

Comparing KHI and KHES in Marital Property Grant Disputes: An Analysis of Judges' Views

Muhamad Subhi Apriantoro¹, M. Naufal Ibnu Alis²,
Sندی Septianozakia³, Dadang Setiana⁴

Universitas Muhammadiyah Surakarta, Indonesia^{1,2,3}
Qassim University, Saudi Arabia⁴

Corresponding Author: msa617@ums.ac.id

DOI: <https://dx.doi.org/10.29240/jhi.v8i1.6464>

Received: 17-01-2023

Revised: 06-04-2023

Accepted: 04-05-2023

Cite this article:

Apriantoro, M., Alis, M., Septianozakia, S., & Setiana, D. (2023). Comparing KHI and KHES in Marital Property Grant Disputes: An Analysis of Judges' Views. *Al-Istinbath: Jurnal Hukum Islam*, 8(1), 37-52. doi:<http://dx.doi.org/10.29240/jhi.v8i1.6464>

Abstract

This study aims to assess how judges make decisions regarding disputes over grants on marital property from the perspectives of two legal systems, KHI and KHES. Specifically, the study examines a case (numbered 145/Pdt.G/2021/PA.Slk) that was heard at the Solok City, West Sumatera Religious Court and involved a communal property grant dispute. The research methodology used was normative juridical, a quantitative approach that uses secondary legal principles, and a qualitative system that relies on library research data. The study's findings indicate that comparing grant arrangements by Compilation of Islamic Law and Compilation of Sharia Economic Law, specifically in terms of the pillars mentioned in KHI and KHES, is closer to the consensus of scholars but not identical because KHI has additional witnesses and KHES has *qabd*.

Keywords: Dispute Resolution; Joint Property Grant; Arbitration; Litigation

Introduction

Marriage is creating a legal agreement between a man and a woman to legitimize their relationship and form a happy and loving union.¹ Peaceful family following Allah's will.² Article 1 of Marriage Law No. 1 of 1974 defines marriage as "The inner and outer relationship between a man and a woman as husband and wife to form a happy and eternal family based on the One Godhead."

Marriage results in the creation of two types of property: inherited and joint.³ Joint property is acquired by the husband and wife together, provided that their marriage is valid⁴. The husband and wife can act under mutual agreement regarding the common property.⁵ Therefore, the husband and wife must consent to distribute the couple's property to their children.⁶ One of the tenets of Islamic Law is that property can be used to transfer wealth from one individual to another via inheritance, gifts, or wills.

In social life, every problem or dispute in the community can be resolved through the family, the involved area, or the court system. In the Religious Courts, the provisions of Islamic Law are applied through conflict resolution practices at the time of the grant.⁷ Some of these cases also require appropriate solutions or exhaustive resolutions. Grant activities occur daily

¹ Wanru Xiong, "Love Is Elsewhere: Internal Migration and Marriage Prospects in China," *European Journal of Population* 39, no. 1 (December 2, 2023): 6, <https://doi.org/10.1007/s10680-023-09658-3>.

² Hamda Sulfinadia, Deri Yanti, and Jurna Petri Roszi, "Keutuhan Rumah Tangga Suami Di Penjara (Studi Kasus Di Lembaga Pemasyarakatan Kelas II A Bukittinggi)," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (November 11, 2021): 271, <https://doi.org/10.29240/jhi.v6i2.3372>.

³ Tarmizi Tarmizi, "Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic Law)," *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (June 30, 2020): 179, <https://doi.org/10.22373/sjkh.v4i1.6784>.

⁴ Felix M. Muchomba, "Parents' Assets and Child Marriage: Are Mother's Assets More Protective than Father's Assets?," *World Development* 138 (February 2021): 105226, <https://doi.org/10.1016/j.worlddev.2020.105226>.

⁵ Natalie KLEIN, "Dispute Settlement - Islamic Law and International Law: Peaceful Resolution of Disputes by Emilia Justyna POWELL. New York: Oxford University Press, 2020. Xiv + 314 Pp. Hardcover: £47.99; Also Available as EBook.," *Asian Journal of International Law* 11, no. 1 (January 25, 2021): 207–8, <https://doi.org/10.1017/S2044251321000023>.

⁶ Sileshi Bedasie Hirko, "The Disputed Constitutionality of the Precedential Practice of the Federal Supreme Court and Its Implications for Oromia Family Law: The Case of Bigamous Marriage in Ethiopia," *Journal of African Law* 63, no. 2 (June 7, 2019): 193–223, <https://doi.org/10.1017/S0021855319000202>.

⁷ Zia Akhtar, "Conflict of Laws, Choice of the Forum Court in the Us, and the Due Process in Family Law Disputes," *International and Comparative Law Review* 21, no. 1 (June 1, 2021): 184–210, <https://doi.org/10.2478/iclr-2021-0007>.

when parents transfer their assets to their adult children and their children marry and start their family inheritance.⁸

Grants are awarded while the giver is still alive to eliminate discordant behavior among siblings and foster family ties after the grantor's death.⁹ In addition, article 210, paragraph 1, of the Compilation of Islamic Law states that a person of at least 21 years of age and sound judgment who is not under duress may donate up to one-third of his wealth in front of two witnesses.¹⁰

Sibling disputes can arise when giving a gift to a child causes disagreements among family members who believe the granting is excessive and should not be extended to other siblings.¹¹ In this instance, it is also possible to generate social envy over the provision of grants, thereby fostering ill will between the two parties. However, if both parents are still alive, the problems between these two parties can be adequately resolved through a family process so that the children at odds can find inner satisfaction.

However, if problems arise after the parent's death as the grantor, the resolution will be even more challenging; even the children of the grantor who disagree with the grant can take action to revoke or cancel the gift given to their siblings.¹² Even if the grant was awarded to two brothers, the Civil Code and the Compilation of Islamic Law stipulate that the license cannot be unilaterally revoked without the grantee's consent.¹³ Article 212 of the Compilation of Islamic Law stipulates that parents may withdraw their grants from their children. In addition, article 712 of the Compilation of Sharia Economic Law states that if the grantee agrees, the grantor may take the grant property after the submission is complete. Similar situations frequently arise in the community, prompting efforts to resolve them in court.

⁸ S L Reiter and M El-Sheikh, "Does Resolution of Interadult Conflict Ameliorate Children's Anger and Distress across Covert, Verbal, and Physical Disputes?," *Journal of Emotional Abuse* 1, no. 3 (1999): 1–21, https://doi.org/10.1300/J135v01n03_01.

⁹ Annelien Bouland, "Family Law in Senegal: Opposition and Pragmatic Pluralism," *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 56, no. 1 (January 2, 2022): 161–80, <https://doi.org/10.1080/00083968.2020.1848599>.

¹⁰ Umar Aimhanosi Oseni, "Shari'ah Court-Annexed Dispute Resolution of Three Commonwealth Countries – a Literature Review," *International Journal of Conflict Management* 26, no. 2 (April 13, 2015): 214–38, <https://doi.org/10.1108/IJCMA-06-2012-0050>.

¹¹ Michael Palmer and Simon Roberts, *Dispute Processes* (Cambridge University Press, 2020), <https://doi.org/10.1017/9781107707467>.

¹² Hilman Syahril Haq et al., "The Institutionalization of Community Mediation for Resolving Merarik Marriage Disputes in Sasak Community," *Jurnal Media Hukum* 26, no. 1 (2019), <https://doi.org/10.18196/jmh.20190118>.

¹³ Lola Akin Ojelabi and Judith Gutman, "Family Dispute Resolution and Access to Justice in Australia," *International Journal of Law in Context* 16, no. 2 (June 8, 2020): 197–215, <https://doi.org/10.1017/S1744552320000142>.

Through reasoning, the Sharia Economic Law Compilation (KHES) regulates the pillars of grants and their receipts.¹⁴ Article 685 of the KHES specifies that the cornerstones of a budget are the grantor, the recipient, the donated goods, the statement, and the delivery. The Sharia Economic Law Compilation (KHES) explains that the provision of grants is permissible if consent or a comment is made and this contract is expressed in words, writing, or gestures. This provision is by KHES article 686. In the form of a Deed, every grant made by a person must follow a face-to-face Notary procedure so that a budget concerning a person's assets can be considered a permanent and enforceable law.

Article 1320 of the Civil Code explains the conditions for the validity of an agreement, including the consent of both parties, the capacity to take legal action, and the existence of an authorized object and reason. The to-be-issued Notary Deed must satisfy the necessary conditions to achieve the authenticity of a deed. Before signing the act, the notary, as the maker of the deed, reads the deed to the signers and witnesses. The purpose of reading this deed is to ensure that the parties understand the deed's contents in the form of various wishes from the parties to the agreement, and the parties will not be harmed by the arguments that are read. If the *man hub* (grant recipient) has received a special grant, it is considered authentic, and its consequences apply to those involved (by notarial deed). Article 1683 and Article 1682 of the Civil Code regulate this provision. Article 1682 of the Civil Code states, "No grant may be made without a notarial deed that must be kept with a notary; if this is not done, the grant is void."

Article 1683 of the Civil Code states that "no grant binds the donor or causes anything before the grant is received in firm words by the grant recipient or by his authorized representative to receive the grant that has been or will be granted." If a receipt is issued without a grant deed, the original or authentic act may be used, and the notary retains the original manuscript. This event took place while Wahib was still alive. In this instance, the grant status becomes valid for the grantor once he receives official notification of the grant's receipt. This provision states that the license is suitable if the recipient has expressly and unambiguously accepted the appointment. However, article 686, paragraph 3 of the KHES states that a grant statement can be classified as an *Ijab*, a solution to the problem. Therefore, even though the grant statement is in the form of a covert agreement, it can still be used to establish the legality of the grant, even if no authentic deed is available. So that the provisions of the grant according to the KHES that are used as conditions are not based on the type of contract but on what can be demonstrated by its form, these provisions must be in writing.

¹⁴ Isman Isman and Yahya Yahya, "Istiqlah Al-Manwi; Multicultural Judicial Reasoning," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (August 8, 2022): 95–116, <https://doi.org/10.18326/ijtihad.v22i1.95-116>.

The study by Setiyowati examines how a religious court acknowledged grandchildren as legal heirs (substitute heirs) and authorized them to replace the prior heirs, who were the grandparents' parents. The report outlines the attempts taken by substitute heirs to conduct preliminary talks or mediation with the parties. When unsuccessful, they filed a lawsuit with the Religious Court following Law No. 3 of 2006 and the Supreme Court's consideration of Case No. 185/K/Ag/2009. Article 185 of the Compilation of Islamic Law stipulates that a kid can replace the position of his parents who died first as a substitute heir, provided that the portion obtained does not exceed the share of the heirs equal to the heirs being replaced. However, the defendants did not accept the ruling and filed a cassation with the supreme court.

The Study by Lilik Andar¹⁵ concludes that the method of *fiqh cum* tradition is the prevailing solution since it provides a medium ground for resolving inheritance disputes for asset unity and family harmony¹⁶. In addition, it serves as a model for socially based inheritance settlement negotiations in multicultural societies¹⁷. If Islamic Law performs a marriage, then Islamic Law also governs the legal repercussions of the wedding, such as inheritance issues.¹⁸

The type of research employed by the researcher is a method of normative legal analysis. This research method is a qualitative approach that focuses on data from library research, namely legal research, that examines and analyzes problems using secondary legal rules. This descriptive-analytical research explores the issues based on the obtained data. Using the provisions of the Compilation of Islamic Law, Compilation of Sharia Economic Law, and the Book of Laws, the author attempts to analyze the decision of the Solok City Religious Court No. 145/Pdt.G/2021/PA.Slk. Civil Law about the discussed issues.

¹⁵ Lilik Andar Yuni and Murjani Murjani, "Gender Sensitivity at Judge's Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 251–79, <https://doi.org/10.19105/al-lhkam.v15i2.2714>.

¹⁶ Dewi Sukarti, "Legal Pluralism in Settling Inheritance Disputes in Besemah, South Sumatera," *AHKAM: Jurnal Ilmu Syariah* 13, no. 1 (February 1, 2013), <https://doi.org/10.15408/ajis.v13i1.950>.

¹⁷ Shiri Regev-Messalem, "How the Law 'Keeps the Money in the Family': Lessons at the Intersection of Elder Care and Inheritance Disputes in Israel," *Law & Social Inquiry* 45, no. 1 (February 24, 2020): 81–110, <https://doi.org/10.1017/lis.2019.47>.

¹⁸ Jamil Ddamulira Mujuzi, "The Islamic Law of Marriage and Inheritance in Kenya," *Journal of African Law* 65, no. 3 (October 1, 2021): 377–401, <https://doi.org/10.1017/S0021855321000346>.

Discussion

Overview of the Dispute Regarding the over Grants on Marital Property as Determined by Solok Religious Court Decision No. 145/Pdt.G/2021/PA.Slk

Plaintiff 1 (H. Desefiarmy Alfariza) and Plaintiff II (also named H. Welli Dasmariyanti) filed a lawsuit regarding a dispute over a joint property grant, according to the data source obtained by the author in the form of an archive of copies of decisions from the Solok Religious Court (Welli Dasmariyanti). On April 7, 2021, the Registrar of the Solok Religious Court registered the lawsuit with case register number 145/Pdt.G/2021/PA.Slk. Additionally, it was stated that Plaintiffs I and II were suing Maidar Lina Ziarti, Hj Hartati Yuniar (Defendant I), Martha Herry Yessy (Defendant II), Yan Merry Rosalinda, SH (Defendant III), Fauzi Ella Sliano Bsc EE MBA (Defendant IV), and Yeni Krisna Silvia (Defendant V).

Case 145/Pdtg/2021/PA.Slk is a dispute (merger) involving marriage ratification/*isbat*, inheritance claims, and grant ratification.¹⁹ Therefore, the author chooses a topic focusing exclusively on disputes over joint property grants. The plaintiffs have filed a lawsuit containing the posita, the plaintiff's claim, the plaintiff's petition, the amicable settlement, the defendant/answer, a respondent is the replik, the evidence, and the parties' conclusion. By the case register number 145/Pdt.G/2021/PA.Slk, the subject of the dispute is the Public Fuel Filling Station (SPBU) which stands on the land with three (three) Ownership Certificates, namely:

1. Certificate of Ownership No. 21, with the following boundaries: it borders the highway to the north, the friend's rice fields to the south, the friend's land to the west, and the friend's land to the east.
2. Ownership Certificate Number 25 with the following boundaries: the highway to the north, a friend's land to the south, a shophouse to the west, and a friend's land to the east.
3. Ownership Certificate No. 91 with the following boundaries: the highway to the north, the friend's land to the south, and the friend's land to the west.

Then the source of contention is the Coffee Company with the Timbangan Mas stamp that processes and manufactures its coffee near the Public Fuel Filling Station (SPBU). The emergence of this dispute over a joint property grant began when the deceased parents of the plaintiff and the defendant were mentioned as the grantor. On July 3, 1995, the donor donated

¹⁹ Zakiul Fuady Muhammad Daud and Raihanah Azahari, "The Wajibah Will: Alternative Wealth Transition for Individuals Who Are Prevented from Attaining Their Inheritance," *International Journal of Ethics and Systems* 38, no. 1 (January 12, 2022): 1–19, <https://doi.org/10.1108/IJOES-09-2018-0133>.

Public Fuel Filling Station (SPBU) No. 14,273,545 and its land to Plaintiff I with Deed No. 3 by Notary Hj. Eldani SH was later confirmed by Deed No. 34 made by Notary Hj. Consequently, the Deed of Statement and Agreement was issued with Deed No. 79 on June 30, 2000.

These deeds are authentic evidence of the legality of grants. The Timbangan Mas Coffee Company then granted Powder Coffee to Plaintiff II via the deed. In honor of the deceased. Hj. Syamsidar and Alm. H. Nazir granted a Public Fuel Filling Station (SPBU) to Plaintiff I and a coffee company to Plaintiff II because they were among the deceased's children. Hj. Syamsidar and Alm. H. Nazir, who are unmarried, are Plaintiff I and Plaintiff II, respectively. A second reason is that from 1986 to 1995, plaintiff I helped both parents pay for the expensive tuition of Defendants III and IV.

The issue arose when the death of both parents (grants) prompted Defendant IV's disapproval of the grant to Plaintiff I, resulting in evil intentions to control the gas station by suing Plaintiff I and Defendant I in civil case No.12/Pdt.G /2011 PN Slk which has permanent legal force (*Eintracht van gewijsde*) regarding the Contract for Public Fuel Filling Stations (SPBU) between plaintiff I and Def In addition, Defendant IV had other malicious intentions, including inviting and convincing Defendants I to V to cancel the grant and refusing to acknowledge the previously made waiver of rights.

Defendants I to III felt tempted by Defendant IV's promise to immediately distribute the inheritance of mother and father's search property (*gono-gini*) if the grant cancellation was successful and assisted. In addition, problems arose when the parents (grants) died, causing Defendant I to illegally seize control of the Timbangan Mas Coffee Company by producing it without the consent of Plaintiff II. In this case, mutual suspicion and hostility resulted in Defendants I to V objecting once more to the grant to Plaintiff II. To reduce the risk that Defendants I through V will transfer or sell the object of the case, the Plaintiffs have requested that the Registrar of the Solok Religious Court place a confiscation of collateral (*Conservatoire Beslag*) against the thing.

Legal Considerations Judges of the Dispute Regarding the over Grants on Marital Property as Determined by Solok Religious Court Decision No. 145/Pdt.G/2021/PA.Slk

The Judge must have a solid basis for his conclusion when deciding a case.²⁰ In each decision, the Judge must provide sufficient maturity in their reasoning and thoughts.

²⁰ Hasan Khalid Dabis, "Rules of Inheritance in Islamic Laws (A Quranic Study)," *Review of International Geographical Education Online* 11, no. 9 (September 2021): 779–87, <http://10.0.187.175/rigeo.11.09.66>.

Case Number 145/Pdt.G/2021/PA.Slk involving cumulative disputes (merger), namely marriage, inheritance, and grants, in this case, the author only takes the issue of the grant so that the Judge's decision explaining the ratification of the appointment is to adjudicate that: 'The Judge grants the lawsuit in part to the Plaintiffs; Declaring the Company's Grants are valid by Hj. Syamsidar to Plaintiff I with the Company Grant Deed Number 3 dated (five million eighty-five thousand rupiahs).

Decisions must be based on factors commonly referred to as considerations. There are two types of civil judgments: those related to the location of the case or incident and those related to the Law. The parties must describe the occurrence, while the Judge is responsible for legal matters. In this case, the author describes the Judge's considerations following the documentation technique, namely the archive of copies of the case decisions. Regarding the central issue in case No. 145/Pdt.G/2021/PA.Slk involving disputes over joint property grants, legal considerations can be drawn from the petition filed, specifically regarding the ratification of donations received by judges.²¹

Based on the evidence, the testimony of the witnesses, and the trial facts, the following legal points can be determined:

Hj. Syamsidar and H. Nazir own a Public Fuel Filling Station (SPBU) at Solok, Jl. Pandan Ujung Number 56 with SPBU Number 141201. Hj. Syamsidar has granted the gas station to Plaintiff I, along with its equipment and business licenses, including all rights that the grantor has and can exercise on the authority of permits, licenses, and acknowledgments to operate the company stated in the Company Grant Deed No. 3 of 1995. At the same time, H. Nazir authorized the grant procedure in 2000, as evidenced by the Deed of Statement and Affirmation No. 34 dated May 26, 2000. Hj. Syamsidar's grant to plaintiff I was made voluntarily and without coercion, and H. Nazir's approval of said grant was also made voluntarily and without pressure. The donated property does not represent over one-third of the donor's assets.

The Assembly will consider the following concerning these facts:

Article 210 of the Compilation of Islamic Law states (1) that a person of at least 21 years of age, with good sense and freedom from coercion, may donate up to one-third of his property to another person or institution in the presence of two witnesses. (2) The donated property must be the rightful property of the donor.

Because in addition to the provisions of Article 668, paragraph (9) of Regulation No. 2 of 2008 of the Supreme Court of the Republic of Indonesia

²¹ Nazrul Hazizi Noordin et al., "Re-Evaluating the Practice of Hibah Trust in Malaysia," *Humanomics* 32, no. 4 (November 14, 2016): 418–36, <https://doi.org/10.1108/H-05-2016-0044>.

about the compilation of Sharia Economic Law, it is stated that a grant is the transfer of ownership of an item to another person without compensation.

Considering that, according to the provisions of Article 712, paragraph 2, of the Regulation of the Supreme Court of the Republic of Indonesia No. 2 of 2008 on the compilation of Sharia Economic Law, assets that do not belong to the donor may be considered valid if the owner of the property permits it, even if the permission is granted after the property has been transferred²².

The provisions of Article 712 paragraph (2) of the Supreme Court Regulation The Republic of Indonesia, Number 2 of 2008, concerning the Compilation of Sharia Economic Law, have been met, even though some of the property rights of the gas station in question belong to H. Nazir. H. Nazir has authorized it in writing through the Deed of Statement and Affirmation Number 34 dated May 26, 2000.

Article 211 of the Compilation of Islamic Law explains, "Grants from parents to their children are considered inheritance."

They are considering that the provisions referenced in Article 211 of the Compilation of Islamic Law are discretionary and non-binding for the Assembly to determine whether the grant above will be classified as an inheritance or a valid grant²³.

The Judge rejected the petition containing the ratification of the grant to Plaintiff II (the subject of the Cap Timbangan Mas Coffee Powder Company's lawsuit). The denial was based on a need for more evidence proving the grant's legitimacy. Accordingly, restate the study's primary purpose.

Settlement of Joint Assets Grant Dispute Cases Under Islamic Law Compilation and Sharia Economic Law

Evaluation of grant-funded legal activities should adhere to legal guidelines.²⁴ Almh. Hj. Syamsidar and Almh. H. Nazir donated a Public Gas Station (SPBU) and the Cap Timbangan Mas coffee company obtained during his marriage to his children, H. Desefiarmy Alfariza (plaintiff I) and Welli Dasmariyanti (plaintiff II), so by considering the legal requirements of the grant as stated in Article 210 of the KHI, namely:

²² A Azhar and M Z M Nor, "Hibah in the Administration of Islamic Property: Ijtihadi Elements and Reality in Malaysia," *UUM Journal of Legal Studies* 10, no. 2 (2019): 103–19, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85088225021&partnerID=40&md5=e350a960249f191d56dd612956b19d19>.

²³ Muhammad Umar Farooq, Mairaj Ali, and SAMIULLAH, "Family, Business and Inheritance Issues: In the Context of Islamic Shariah Solution," *Ilkogretim Online* 20, no. 4 (July 2021): 2015–20, <http://10.0.66.155/ilkonline.2021.04.229>.

²⁴ Nuria Siswi Enggarani, "Independensi Peradilan Dan Negara Hukum," *Law and Justice* 3, no. 2 (2019): 82–90.

First, a person at least 21 years old, with common sense, and not under duress may relinquish one-third of his property in front of two witnesses and still claim ownership.

Second, the donated property must be the donor's personal property. According to the article in the Compilation of Islamic Law, two witnesses must be present at the time the grant is implemented, and the property to be donated must be a right that belongs to the grantor.

According to the preceding provisions, the grant made by the late is invalid. Hj. Syamsidar and Alm. H. Nazir were confirmed by Notary Hj issuance of Deed No. 3. Consequently, the Deed of Statement and Agreement was issued with Deed No. 79 on June 30, 2000. These deeds are authentic evidence of the legality of grants. Through the case's subject matter, it is evident that the dispute arose as a result of an act of withdrawal or cancellation of the grant by the defendants, who were named as the plaintiff's relatives after the grantor's death, out of a desire or desire to control the property.

In this instance, the Compilation of Islamic Law provides a dispute resolution mechanism. Article 212 KHI regulates the withdrawal or cancellation of grants, except from parents to their children, and prohibits the cancellation or withdrawal of gifts (grants) between brothers or spouses. Refundable grants are only grants given by parents to their children. By article 211 KHI, contributions from parents to children may be considered inheritance.²⁵

According to the Compilation of Islamic Law, the grant must be sanctioned by the grantor's heirs if it is made near its death. Through the provisions of the KHI, the actions of Fauzi Ella Sliano Bsc EE MBA as Defendant IV created malicious intent to control gas stations by inviting and persuading defendants I to V to cancel the grant and by not admitting the waiver of rights that had previously been made. These actions can be rejected under the applicable law.

The rejection of the action is predicated on the grant's compliance with all applicable legal requirements. Hj. Syamsidar and Alm. H. Nazir to Plaintiffs I and II were bolstered by the deed drawn up by notary Hj. Eldani, who took into account the requirements for drawing up the act. These deeds are authentic evidence of the legality of grants. So long as the parties acknowledge it or neither party objects, the private deed notarized by a Notary will be admissible as evidence. The private deed becomes authentic with full probative force if both parties agree. On the other hand, if one of the parties rejects the act and

²⁵ Mohamed Gad, *Al-Tufi's Concept of Maslahah. An Attempt to Apply on the Woman's Inheritance in the Islamic Inheritance Jurisprudence*, vol. 1. Auflage (München: GRIN Verlag, 2021), <http://e-resources.perpusnas.go.id:2048/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsebk&AN=2936144&site=eds-live>.

the judge evaluates the invalidity of the evidence, the denial will be deemed invalid.

Therefore, the ratification of the grant is considered valid through the deed issued and concurrently with the release of rights or transfer of requests made by the heirs at the time of the appointment. Furthermore, even though the grantor has passed away, the validity of the grant will not be affected because the grantor, grantee, and two witnesses were all still alive when the grant was executed. Therefore, the actions of Defendant IV and other heirs violated the legal requirements, and authentic evidence conformed to the provisions of the Compendium of Islamic Law.

Chapter IV of the Sharia Economic Law Compilation (KHES) regulates grants in 43 articles, beginning with article 685 and ending with article 714. The withdrawal of grants is explicitly governed by articles 709 to 723 of the third section, titled "Withdrawal of Grants." The validity of the grant is primarily determined by the grant's pillars, as outlined in Article 685: a) the donor; b) the recipient; c) the donated object; d) the statement; and e) the submission.

The grant that will take effect in the future is null and void. The grant will be valid because the terms and conditions bind the grantee. For example, if one of the grantors or recipients dies before the grant delivery, the transaction is deemed null and void. In addition, the grant will be revoked if there is an element of coercion in its implementation. Then, the study of individuals who donate their assets to grantees may be withdrawn according to the following conditions:

1. The grant property may be withdrawn at the *sahib's* discretion before submission.
2. Once the grant contract is signed, *Wahib* prohibits grantees from using their grants.
3. Withdrawals are only permitted after completed delivery if the recipient consents.
4. The elimination of parental grants for their children.

Based on the conditions governing the withdrawal of grant assets, it can be concluded that there are exceptions to the Sharia Economic Law Compilation (KHES) regarding the withdrawal of grant assets, namely: if the *wahib* withdraws the grant without the consent of the *mauhub lah* or court order, and if someone gives a grant to his parents, or a brother or sister, or the children of his siblings, or his uncles and aunts.

Furthermore, if the grantee intends to profit from the grant assets by selling or duplicating the grant for distribution to others when one of the grant's givers or recipients dies, the grant cannot be revoked.

Regarding this case, specifically the attempted cancellation or withdrawal of grants by Defendant IV and other heirs, the court did not recognize the prior waiver of rights based on the issuance of a notarial deed. Therefore, the Sharia Economic Law Compilation provides a resolution based on its provisions.

Dons made by the deceased. Hj. Syamsidar and Alm. H. Nazir have satisfied the Sharia Economic Law Compilation's criteria for the grant's pillars. Through the notarial act, the provisions of the KHES have been met, including the existence of the donor and the recipient, the object to be submitted, the statement, and the submission. Therefore, the grant is deemed valid, and its effect applies to the parties involved in the *mawhub* (the person receiving the grant) who have received the grant specifically for the gift (with a notary deed).

This occurred while the donor was still living. In this case, the grant status becomes valid for the donor, who has been officially notified of its receipt.

This provision stipulates that a grant is valid if the *mawhub* (the recipient) expressly and unambiguously accepts it.

However, article 686, paragraph 3 of the KHES states that a grant statement can be classified as an Ijab, a solution to the problem. Therefore, even though the grant statement is in the form of a covert agreement, it can still be used to establish the legality of the grant, even if no authentic deed is available. Furthermore, so that the provisions of the grant according to the KHES used as conditions are not based on the type of contract but on what can be demonstrated by its form, these provisions must be in writing. Therefore, the statement issued by the defendants who wish to cancel the grant has been disproved due to written evidence in the form of an authentic deed that satisfies the Sharia Economic Law Compilation's criteria for legality.

The judge's statement regarding the dispute over the joint property grant refers to Article 712, paragraph 2, of the Compilation of Sharia Economic Law, which states that property that does not belong to the donor but is donated may be considered valid if the property's owner permits it, even if the permission is granted after the property has been transferred. Therefore, the provisions of Article 712 paragraph (2) of the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law have been met, even though some of the property rights of the gas station in question belong to H. Nazir. H. Nazir has authorized it in writing via Deed of Statement and Confirmation Number 34 dated May 26, 2000. Thus,

the defendants' cancellation cannot be honored, and the ratification of the grant is considered valid under the law.²⁶

In Indonesia, grant arrangements are governed by the Compilation of Islamic Law (KHI) and the Compilation of Sharia Economic Law (KHES), which stipulate that a valid grant must meet the pillars and criteria of the grant. Regarding the posts mentioned in KHI and KHES, they are closer to the consensus of scholars, but they are different because KHI contains additional witnesses, and KHES contains *qabd*.

In terms of conditions, the most striking difference is that the giver in KHI (21 years) and KHES (18 years/never married), formerly known as *baligh* in fiqh, had an age restriction. KHES also justifies the *igrar* through writing, gestures, and other nonverbal behaviors. In addition, article 712 KHES defines the arrangement for withdrawing grant assets, which states that the grantor may withdraw the grant assets following delivery if the grantee consents. Moreover, according to article 212 of the KHI, grants cannot be revoked, except those given by parents to their children.

Conclusion

In this case, the legal considerations and the Solok Religious Court's decision against the provisions of Islamic law regarding the cancellation of the defendant's grant as a parental gift to the plaintiff were deemed clear and appropriate. Therefore, a comparison of Grant Arrangements by Compilation of Islamic Law and Compilation of Sharia Economic Law, specifically in terms of the pillars mentioned in KHI and KHES, is closer to the consensus of scholars but not identical because KHI has additional witnesses and KHES has *qabd*.

Since the Compilation of Islamic Law as Material Law and Religious Court Procedures explains grant practice in detail, the government should clarify more explicit guidelines about grant arrangements, including withdrawal or cancellation. In addition, the collection of grants from the Compilation of Islamic Law and the Compilation of Islamic Economic Law can provide knowledge about resolving existing grant difficulties to prevent future grant disputes.

Referring to the application of the rule of law, "*lex posterior derogate legi priori*" means that a law passed in the future can nullify or overturn a law passed in the past. This principle prevents two regulations from creating legal ambiguity. The panel of judges, in this case, is only sometimes guided by the rule

²⁶ Emily Schindeler, "Family Law Court Orders for Supervised Contact in Custodial Disputes – Unanswered Questions," *Children Australia* 44, no. 4 (December 12, 2019): 194–201, <https://doi.org/10.1017/cha.2019.42>.

of law. Because if a formulation is applied to the Compilation of Sharia Economic Law but has not reached the goal of establishing law (*maqashid al-syari'ah*), then the panel of judges may engage in *ijtihad* by making decisions that are contrary to the article of the law in question because its implementation is contrary to with propriety and humanity by referring to the provisions in the Compilation of Islamic Law, the opinions of *fiqh* scholars.

References

- Akhtar, Zia. "Conflict of Laws, Choice of the Forum Court in the Us, and the Due Process in Family Law Disputes." *International and Comparative Law Review* 21, no. 1 (June 1, 2021): 184–210. <https://doi.org/10.2478/iclr-2021-0007>.
- Akin Ojelabi, Lola, and Judith Gutman. "Family Dispute Resolution and Access to Justice in Australia." *International Journal of Law in Context* 16, no. 2 (June 8, 2020): 197–215. <https://doi.org/10.1017/S1744552320000142>.
- Azhar, A, and M Z M Nor. "Hibah in the Administration of Islamic Property: Ijtihadi Elements and Reality in Malaysia." *UUM Journal of Legal Studies* 10, no. 2 (2019): 103–19. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85088225021&partnerID=40&md5=e350a960249f191d56dd612956b19d19>.
- Boulard, Annelien. "Family Law in Senegal: Opposition and Pragmatic Pluralism." *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 56, no. 1 (January 2, 2022): 161–80. <https://doi.org/10.1080/00083968.2020.1848599>.
- Dabis, Hasan Khalid. "Rules of Inheritance in Islamic Laws (A Quranic Study)." *Review of International Geographical Education Online* 11, no. 9 (September 2021): 779–87. <http://10.0.187.175/rigeo.11.09.66>.
- Enggarani, Nuria Siswi. "Independensi Peradilan Dan Negara Hukum." *Law and Justice* 3, no. 2 (2019): 82–90.
- Farooq, Muhammad Umar, Mairaj Ali, and SAMIULLAH. "Family, Business and Inheritance Issues: In the Context of Islamic Shariah Solution." *Ilkogretim Online* 20, no. 4 (July 2021): 2015–20. <http://10.0.66.155/ilkonline.2021.04.229>.
- Gad, Mohamed. *Al-Tu'fi's Concept of Maslahah. An Attempt to Apply on the Woman's Inheritance in the Islamic Inheritance Jurisprudence*. Vol. 1. Auflage. München: GRIN Verlag, 2021. <http://e-resources.perpusnas.go.id:2048/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsebk&AN=2936144&site=eds-live>.
- Hirko, Sileshi Bedasie. "The Disputed Constitutionality of the Precedential Practice of the Federal Supreme Court and Its Implications for Oromia Family Law: The Case of Bigamous Marriage in Ethiopia." *Journal of African Law* 63, no. 2 (June 7, 2019): 193–223. <https://doi.org/10.1017/S0021855319000202>.
- Isman, Isman, and Yahya Yahya. "Istiqra Al-Manwi; Multicultural Judicial Reasoning." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (August 8, 2022): 95–116. <https://doi.org/10.18326/ijtihad.v22i1.95-116>.

- KLEIN, Natalie. "Dispute Settlement - Islamic Law and International Law: Peaceful Resolution of Disputes by Emilia Justyna POWELL. New York: Oxford University Press, 2020. Xiv + 314 Pp. Hardcover: £47.99; Also Available as EBook." *Asian Journal of International Law* 11, no. 1 (January 25, 2021): 207–8. <https://doi.org/10.1017/S2044251321000023>.
- Muchomba, Felix M. "Parents' Assets and Child Marriage: Are Mother's Assets More Protective than Father's Assets?" *World Development* 138 (February 2021): 105226. <https://doi.org/10.1016/j.worlddev.2020.105226>.
- Muhammad Daud, Zakiul Fuady, and Raihanah Azahari. "The Wajibah Will: Alternative Wealth Transition for Individuals Who Are Prevented from Attaining Their Inheritance." *International Journal of Ethics and Systems* 38, no. 1 (January 12, 2022): 1–19. <https://doi.org/10.1108/IJOES-09-2018-0133>.
- Mujuzi, Jamil Ddamulira. "The Islamic Law of Marriage and Inheritance in Kenya." *Journal of African Law* 65, no. 3 (October 1, 2021): 377–401. <https://doi.org/10.1017/S0021855321000346>.
- Noordin, Nazrul Hazizi, Muhammad Issyam Ismail, Muhammad Abd Hadi Abd Rahman, Siti Nurah Haron, and Adam Abdullah. "Re-Evaluating the Practice of Hibah Trust in Malaysia." *Humanomics* 32, no. 4 (November 14, 2016): 418–36. <https://doi.org/10.1108/H-05-2016-0044>.
- Oseni, Umar Aimhanosi. "Shari'ah Court-Annexed Dispute Resolution of Three Commonwealth Countries – a Literature Review." *International Journal of Conflict Management* 26, no. 2 (April 13, 2015): 214–38. <https://doi.org/10.1108/IJCMA-06-2012-0050>.
- Palmer, Michael, and Simon Roberts. *Dispute Processes*. Cambridge University Press, 2020. <https://doi.org/10.1017/9781107707467>.
- Regev-Messalem, Shiri. "How the Law 'Keeps the Money in the Family': Lessons at the Intersection of Elder Care and Inheritance Disputes in Israel." *Law & Social Inquiry* 45, no. 1 (February 24, 2020): 81–110. <https://doi.org/10.1017/lsi.2019.47>.
- Reiter, S L, and M El-Sheikh. "Does Resolution of Interadult Conflict Ameliorate Children's Anger and Distress across Covert, Verbal, and Physical Disputes?" *Journal of Emotional Abuse* 1, no. 3 (1999): 1–21. https://doi.org/10.1300/J135v01n03_01.
- Schindler, Emily. "Family Law Court Orders for Supervised Contact in Custodial Disputes – Unanswered Questions." *Children Australia* 44, no. 4 (December 12, 2019): 194–201. <https://doi.org/10.1017/cha.2019.42>.
- Setiyowati. "Inheritance Dispute Resolution against Substitute Heirs: Analyzing Supreme Court's Decision Number 185 K/Ag/2009." *Croatian International Relations Review* 28, no. 89 (2022): 136–49. <https://doi.org/10.2478/CIRR-2022-0008>.
- Sukarti, Dewi. "Legal Pluralism in Settling Inheritance Disputes in Besemah, South Sumatera." *AHKAM: Jurnal Ilmu Syariah* 13, no. 1 (February 1, 2013).

<https://doi.org/10.15408/ajis.v13i1.950>.

Sulfinadia, Hamda, Deri Yanti, and Jurna Petri Roszi. "Keutuhan Rumah Tangga Suami Di Penjara (Studi Kasus Di Lembaga Pemasarakatan Kelas II A Bukittinggi)." *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (November 11, 2021): 271. <https://doi.org/10.29240/jhi.v6i2.3372>.

Syahrial Haq, Hilman, Nasri Nasri, Khudzaifah Dimiyati, and Absori Absori. "The Institutionalization of Community Mediation for Resolving Merarik Marriage Disputes in Sasak Community." *Jurnal Media Hukum* 26, no. 1 (2019). <https://doi.org/10.18196/jmh.20190118>.

Tarmizi, Tarmizi. "Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic Law)." *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (June 30, 2020): 179. <https://doi.org/10.22373/sjhk.v4i1.6784>.

Xiong, Wanru. "Love Is Elsewhere: Internal Migration and Marriage Prospects in China." *European Journal of Population* 39, no. 1 (December 2, 2023): 6. <https://doi.org/10.1007/s10680-023-09658-3>.

Yuni, Lilik Andar, and Murjani Murjani. "Gender Sensitivity at Judge's Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 251–79. <https://doi.org/10.19105/al-lhkam.v15i2.2714>.