 1986, had orally conveyed two final wishes. First, that he should be buried in the yard of his house; and second, that all of his estate be inherited by the children and grandchildren of his brother, Haji Taswir—including a parcel of land measuring approximately 28 m<sup>2</sup>—given that Haji Zaenuddin had no descendants from his marriage. These oral declarations were subsequently used as the foundation of the plaintiff's claim, who believed that the deceased's will must be respected and carried binding force.

If this claim is analyzed under the Compilation of Islamic Law (KHI), which serves as one of the substantive legal sources for the Religious Courts in Indonesia, particularly for Muslim litigants, the claim may be considered normatively sound. Article 174 of the KHI explicitly enumerates the categories of heirs entitled to inheritance. Article 174 paragraph (1) specifies that heirs by blood relation consist of two groups: (a) male heirs, including father, son, brother, paternal uncle, and grandfather; and (b) female heirs, including mother, daughter, sister, and grandmother. This provision indicates that nephews from the paternal line (in this case, the children and grandchildren of Haji Taswir, the brother of the late Haji Zaenuddin) fall within the family lineage recognized as heirs. Since Haji Zaenuddin left no direct descendants (children), the bloodline through his brother becomes relevant in determining heirs.

Accordingly, the plaintiff's claim possesses a normative foundation in the KHI, as it is consistent with the principle of lineage (*nasab*) acknowledged in Islamic inheritance law.

The reinforcement of the plaintiff's claim can also be found in the Civil Code. Article 832 of the Civil Code stipulates that "according to the law, those entitled to inherit are blood relatives, whether legitimate under the law or born outside of marriage, and the surviving spouse, in accordance with the following provisions. If there are no blood relatives or surviving spouse, then all of the estate becomes the property of the state, which is obliged to settle the debts of the deceased insofar as the value of the estate suffices." This provision affirms that the principal heirs are those with blood relations or marital ties to the decedent. Accordingly, the plaintiff's claim, which is based on kinship through the decedent's brother (Haji Taswir), does not contradict the construction of inheritance law under the Civil Code. Nephews—in this case, the children and grandchildren of the decedent's brother—fall within the category of blood relatives who may hierarchically become heirs if the decedent leaves no direct descendants.

Although the plaintiffs' genealogical position as heirs can be justified, the principal basis of their claim—namely, the existence of an oral will—suffers from a fundamental weakness when tested against evidentiary law. Referring to Article 195 paragraph (2) of the Compilation of Islamic Law (KHI), an oral will is valid only if declared before at least two witnesses. Similarly, under the Civil Code, a will is essentially a formal act requiring written and authentic form, with oral wills permitted only in very limited emergency circumstances (*noodtestament*). In the trial, the plaintiffs failed entirely to present witnesses who directly heard the oral will of Haji Zaenuddin. This failure to meet evidentiary requirements undermined the strength of their inheritance claim, regardless of their status as blood relatives.

In their arguments, the plaintiffs also asserted that Haji Taswir had authorized Dahar (the sibling of Defendant I and alleged adopted child of Haji Zaenuddin) to cultivate the rice field left by Haji Zaenuddin, as Haji Taswir was unable to manage it himself. This assertion raises several critical points for analysis. One central issue in the dispute is the identity and legal status of Dahar. There are conflicting accounts between the plaintiffs and defendants regarding his status. The plaintiffs claimed that Dahar was merely a worker, whereas the defendants, supported by testimony from village officials and local residents, asserted that Dahar was an adopted child widely recognized by the community.

This ambiguity should not have arisen had the process of adoption been carried out in accordance with positive law. Article 13 of Government Regulation No. 54 of 2007 explicitly requires that every adoption must be legalized through a court decree. Since no evidence of a court decree was submitted in this case, Dahar's status as an adopted child remains only *de facto* (factual/social) and not *de jure* (legally valid under state law).<sup>[13]</sup> The absence of formal legality compelled the judges to seek material truth through other means of evidence, namely witness testimony from the surrounding community, in order to ascertain the actual relationship between Haji Zaenuddin and Dahar.

The fact that the land certificate was issued after a series of rigorous formal procedures—ranging from proof of possession history, corroboration through sporadic statements, to public announcement without objection—further reinforced its validity. The certificate not only reflects factual possession by Dahar's family but also provides legal certainty (*rechtszekerheid*) and legal protection (*rechtsbescherming*) for the rights holder.<sup>[14]</sup>

Moreover, the certificate had never previously been contested by the plaintiffs. This fact further demonstrates that the plaintiffs had never shown any interest in the disputed land cultivated by Dahar and his heirs. It also indicates that the plaintiffs had never cultivated the land themselves, since according to community testimony, the land had been managed by Dahar from the time of Haji Zaenuddin, and even when the land was allegedly inherited by Haji Taswir (as claimed by the plaintiffs), it continued to be cultivated by Dahar. After Dahar's death, the land was managed by his family, specifically Inaq Siadah.

With the issuance of the certificate of ownership in the name of Inaq Siadah, the legal position of Defendant I became far

<sup>12</sup> Prasetyo, G. S., Deeds of Gift Agreements and Deeds of Power of Attorney in the Indonesian Land Law System (Doctoral Dissertation, Islamic University of Indonesia), Yogyakarta, 2023, p. 44.

<sup>13</sup> Deseanah, E., & Bey, F., Implementation of Adoption and Child Protection in Indonesia. *Lex Jurnalica*, Vol. 12 No. 1, 2015, p. 147.

<sup>14</sup> Avivah, L. N., Sutaryono, S., & Andari, D. W. T. The Importance of Initial Land Registration for Legal Protection of Land Certificate Ownership. *Tunas Agraria*, Vol. 5 No. 3, 2022, pp. 197-210.

stronger than if it had relied solely on the claim of an oral gift. This is because, within Indonesia's land law system, a certificate of ownership is regarded as the pinnacle of land ownership legality, enforceable before the law unless proven to contain administrative defects or annulled by a court decision. Land certificates are issued through administrative procedures by the National Land Agency (BPN) and serve a dual function: as proof of ownership and as the state's recognition of individual rights. As authentic instruments, land certificates carry full evidentiary force.

This aligns with Article 1870 of the Civil Code, which affirms that "an authentic deed provides, between the parties, their heirs, or those deriving rights from them, conclusive proof of what is contained therein." Consequently, anyone claiming a right or invoking an event to substantiate such right must prove the claim with valid evidence, whereas a party holding a certificate of ownership is not burdened with additional proof. Therefore, the existence of the certificate of ownership in the name of Inaq Siadah provides exceptionally strong legal legitimacy for Defendant I. This position not only reinforces ownership of the disputed land but also underscores that the plaintiffs' claim, based on oral gifts without written evidence, is exceedingly weak before the law. In judicial practice, courts tend to prioritize authentic evidence such as certificates over oral assertions that cannot be legally verified.

Another consideration that likely formed the philosophical foundation of the judges' decision was the pursuit of substantive justice. Within the Indonesian legal system, judges are not merely the "mouthpiece of the law" (*bouche de la loi*), but also legal discoverers (*rechtsvinding*), as mandated by Law No. 48 of 2009 on Judicial Power, specifically Article 5 paragraph (1), which states that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live within society. This obligation enables judges to draw upon societal values in order to reach decisions that are truly just, particularly when rigid application of formal law would undermine justice.

In this case, it would be profoundly unjust to deprive a family of land they have cultivated and maintained for nearly forty years merely due to the absence of a written document from the past. Such an approach aligns with the concept of Progressive Law popularized by Prof. Dr. Satjipto Rahardjo, who argued that "law is for humans, not humans for law." This principle underscores that the ultimate purpose of law is to achieve justice, happiness, and welfare for society—even if doing so requires transcending rigid formalities of regulation.<sup>[15]</sup>

The plaintiffs' prolonged passivity over several decades may also be analyzed through the doctrine of *rechtsverwerking* (waiver of rights). This doctrine holds that a person may lose the right to assert a claim if their silence has created a legitimate belief in another party that the right will no longer be exercised. Thus, the court's decision in favor of the defendants can be viewed as a manifestation of legal discovery (*rechtsvinding*) that prioritizes substantive justice over rigid formal certainty.

Based on the author's analysis as outlined above, it can be concluded that Dahar may be deemed to have possessed the disputed land in good faith for several reasons, such as:

### 1. Origin of Land Possession

Dahar acquired the disputed land through a legal act of gift (*hibah*) directly from Haji Zaenuddin (alias H. Sen) and Saenah (alias Inaq Sen) during their lifetime. The gift was granted to Dahar as an adopted child who had long resided and lived with the donors. In civil law, possession derived from a lawful legal act carried out by parties who genuinely controlled the object demonstrates good faith (*goede trouw*) on the part of the recipient.

### 2. Absence of Unlawful Possession

There is no legal fact indicating that Dahar's possession was without right or intended to be unlawful. In the judges' considerations, the plaintiffs' claim that Dahar was merely instructed to cultivate the land as inheritance or under another's command was found unproven. On the contrary, the court assessed that Dahar's possession of the disputed land was based on a clear legal relationship, namely as a recipient of a gift, not as a temporary cultivator or possessor without legal basis.

### 3. Open and Uncontested Possession

Dahar's possession of the land was carried out openly, visibly, and without objection from any party during the lifetime of the donors. There was no evidence of objection, rejection, or lawsuit from the heirs at the time of the gift or during Dahar's possession. This condition reinforces the presumption that possession was exercised with the belief that the right was lawfully acquired, which is a principal element of good faith.

### 4. Subsequent Transfers and Administrative Recognition

The subsequent chain of transfers—namely, the gift from Dahar to Inaq Ziadah, followed by the issuance of a certificate of ownership and eventual sale to a third party—demonstrates that Dahar's initial possession was acknowledged and accepted within legal practice and land administration. If Dahar had possessed the land in bad faith from the outset, such transfers would likely have been defective and would not have obtained administrative recognition, as occurred in this case.

On the basis of these considerations and the judges' reasoning in the merits of the case, Dahar was not deemed to have possessed the land unlawfully. Rather, he was considered to have possessed the land in good faith, since his possession originated from a valid gift (*hibah*), was exercised openly, without deceit, and without any dispute at the time such possession took place.

### 4. Conclusion

From the analysis presented, several key conclusions can be drawn:

Normative Differences between the Civil Code and KHI. The Civil Code emphasizes formal legal certainty, requiring gifts to be executed in a notarial deed to be valid. The Compilation of Islamic Law (KHI) emphasizes substantive justice and procedural simplicity, allowing oral gifts provided witnesses are present and substantive requirements are met. Ratio Decidendi of the Selong District Court Decision No. 49/Pdt.G/2024/PN.Sel. The judges determined that the dispute was no longer an inheritance matter but a general civil

<sup>15</sup> Rahardjo, S. *Progressive Law: A Synthesis of Indonesian Law*. Genta Publishing, Yogyakarta, 2009, p. 90.

dispute concerning the validity of land transfers. Jurisdiction was placed with the District Court, as the land had undergone multiple transfers (gift, certificate, sale). Legal Position of Dahar as Land Holder, Although Dahar's status as an adopted child was not *de jure* valid due to the absence of a court decree, the judges found his possession of the land to be based on a valid gift and carried out in good faith. His possession was open, continuous, and uncontested, and later recognized through administrative land procedures.

Strength of Land Certificates, the certificate of ownership in the name of Inaq Siadah was regarded as the highest form of land ownership legality, consistent with Article 1870 of the Civil Code on the evidentiary force of authentic deeds. The certificate provided legal certainty (*rechtszekerheid*) and legal protection (*rechtsbescherming*), rendering the plaintiffs' oral gift claim legally weak.

Philosophical Considerations of the Judges, Judges are mandated not only to apply law formally but also to seek substantive justice, as stipulated in Article 5(1) of Law No. 48 of 2009 on Judicial Power. This approach aligns with Satjipto Rahardjo's Progressive Law, which asserts that "law is for humans, not humans for law," prioritizing justice and welfare over rigid formalities. Doctrine of *Rechtsverwerking* (Waiver of Rights). The plaintiffs' decades-long passivity created the presumption that their rights would no longer be exercised. This doctrine reinforced the defendants' position, as the plaintiffs were deemed to have implicitly relinquished their rights.

Final Conclusion, The Selong District Court Decision No. 49/Pdt.G/2024/PN.Sel reflects the application of Indonesia's legal pluralism:

- The Civil Code provides certainty through authentic deeds and land certificates.
- KHI and customary law provide moral legitimacy for oral gifts and kinship-based inheritance.
- The judges integrated these frameworks by emphasizing good faith, factual possession, and substantive justice, ensuring that the ruling was not only valid under positive law but also fair according to the social values prevailing in the community.

## References

1. Deannira Patrisya Tumbelaka, *et al.* Legal Review of Land Donation Letters from Parents to Children Made Without a Deed of Land Ownership (PPAT) or Notary Public Deed. *Lex Crimen*. 2024;12(4).
2. Salim Hs. Deed Making Techniques One: Theoretical Concepts, Notary Authority, Form, and Minutes of the Deed. Jakarta: PT. Raja Grafindo Persada; 2015.
3. Deannira Patrisya Tumbelaka, *et al.* Legal Review of Land Donation Letters from Parents to Children Made Without a Deed of Land Ownership (PPAT) or Notary Public Deed. *Lex Crimen*. 2024;12(4).
4. Helmi Karim. Provisions of the Compilation of Islamic Law Concerning Limitations in Granting Grants. *Jurnal Hukum Islam*. 2015;1(1).
5. Abdul Ghofur Anshori. Indonesian Notary Institution, Legal and Ethical Perspectives. Yogyakarta: UII Press; 2009.
6. Andi Annisa Nurlia Mamonto. Comparative Civil Law. Malang: PT. Literasi Nusantara Abadi Group; 2023.
7. Prasetyo GS. Deeds of Gift Agreements and Deeds of Power of Attorney in the Indonesian Land Law System.

Yogyakarta: Islamic University of Indonesia; 2023.

8. Deseanah E, Bey F. Implementation of Adoption and Child Protection in Indonesia. *Lex Jurnalica*. 2015;12(1).
9. Avivah LN, Sutaryono S, Andari DWT. The Importance of Initial Land Registration for Legal Protection of Land Certificate Ownership. *Tunas Agraria*. 2022;5(3).
10. Rahardjo S. Progressive Law: A Synthesis of Indonesian Law. Yogyakarta: Genta Publishing; 2009.
11. Peter Mahmud Marzuki. *Legal Research*. Jakarta: Kencana Prenada; 2010. p. 3.
12. Amiruddin, Zainal Asikin. *Introduction to Legal Research Methods*. Jakarta: PT. Raja Grafindo Persada; 2020.
13. Zainal Asikin. *Menganahil Filsafat Hukum*. 1st ed. Mataram: Pustaka Bangsa; 2018.
14. Abdul Mukthie Fadjar. *History, Elements, and Types of the Rule of Law*. Malang: Setara Press; 2016.

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