



Judicial Examination of Unilateral Revocation of Grants Derived from Joint Marital Property

Arpyana Wahyuni ^{1*}, H Salim HS ², Lalu Muhammad Hayyanul Haq ³

¹⁻³ Master's Program in Notarial Law Faculty of Law, Social and Political Sciences, University of Mataram, Indonesia

Corresponding Author: Arpyana Wahyuni

Article Info

ISSN (online): 2583-6536

Volume: 05

Issue: 02

March-April 2026

Received: 09-01-2026

Accepted: 07-02-2026

Published: 05-03-2026

Page No: 10-17

Abstract

This study aims to analyze several issues. First, the existence of grants (*hibah*) under Indonesian positive law, particularly the differences between the provisions in the Civil Code (KUHPerdata), the Compilation of Islamic Law (KHI), and customary law. Second, the legal considerations of judges in cases involving land grants made by foster parents to foster children, where the object originated from joint property, as decided by the Waingapu Religious Court in Decision Number 4/Pdt.G/2018/PA WGP. The background of this research lies in the practice of grants made by parents to their foster children, which later led to the foster child refusing to care for the elderly and ailing parent, prompting the donor to file a lawsuit for the revocation of the grant. The research method employed is normative legal research with three approaches: statutory, conceptual, and case-based. The sources of legal materials consist of primary, secondary, and tertiary legal materials, analyzed using qualitative techniques. The findings show that the Civil Code regulates the revocation of grants under Article 1688. Meanwhile, the Compilation of Islamic Law regulates grant revocation in Articles 210 to 212. In customary law, revocation is possible if the grant violates customary provisions or if the recipient breaches a promise. In Decision Number 4/Pdt.G/2018/PA WGP, the judge acknowledged the validity of the grant due to the existence of a notarial deed of grant, while the petitioner's claim was deemed vague. This decision underscores that in judicial practice, judges may prioritize administrative formalities over moral and sociological considerations.

DOI: <https://doi.org/10.54660/IJL.2026.5.2.10-17>

Keywords: Judicial Examination, Unilateral Revocation, Grants, Joint Marital Property

1. Introduction

Human beings, as social creatures, naturally require others to interact with in daily life. Humans are created to live in pairs, which is manifested in the institution of marriage. In Indonesia, marriage is regulated under Law Number 1 of 1974 concerning Marriage. Article 1 of Law Number 1 of 1974 concerning Marriage states:

“Marriage is a physical and spiritual bond between a man and a woman as husband and wife, to establish a happy and everlasting family (household) based on the Almighty God.”

Within marriage, there are two categories of property: separate property and marital property. Separate property refers to assets acquired prior to marriage, while marital property consists of assets obtained during the marriage or throughout its duration.

In expressing affection, individuals often manifest it through the act of giving gifts. In legal terminology, such gifts are referred to as *hibah* (grants). Grants are regulated under Chapter X of the Indonesian Civil Code (KUHPer), specifically Articles 1666 to 1693. Article 1666 of the Civil Code stipulates:

“A grant is an agreement whereby a donor transfers an object gratuitously, without the possibility of revocation, for the benefit of the recipient of the transfer. The law only recognizes grants made between living persons.”

It can thus be understood that a grant is made gratuitously, meaning the transfer is carried out without compensation or reciprocal obligation from the recipient, unlike a sale and purchase agreement which is reciprocal in nature. A grant must be given while the donor is still alive, in contrast to inheritance, which requires the death of the testator before the heir can receive the inheritance.

The object of a grant (*hibah*) may consist of both movable and immovable property. Legally, a deed of grant constitutes one of the essential requirements for the validity of a grant. Such a deed serves as official documentation recognized by law to demonstrate the legality of the grant process. Therefore, it is crucial to observe both the formal and material requirements in the drafting of a grant deed. In principle, a grant must be executed through a notarial deed, with the original document retained by the notary. However, grants involving land and buildings must be executed by a Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT).^[1]

A grant is characterized by its irrevocable nature, meaning that once it has been given, the donor no longer possesses the right to revoke it, except under specific circumstances expressly regulated in the Civil Code. Although, in principle, a grant cannot be withdrawn once delivered, there are exceptions under which revocation is permitted. Article 1688 of the Civil Code stipulates:

“A grant cannot be revoked and therefore cannot be annulled, except in the following cases:

If the conditions of the grant are not fulfilled by the recipient;

If the recipient is guilty of committing or participating in an attempt to murder or another crime against the donor;

If the donor falls into poverty and the recipient refuses to provide maintenance.^[2]

In practice, grants are often made by members of society to transfer assets to heirs before the death of the testator, or as acts of charity and social assistance. In Decision Number 4/Pdt.G/2018/PA WGP, the petitioner filed a lawsuit against the respondent concerning a grant previously given. The grant in question involved a parcel of land originating from joint property between the petitioner and his wife. In this case, the respondent was the foster child of the petitioner and his wife. Initially, all matters proceeded smoothly until one day the petitioner's wife passed away.

The respondent, who was studying in another city, returned to the same hometown as the petitioner in Waingapu. However, instead of going directly to the petitioner's house, the respondent went to the house of her biological mother, who is the petitioner's younger sister. After several days of waiting, the respondent did not return to the petitioner's home. The petitioner repeatedly attempted to contact the respondent, but she did not answer. Eventually, the petitioner called his elder sibling, and when the phone was answered, it was the respondent who spoke. The respondent stated that she did not wish to return to the petitioner's house and preferred to live with her biological mother. This statement was heard by several witnesses who were present with the petitioner at the time.

This situation deeply disappointed the petitioner, as he had

cared for the respondent since childhood. At present, the petitioner is elderly and in poor health and requires someone to look after him. However, the respondent, as the petitioner's foster child, refused to return to his home. This refusal became the basis for the petitioner's lawsuit seeking the revocation of the grant at the Waingapu Religious Court.

In this case, the Waingapu Religious Court judge rejected the petitioner's claim for revocation of the grant because the petition was obscure (*obscuur libel*). According to the judge, the petitioner's claim lacked clarity, and he failed to substantiate the allegations made against the respondent.

About the grant object originating from joint property, in this case, the petitioner's wife has passed away, which is legally considered as divorce by death (*cerai mati*). Consequently, the joint property of the petitioner and his wife must be regulated according to Islamic law, as stipulated in Article 6 of the Compilation of Islamic Law (KHI), which states:

“In the event of divorce by death, half of the joint property becomes the right of the surviving spouse.”^[3]

Furthermore, Supreme Court Jurisprudence Number 1448 K/Sip/1974 declares: “Since the enactment of Law Number 1 of 1974, assets acquired during marriage constitute joint property, and therefore, upon divorce, such joint property must be divided equally between the former husband and wife.” Accordingly, the joint property of the petitioner and his wife must be divided equally, with each party entitled to one-half of the property.

Based on the above background, the author formulates two main research problems:

What is the legal existence and validity of grants involving joint property?

What is the rationality of equitable judicial considerations in the court's decision Number 4/Pdt.G/2018/PA WGP?

2. Research Method

The type of research employed in this study is normative legal research. Normative legal research is an approach conducted on the basis of primary legal materials, examining theoretical matters related to legal principles, legal concepts, legal doctrines, statutory provisions, and the legal system by utilizing secondary data, including principles, norms, and legal rules contained in legislation and other regulations, as well as through the study of books, statutes, and documents closely related to the research.^[4]

As normative legal research, this study falls within the category of descriptive-prescriptive legal research, which aims to identify solutions to legal problems (*problem-solution*).^[5] The research approaches applied must be consistent with the type of research used. Such consistency is necessary to provide accurate answers to the issues under examination. The approaches adopted include:

Conceptual Approach – This approach provides a conceptual framework illustrating the relationship between the concepts under study and the views of legal scholars in relation to the issues being discussed.^[6]

Statute Approach – This approach involves examining and analyzing all laws and regulations relevant to the legal issues

¹ Nur Aidah Fitriah, “Legal Analysis of the Cancellation of Grants at the Jember Religious Court, Case Number: 4301/Pdt.G/2023/PA.Jr,” *Journal of Fiqh in Contemporary Financial Transactions*, Vol. 3 No. 2, 2025, p. 163.

² Indonesian Civil Code, Article 1688.

³ Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, Article 6.

⁴ Soerjono Soekanto, *Penelitian Hukum Normatif* PT. Raja Grafindo Persada, Jakarta, 2006, p. 24.

⁵ Soerjono Soekanto, *Pengantar Penelitian Hukum* UI Press, Jakarta, 2008, pp. 50-51.

⁶ Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* [Introduction to Legal Research Methods], Rajawali Pers, Jakarta, 2013, p. 47.

at hand. Statutes serve as the primary reference materials in the research.

Case Approach – This approach aims to study the application of legal norms or rules in legal practice. It is typically employed in relation to cases that have already been adjudicated. In normative research, such cases are examined to obtain an overview of the normative dimensions and their impact on the application of legal rules in practice.^[7]

All data used in this study are derived from various sources of legal literature, both hard copy (books) and soft copy (internet sources, journals, and official publications). Accordingly, the data collection technique employed is documentation, which involves recording, copying, downloading, and other relevant methods of gathering data from both hard copy and soft copy sources.

The processing of legal materials in normative legal research is carried out through systematization, which includes selecting legal materials, classifying them according to categories, and organizing them to produce systematic and logical research findings. The analysis applied is qualitative, conducted by interpreting the processed legal materials. The nature of the analysis in normative legal research is prescriptive: it provides arguments based on the research findings, which may involve opposing, criticizing, supporting, supplementing, or commenting on the results, and ultimately draws conclusions with the aid of relevant legal theories.^[8]

3. Discussion

3.1. The Existence of Grants and Their Legal Validity Regarding Grant Objects Derived from Marital Assets.

3.1.1. The Existence of Grants and Their Validity within the Indonesian Legal System.

The existence of grants (*hibah*) within the Indonesian legal system represents the embodiment of an individual's freedom to determine the disposition of their property during their lifetime. A grant is not merely a "gift," but rather a unilateral legal act that is final and binding.

Grants under the Civil Code (KUHPerdata)

Indonesian positive law, particularly as codified in the Civil Code (*KUHPerdata*), provides a comprehensive regulation of grants as a form of agreement executed while the donor is still alive. Grants are regulated in Book Three, Chapter Ten, Articles 1666 to 1693. Article 1666 of the Civil Code stipulates: "A grant is an agreement whereby the donor, during his lifetime, gratuitously and irrevocably transfers an object for the benefit of the recipient who accepts the transfer."

A grant is classified as a unilateral agreement, in which only the donor bears obligations under the agreement, while the recipient has no reciprocal obligations.

Grants under Islamic Law

In Islam, grants constitute one of the recognized mechanisms for the transfer of property. Their legality is firmly established and strongly encouraged, as they carry both

vertical and horizontal dimensions of worship. Vertically, a grant reflects obedience to Allah's command; horizontally, it fosters affection between donor and recipient, strengthens kinship ties, and promotes mutual assistance.

The Compilation of Islamic Law (KHI) and the Compilation of Sharia Economic Law (KHES), both derived from Islamic jurisprudence (*fiqh*), serve as authoritative references for judges in Religious Courts. These regulations stipulate that a valid grant requires the presence of two witnesses (Article 210 KHI), and that the declaration of consent (*ijab*) may be expressed verbally, in writing, or through gestures (Article 686(3) KHES).

Sayyid Sabiq, in his work *Fiqh al-Sunnah*, defines a grant as "the transfer of ownership of property by a person to another during his lifetime without compensation." In the Indonesian language, *hibah* means "gift," derived from the Arabic word *hib* which signifies "love" or "affection." This definition aligns with the essence and purpose of grants in Islamic law.^[9]

The regulation of grants in the Compilation of Islamic Law (KHI) forms an integral part of the Islamic family law system in Indonesia, although the number of provisions governing grants is relatively limited compared to inheritance or marriage. Nevertheless, Articles 171(g) and 210–214 of KHI provide a sufficient normative framework for regulating the practice of grants among Muslim communities. These provisions not only define, stipulate requirements, and outline procedures for grants, but also emphasize the balance between individual freedom in transferring property and the obligation to safeguard the rights of heirs.

Article 171(g) of KHI defines a grant as the voluntary transfer of an object without compensation from one person to another who is still alive, for the recipient's full ownership. This definition highlights several essential elements of grants: the element of transfer, voluntariness, absence of compensation, and the complete transfer of rights to the recipient. Accordingly, KHI positions grants as unilateral legal acts, arising solely from the donor's will, without requiring reciprocal obligations as in contracts of sale, lease, or other bilateral agreements.

Grants under Customary Law

In customary law, grants (*hibah*) are known as *beri-memberi* ("giving and receiving"), which signifies the act of giving goods to others as an expression of compassion, respect, remembrance, honor, gratitude, friendship, sympathy, and similar sentiments. Such acts of giving may involve objects of either minor or major value.

Minor objects are those of relatively low economic value, such as daily expenses, foodstuffs, clothing, jewelry, household tools, and similar items. It is customary for members of society to bring small tokens or gifts when visiting acquaintances. Major objects, on the other hand, are items of significant value.

Customary law also recognizes grants as legal acts. According to customary law, a grant constitutes a transfer that takes effect immediately while the donor is still alive, and

⁷ Salim HS and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis dan Disertasi* [Application of Legal Theory to Thesis and Dissertation], Raja Grafindo, Jakarta, 2013, pp. 17-18.

⁸ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* [The Dualism of Normative and Empirical Legal Research], Pustaka Pelajar, Yogyakarta, 2010, p. 157.

⁹ Sayyid Sabiq dalam Idia Isti Murni, "Hibah Dalam Hukum Positif Di Indonesia Dan Kaitannya Dengan Pembuktian Di Persidangan", [https://www.pakanbaru.go.id/images/stories2017/berkas2017/HIBAH%20\(Dra.%20Hj.%20Idia%20Isti%20Murni,%20M.Hum.\).pdf](https://www.pakanbaru.go.id/images/stories2017/berkas2017/HIBAH%20(Dra.%20Hj.%20Idia%20Isti%20Murni,%20M.Hum.).pdf), diakses tanggal 16 Januari 2026

it may be given to anyone.

If the grant involves land, it must be executed in a manner that is both *tunai* (immediate) and *terang* (transparent), because such grants are considered land transactions. As explained by Soerojo Wignjodipuro, the granting of land to a child constitutes a land transaction, though not a sale, but rather a transfer of land within the family. Since it is a land transaction, the grant must be carried out with the assistance of the head of the customary community in order to be valid and transparent.^[10]

Thus, under customary law, a grant (*hibah*) is considered valid if it is executed in the presence of the head of the customary community or local customary leader. If a grant is made without the involvement of the head of the customary community, it is deemed non-transparent or “obscure,” meaning that it lacks legal validity. In the event of a dispute, the customary leader will not provide support or recognition for such a grant.

3.1.2. Grants Involving Joint Property Grants in Relation to *Legitime Portie*

Inheritance and grants are essentially two distinct legal acts, yet both concern the transfer of property. Inheritance law forms part of family law, closely connected to human life, as every individual will inevitably experience the legal event of death.

Civil inheritance law is characterized as mandatory law.^[11] The element of compulsion in civil inheritance law can be seen, for example, in the provision of absolute rights (*legitime portie*) to certain heirs over a specific portion of the estate, or in the prohibition against a testator disposing of property in ways that infringe upon these rights. In such cases, recipients of grants are obliged to return the property previously granted to them into the estate to fulfill the absolute portion (*legitime portie*) of heirs entitled to it.^[12]

As mandatory law (*dwingend recht*), civil inheritance law prohibits a testator from exceeding the limits prescribed by statute in disposing of their estate. Any violation of these limits will have legal consequences upon the estate after the testator’s death. A grant that infringes upon the *legitime portie* is classified as an unlawful act (*onrechtmatige daad*), defined as an act or omission that causes harm to another without a prior legal relationship, thereby entitling the injured party to claim compensation.^[13]

The absolute portion (*legitime portie*) of heirs in the direct descending line is protected against grants. According to Article 914 of the Civil Code, if the testator leaves only one legitimate child, the child’s absolute portion is one-half of the statutory share. If there are two legitimate children, their absolute portion is two-thirds of their statutory share. If there are three or more legitimate children, their absolute portion is one-quarter of their statutory share. The statutory share refers to the portion of the estate that heirs would receive if no grants or testamentary dispositions were made.

For heirs in the ascending line, Article 915 of the Civil Code stipulates that their absolute portion is always one-half of the

statutory share. For recognized illegitimate children, Article 916 provides that their absolute portion is also one-half of their statutory share. Heirs without an absolute portion (*non-legitimaris*) include, first, the surviving spouse, and second, the siblings of the deceased, as they belong to the collateral line. The application of *legitime portie* calculations depends on whether grants or testamentary dispositions exist.

In Islamic law, Article 210 of the Compilation of Islamic Law (KHI) sets forth two provisions regarding the minimum age, the permissible proportion, and the nature of property that may be granted. Article 210(1) states:

“A person who is at least 21 years old, of sound mind, and acting without coercion may grant up to one-third of their property to another person or institution in the presence of two witnesses, for full ownership.”

From this provision, it can be concluded that the minimum age for granting property is 21 years, consistent with Article 330 of the Civil Code, which defines adulthood as reaching the age of 21 or earlier upon marriage. The limitation of one-third of property is based on the hadith of the Prophet Muhammad (peace be upon him), narrated by Imran Ibn Husain, in which the Prophet instructed that only one-third of slaves could be freed at the time of death.^[14]

Article 210(2) further stipulates:

“The property granted must be the rightful property of the donor.”

This implies that the property must be legally owned by the donor. While the provision does not specify whether the property must be tangible or intangible, in principle, any asset or right that can be legally traded may be granted, such as shares. The donor must be the lawful owner, of legal age, physically and mentally sound, and acting voluntarily.

The one-third limitation is also linked to the principle of justice. If all property were granted, it would undermine the donor’s livelihood and the rights of heirs. Justice theory emphasizes fairness and human welfare over strict adherence to statutory provisions, recognizing that at times, the pursuit of justice may diverge from the literal text of the law.

Joint Property as the Object of Grants.

The concept of joint property has long been recognized, even prior to the enactment of Law Number 1 of 1974 on Marriage, through customary law, jurisprudence, and the Civil Code (*Burgerlijk Wetboek*, BW). The regulation of joint property under the Civil Code differs significantly from its regulation under Law Number 1 of 1974, which is currently in force. According to Law Number 1 of 1974, property acquired during marriage constitutes joint property. Meanwhile, property brought into the marriage by each spouse, as well as gifts and inheritance, remains under the control of each party, unless otherwise agreed (Article 35 of Law Number 1 of 1974).^[15]

In the Civil Code, joint property is regulated under Articles 119 to 122. Article 119 stipulates:

“From the moment the marriage is solemnized, a complete union of the spouses’ assets arises by operation of law, unless

¹⁰ Soerojo Wignjodipuro, “Introduction and Principles of Customary Law,” Gunung Agung, Jakarta, 1984, p. 174.

¹¹ Bertly Willy Wongkar, “Legal Settlement of Inherited Land Encroachment According to *Legitime Portie* in Civil Inheritance Law,” *Lex Administratum* 9, no. 1, 2021.

¹² Amanat, Anisitus. “Distributing Inheritance Based on Articles of the Law and the Civil Code.” 1st ed., Jakarta: PT RajaGrafindo Persada, 2000, p. 65.

¹³ Sibarani, Sabungan. “The Application of *Legitime Portie* (Absolute Share) in Inheritance Distribution According to the Civil Code (Case Study of Decision Number 320/PDT/G/2013/PN. JKT. BAR).” *Jurnal Ilmu Hukum* 6, no. 2 (2015): 123-130.

¹⁴ Ibn Rusyd, “*Bidayah al-Mujtahid, Jus 2*,” Semarang: Usaha Keluarga, 2017, hlm. 245.

¹⁵ Fahmi Al Amruzi, *Hukum Harta Kekayaan Perkawinan*, Yogyakarta: Aswaja Pressindo, 2013, p. 34

otherwise provided by a prenuptial agreement.” Consequently, the wife cannot act independently without the assistance of her husband. Once the marriage is contracted, the spouses’ assets are united by law, unless a prenuptial agreement stipulates separation of property.^[16]

Under civil law, the management of joint property lies exclusively in the hands of the husband. However, despite this extensive authority, the Civil Code imposes certain restrictions on the disposition of joint property. One such restriction is the prohibition against granting (*hibah*) joint property, whether movable or immovable. Article 124(3) of the Civil Code explicitly states that immovable property and all movable property belonging to the marital union may not be granted, except for the purpose of providing for the children.^[17]

The legal position of joint property in Indonesian marriage law is regulated under Articles 35 and 36 of Law Number 1 of 1974 on Marriage, which stipulate that property acquired during marriage constitutes joint property and may only be used with the consent of both spouses. Meanwhile, separate property, gifts, and inheritance remain under the control of each spouse and are fully their own, unless otherwise agreed. In essence, joint property refers to assets acquired through the efforts of either spouse or both during the course of the marriage.

With respect to joint property, each spouse must act with the consent of the other, as stipulated in Article 36 of Law Number 1 of 1974 on Marriage. This provision demonstrates that if either the husband or wife intends to undertake a legal act involving joint property (such as selling, granting, or using it as collateral for debt), whether movable or immovable, such legal act must be based on the mutual consent of both spouses.^[18]

The transfer of rights over joint property is regulated under Article 36(1) of Law Number 1 of 1974, which states that either spouse may act regarding joint property only with the consent of the other. Similarly, Article 92 of the Compilation of Islamic Law (KHI) stipulates that neither spouse may sell or transfer joint property without the other’s consent. Both legal frameworks thus emphasize that the transfer of joint property requires the agreement of both parties.

The legal consequence of transferring joint property by way of grant (*hibah*) without the consent of one spouse is that such legal act becomes null and void by operation of law, as it contravenes Law Number 1 of 1974 and the Compilation of Islamic Law. Consequently, any deed of grant issued by a Land Deed Official (PPAT) or any certificate of grant in such circumstances lacks legal force.

3.2. Considerations of Justice in the Court Decision Number 4/Pdt.G/2018/PA WGP

3.2.1. Case Description of the Waingapu Religious Court Decision Number 4/Pdt.G/2018/PA WGP

Judges within the judicial system are not merely figures equipped with technical expertise in law, but are also entrusted with the responsibility of discovering, interpreting, and applying the most appropriate legal norms in every case

brought before them. In matters concerning the validity of a grant (*hibah*), judges are required not only to examine the documents submitted by the parties, but also to carefully consider the reasons underlying the petition. Such considerations must then be aligned with the relevant statutory provisions, ensuring that the decision rendered is not only legally sound but also reflects values of justice, propriety, and the social norms recognized within society. In delivering judgments, judges are bound by the principles of adjudication as stipulated in Article 2 of Law Number 48 of 2009 (Second Amendment to Law Number 14 of 1970 on Judicial Power). These principles include:

1. **The Principle of judicial passivity** (*asas hakim bersifat menunggu*), meaning that judges may only examine a case if a party submits a claim; without such a claim, judges have no basis to act.
2. **The Principle of judicial restraint** (*asas hakim bersifat pasif*), meaning that the scope of the dispute is determined by the parties, and judges may not expand the object of the dispute beyond what has been requested.
3. **The Principle of open trial**, requiring that proceedings be conducted publicly unless otherwise mandated by law or justified by specific circumstances.
4. **The Principle of hearing both parties**, obligating judges to adjudicate objectively by granting equal opportunity to each party.
5. **The Principle of reasoned judgment**, requiring judges to provide legal arguments as the basis for their decisions.
6. **The Principle of procedural costs**, stipulating that a case may only be registered once the required fees have been paid.
7. **The Principle of justice based on the Almighty God**, requiring that every judgment include this phrase as part of its formal identity.^[19]

Accordingly, judicial decisions should not only embody legal accuracy but also reflect justice within the concrete circumstances faced by the parties. One of the cases examined in this study is the Waingapu Religious Court Decision Number 4/Pdt.G/2018/PA WGP. The analysis aims to dissect the *ratio decidendi* of the judge in resolving this case.

In the Principal Case:

1. The arguments raised by the respondent in the preliminary objection are inseparable (*mutatis mutandis*) from the arguments presented in the principal case.
2. All of the petitioner’s claims are expressly rejected by the respondent as being entirely without legal basis and contrary to the applicable laws and regulations.
3. A grant (*hibah*) is one example of a *tabarru’* contract, which is not intended for profit but is gratuitously directed toward another person. The essential elements of a grant include sincerity, voluntariness, and the transfer of ownership rights.
4. Pursuant to Article 212 of the Compilation of Islamic

¹⁶ Ibid, p.39.

¹⁷ Hasanuddin Pulungan, “Legal Consequences of Granting Gifts from Joint Marital Assets Without the Wife’s Consent (Study of the Medan District Court Decision Number 425/Pdt.G/2012.PN.Mdn),” Undergraduate Thesis Article, Faculty of Law, University of North Sumatra, 2016, p. 35.

¹⁸ engku Erwinsyahbana and Vivi Lia Falini Tanjung, “Legal Certainty Regarding the Pledging of Marital Assets Without the Consent of One Spouse in Marriage,” *Jurnal Varia Justicia*, Volume 13, Number E, March 2017, p. 51.

¹⁹ Law Number 48 of 2009 concerning Judicial Power, State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076, Article 2.”

- Law (KHI), a grant cannot be revoked, except for grants made by parents to their children. This provision is consistent with the hadiths of Ibn Umar and Ibn Abbas, in which the Prophet Muhammad stated that it is not lawful for a Muslim to reclaim a gift once given, except for a parent reclaiming a gift given to a child. These hadiths are deemed authentic by At-Tirmidhi, Ibn Hibban, Al-Hakim, An-Nasa'i, and Ibn Majah, as cited by Abdul Manan in *Masalah Hukum Perdata Islam di Indonesia* (2008).
5. The petitioner consciously and without coercion executed the grant in accordance with Deed of Grant No. xxxxxxxxxxxx/2014 dated xxxxxxxx 2014, having personally informed the respondent of his and his late wife's intention. It is therefore unreasonable to claim that the grant was made under repeated pressure from the respondent's biological mother, who only learned of the grant after its execution.
 6. After completing her studies in Malang, the respondent complied with the petitioner's request to return valuable items, including gold, a tablet, and a mobile phone, which had previously been given to her by the petitioner and his late wife.
 7. Grants may be revoked if given to biological children, as they may be classified as inheritance under Articles 211 and 212 of KHI. However, in this case, the respondent is not the petitioner's biological child but his foster child. Under Islamic law, foster children cannot be equated with biological children, as lineage (*nasab*) remains with the biological parents. Consequently, foster children have no inheritance rights from foster parents. Therefore, the grant made by the petitioner to the respondent under Deed of Grant No. xxxxxxxxxxxx/2014 dated xxxxxxxx 2014 cannot be revoked or annulled.
 8. The position of foster children is clarified in the Qur'an, Surah Al-Ahzab verses 4–5, which state that foster children cannot be equated with biological children, nor can their lineage be severed from their biological parents. Adoption is a manifestation of faith and humanity, intended to provide care and nurture, but it does not alter lineage or inheritance rights.
 9. The petitioner's reasons for revoking the grant are shallow, legally unfounded, and based solely on emotional, unilateral desires.
 10. The petitioner's claim rests only on the fact that the respondent left his home to stay with her biological mother. In reality, the petitioner himself exacerbated the situation by forbidding the respondent from meeting her extended family, expelling her cousin, and imposing deadlines for her return. Mediation efforts by the Waingapu District Court Chief and local neighborhood leaders were unsuccessful due to the petitioner's refusal to reconcile. Furthermore, the petitioner continues to withhold the respondent's university diploma. Such conduct contradicts the essence of adoption, which should not sever ties between foster children and their biological families.
 11. From the outset, the respondent has acknowledged and appreciated the care and attention of the petitioner and his late wife, and remains committed to caring for the petitioner until his death.
 12. The respondent, having only recently graduated and returned to Waingapu, has no authority to control her biological parents or family in accordance with the

petitioner's wishes, contrary to the petitioner's allegations.

13. The petitioner's claim in point 4 of his petition is false and fabricated, as the respondent's biological parents and siblings remain committed to supporting the petitioner.
14. The respondent does not understand the petitioner's behavior, which consistently imposes his will upon her and her biological family. The petitioner disregards deliberation and instead reacts impulsively, making unilateral decisions whenever displeased, as exemplified by the present petition.

In its ruling, the Court adjudicated as follows:

On the Preliminary Objection (Eksepsi):

- Declares that the respondent's objection is inadmissible.

On the Principal Case:

1. Declares that the petitioner's application is inadmissible.
2. Orders the petitioner to pay court costs in the amount of Rp. 391,000 (three hundred ninety-one thousand rupiah).

3.2.2. Analysis of Equitable Judicial Considerations in the Case at Hand

The rationality of the judge's legal reasoning in rejecting the revocation of the grant in this case is rooted in the principle of legal certainty and the protection of perfected legal acts. The judge considered that justice cannot stand independently without a clear foundation of legality. Thus, once a grant fulfills the essential elements under Islamic law and statutory provisions—namely the donor (*wahib*), the recipient (*mauhub lahu*), the object of the grant (*mauhub*), and the declaration and acceptance (*ijab* and *qabul*) ownership rights are transferred absolutely. The judge's reasoning reflects concern that revoking grants without exceptional grounds would create a negative precedent, undermining the stability of property rights in society.

The judge also rationally weighed that legal protection must extend to the respondent (the child) who already holds rights over the object, particularly since revocation could generate new injustices for the recipient, who may have invested effort, resources, or emotional attachment to the granted property over the years.

Furthermore, the judge's rationality is evident in the strict application of evidentiary standards to the petitioner's claims. Although Article 212 of the Compilation of Islamic Law provides discretion for parents to revoke grants, the judge interpreted this right restrictively to prevent misuse. Subjective reasons such as disharmony or lack of attention, absent evidence of serious legal violations, were deemed insufficient to override the probative force of an authentic grant deed. The judge prioritized "procedural justice," affirming that a deed executed consciously and voluntarily in the past must be respected as an expression of the donor's free will, which cannot be unilaterally withdrawn without urgent and exceptional justification. By rejecting the revocation, the judge safeguarded the integrity of civil law, ensuring it is not easily disrupted by emotional fluctuations or temporary family conflicts, thereby promoting stable and measurable justice for all parties.

In the Waingapu Religious Court Decision Number 4/Pdt.G/2018/PA WGP, the judge adhered closely to written rules governing grants and their revocation, as stipulated in the Civil Code and KHI. By contrast, in Supreme Court Decision Number 1795 K/Pdt/2013, a mother successfully

sought revocation of a grant to her child due to verbal abuse, expulsion from the home, and unauthorized sale of the granted asset. The Supreme Court held that such conduct violated principles of propriety and justice, thereby justifying revocation. This demonstrates that courts increasingly recognize good faith and fairness as grounds for revocation in Indonesian civil law practice. In this context, the principle of good faith (*itikad baik*) under Article 1338(3) of the Civil Code is highly relevant.

From a sociological perspective, grants are not merely private transactions but reflections of social relationships within communities. In many Indonesian local cultures, grants carry implicit social expectations. For example, in customary communities, a child receiving land through a grant bears moral and social responsibilities to care for parents, preserve family land, and uphold family honor.

The issue of revocation due to breach of moral obligations highlights the tension between written legal norms and social realities. While civil law provides limited grounds for revocation, societal developments demand a more progressive and responsive approach. A normative solution must be both theoretical and practical, ensuring fair legal protection for donors. One key solution is strengthening the role of judges in interpreting principles of justice and propriety. The Civil Code does not rigidly define “grossly improper conduct” as grounds for revocation (Article 1688), leaving interpretive space for judicial discretion. Judges should not rely solely on formalistic norms but should actively explore substantive justice values embedded in society. By considering social context, personal relationships, and evidence of moral breaches, judges can deliver restorative justice for donors who feel betrayed both morally and legally.

To support this, internal guidelines from the Supreme Court should be reinforced, providing judicial references for handling grant revocation cases. Such guidelines could elaborate indicators of “improper conduct” or breaches sufficient to justify revocation, including verbal abuse, neglect, emotional manipulation, and violations of moral agreements proven with clarity.

4. Conclusion

The existence of grants (*hibah*) in the Indonesian legal system reflects the fundamental principle of individual freedom to dispose of property during one’s lifetime. Hibah is not merely a gift but a unilateral legal act that is final and binding. Its regulation across three major legal frameworks—Civil Code (KUHPerdara), Compilation of Islamic Law (KHI), and Customary Law—demonstrates the pluralistic nature of Indonesian law, where statutory certainty, religious values, and social traditions intersect.

The Civil Code emphasizes legal certainty and formal requirements, restricting revocation to exceptional circumstances such as breach of conditions, serious crimes against the donor, or refusal to provide support when the donor falls into poverty. KHI, while recognizing hibah as a voluntary act of worship and social solidarity, provides a narrow exception for revocation only in the case of parental grants to biological children, thereby safeguarding both donor autonomy and heirs’ rights. Customary law, in contrast, situates hibah within the framework of social morality and communal transparency, requiring the involvement of customary leaders to ensure validity and legitimacy.

Judicial practice, as reflected in the Waingapu Religious Court Decision No. 4/Pdt.G/2018/PA WGP, illustrates a formalistic approach, prioritizing documentary evidence and statutory compliance over moral considerations. However, Supreme Court jurisprudence (e.g., Decision No. 1795 K/Pdt/2013) signals a progressive shift, recognizing fairness, propriety, and good faith as legitimate grounds for revocation when recipients act in ways that fundamentally betray social and moral obligations. This development highlights the growing importance of substantive justice alongside procedural legality.

Ultimately, hibah in Indonesia embodies not only a legal transaction but also a social mandate. It carries expectations of care, respect, and familial responsibility. The tension between written law and social reality underscores the need for judges to actively interpret principles of justice and propriety, ensuring that hibah remains both legally secure and socially meaningful. Strengthening judicial guidelines on what constitutes “grossly improper conduct” would provide greater clarity and balance, enabling courts to protect donors while preserving the integrity of property rights and social harmony.

Reference

1. Nur Aidah Fitriah. Legal analysis of the cancellation of grants at the Jember Religious Court, case number: 4301/Pdt.G/2023/PA.Jr. *Journal of Fiqh in Contemporary Financial Transactions*. 2025;3(2).
2. Indonesia. Kitab Undang-Undang Hukum Perdata (Indonesian Civil Code). Article 1688.
3. President of the Republic of Indonesia. Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law. Jakarta: President of the Republic of Indonesia; 1991. Article 6.
4. Soekanto S. *Penelitian hukum normatif*. Jakarta: PT RajaGrafindo Persada; 2006.
5. Soekanto S. *Pengantar penelitian hukum*. Jakarta: UI Press; 2008.
6. Amirudin, Asikin Z. *Pengantar metode penelitian hukum*. Jakarta: Rajawali Pers; 2013.
7. Salim HS, Nurbani ES. *Penerapan teori hukum pada tesis dan disertasi*. Jakarta: RajaGrafindo; 2013.
8. Fajar M, Achmad Y. *Dualisme penelitian hukum normatif dan empiris*. Yogyakarta: Pustaka Pelajar; 2010.
9. Murni II. Hibah dalam hukum positif di Indonesia dan kaitannya dengan pembuktian di persidangan [Grant in positive law in Indonesia and its relation to proof in court]. Pekanbaru: Pengadilan Agama Pekanbaru;. Available from: [https://www.pa-pekanbaru.go.id/images/stories2017/berkas2017/HIBA%20\(Dra.%20Hj.%20Idia%20Isti%20Murni,%20M.H.um.\).pdf](https://www.pa-pekanbaru.go.id/images/stories2017/berkas2017/HIBA%20(Dra.%20Hj.%20Idia%20Isti%20Murni,%20M.H.um.).pdf)
10. Wignjodipuro S. *Introduction and principles of customary law*. Jakarta: Gunung Agung; 1984.
11. Wongkar BW. Legal settlement of inherited land encroachment according to legitime portie in civil inheritance law. *Lex Administratum*. 2021;9(1).
12. Amanat A. *Distributing inheritance based on articles of the law and the Civil Code*. 1st ed. Jakarta: PT RajaGrafindo Persada; 2000.
13. Sibarani S. The application of legitime portie (absolute share) in inheritance distribution according to the Civil Code (case study of decision number

- 320/PDT/G/2013/PN. JKT. BAR). *Jurnal Ilmu Hukum*. 2015;6(2):123-130.
14. Ibn Rusyd. *Bidayah al-Mujtahid*. Vol. 2. Semarang: Usaha Keluarga; 2017.
 15. Al Amruzi F. *Hukum harta kekayaan perkawinan*. Yogyakarta: Aswaja Pressindo; 2013.
 16. Pulumgan H. *Legal consequences of granting gifts from joint marital assets without the wife's consent (study of the Medan District Court decision number 425/Pdt.G/2012.PN.Mdn)*. Medan: Faculty of Law, University of North Sumatra; 2016.
 17. Erwinsyahbana T, Tanjung VLF. *Legal certainty regarding the pledging of marital assets without the consent of one spouse in marriage*. *Jurnal Varia Justicia*. 2017;13(E).
 18. Indonesia. *Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*. *State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to the State Gazette of the Republic of Indonesia Number 5076*. Article 2

How to Cite This Article

Wahyuni A, Salim HS, Haq LMH. *Judicial examination of unilateral revocation of grants derived from joint marital property*. *International Journal of Judicial Law*. 2026;5(2):10–17. doi:10.54660/IJL.2026.5.2.10-17.

Creative Commons (CC) License

This is an open access journal, and articles are distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0) License, which allows others to remix, tweak, and build upon the work non-commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.