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## Inheritance Transitioning to Gift in The Issuance of Land Certificates: an Islamic Legal Perspective

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### Abstract

In Islamic law, inheritance and gifts are two distinct concepts with different rules and implications. However, in practice, there is often confusion between these two, particularly in the context of land ownership and certification. This confusion can lead to legal complications and potential disputes. This research aims to elucidate inheritance and gifts in Islam and the factors causing and legal position of the transition of inheritance status to gift status in the issuance of land certificates. This study employs a qualitative descriptive research approach focused on textual analysis, utilizing normative juridical and conceptual approaches. The findings are as follows: Firstly, the factors leading to the transition of inherited land status to gifted land include the community's lack of understanding regarding the difference between inheritance and gifts, the absence or loss of supporting documents, and the facilitation of land registration. Secondly, the legal position of changing the status of inherited land to gifted land in the issuance of land certificates arises due to the loss of supporting documents and to prevent future complications. This action is permitted based on considerations of *maṣlahah* (public interest) to safeguard property and prevent harm. It also falls under emergency conditions where the *fiqh* principle states that every necessity justifies what is forbidden, but only for administrative purposes. The land remains inherited land in accordance with the *fiqh* principle that the intention and substance, not the expressions and formalities, are the reference points in transactions.

**Keywords:** *Inheritance, Grants, Land Certificates, Legal Transition, Land Status*

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## 1. INTRODUCTION

Wealth is conceived as a divine endowment from Allah Swt. that facilitates human existence. Material possessions and affluence in their multifarious forms were created for the living beings on this earth. It beholds humans to comprehend the

ontological essence of wealth, as merely a divine trust, with absolute ownership vested in Allah Swt., which can be repossessed from humans at any conjuncture.<sup>1</sup> As stated in the Holy Quran, Surah al-Najm 53: 31,

وَلِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ لِيَجْزِيَ الَّذِينَ أَسَاءُوا بِمَا عَمِلُوا وَيَجْزِيَ الَّذِينَ أَحْسَنُوا بِالْحُسْنَىٰ

Translation:

And to Allah Swt. belongs everything in the heavens and the earth, so that He may requite those who commit evil according to their deeds, and reward those who do good with what is best (Paradise).

Islam regulates the utilization of wealth through righteous means including buying and selling, lending and borrowing, inheritance, gifts, bequests, and so forth. In Islamic law, wealth has an honorable status when used according to its function. Among these is inheritance, where ownership of the deceased's property is transferred to their heirs. Gifts refer to bestowing possessions during one's lifetime. Generally, before passing away, parents gather all their children to give them wealth or divide their possessions among them. This type of agreement is called a gift, not a distribution of inheritance.<sup>2</sup>

Inheritance and gifts are important discussions related to asset ownership. However, many still cannot distinguish between the two. Issues surrounding inheritance and gifts remain problematic in society, likely because of a lack of profound comprehension of inheritance principles. At times, matters of inheritance and gifts are seen as less important in scholarly disciplines. According to Article 171 section e of the Compilation of Islamic Law, inheritance assets refer to separate property plus a share of communal assets after allocation for the deceased's needs while ill until passing, funeral arrangements (*tajhīz*), debt payments, and distribution to relatives.<sup>3</sup> And in Article 211 of the Compilation of Islamic Law it is stated that "gifts from parents to their children can be counted as inheritance."<sup>4</sup>

It is an imperative for the Indonesian people as land rights holders to obtain legal certainty and protection of their rights. Registered land must have authentic written evidence. Land rights registration, which is carried out based on Government Regulation Number 24 of 1997, has the following objectives:<sup>5</sup>

1. To provide legal certainty and legal protection to holders of land rights, apartment units, and other registered rights, so they can easily prove themselves as the rightful holder.
2. To provide information for interested parties, including the government, so they can easily obtain necessary data in carrying out legal actions regarding plots of land and apartment units that have been registered.
3. To create an orderly land administration.

Article 19 of Law No. 5 of 1960 on Indonesia's Basic Agrarian Principles makes it mandatory for the populace to participate in the government-organized land registration

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<sup>1</sup> Nur Kholis et al., "Islamic Wealth Management: Qur'anic Approach," in *The 3rd International Conference on Advance & Scientific Innovation (ICASI)*, 2022, 86–99, <https://doi.org/DOI.10.18502/kss.v7i10.11348>.

<sup>2</sup> Muhammad Ajib, *Perbedaan Antara Hibah, Wasiat, Dan Waris*, Cet. 1 (Jakarta Selatan: Rumah Fikih Publishing, 2022), p. 6-11.

<sup>3</sup> Undang-undang (UU), *UURI No. 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam* (Bandung, 2011), p. 107.

<sup>4</sup> *Ibid.*, p. 116.

<sup>5</sup> Peraturan Pemerintah (PP), *Peraturan Pemerintah Republik Indonesia No. 24 Tahun 1997 Tentang Pendaftaran Tanah* (Jakarta, 1997), p. 4, <https://peraturan.bpk.go.id/Details/56273/pp-no-24-tahun-1997>.

system being implemented nationwide. This land registration process, or registration of land rights, leads to the issuance of a certificate of land title that serves as legal proof of the registered rights to the land.<sup>6</sup> The rationale behind mandated participation in land registration is to provide legal certainty and protection of property rights. Without proper registration and certification, claims on land can remain ambiguous, leading to conflicts and instability. The government seeks to avoid these outcomes by requiring universal registration of lands to definitively document titles.<sup>7</sup>

While registration aims to prevent disputes, the complex bureaucracy poses challenges for many citizens, especially in rural areas. Lacking expertise in navigating procedures, some revert to changing inherited land status to gifts simply to complete the certificate process quickly. Though technically improper, Article 19's obligations can prod people toward this route. Improving the registration system's accessibility could reduce reliance on status changes purely for administrative convenience.<sup>8</sup>

A land certificate represents strong legal evidence, meaning the data within must be accepted as correct as long as no party can prove otherwise. Issuing a title certificate provides owners legal certainty and protection for their land rights. However, many in society still lack understanding of the nuanced differences between inherited land and gifted land transferred from parents to children. Additionally, some underestimate the importance of formally documenting proof of ownership. Consequently, when the time comes to furnish evidence of title, much supplementary data is often no longer available because the previous owner passed away long before or for other reasons.<sup>9</sup>

This situation pressures inheritors to resort to designating land as gifts rather than attempting to establish valid inheritance claims when original records are missing or never existed. The inability to conclusively demonstrate inheritance rights means gifting becomes the simpler option for certification, even if it contradicts the original means of transfer. Enhanced public awareness about meticulously maintaining inheritance documentation could help avoid this scenario of status changes stemming from lack of proper records.<sup>10</sup>

One issue that arises in cases of making proof of land ownership is the loss of supplementary data that makes it difficult to issue the certificate. This causes landowners to provide gift data when applying for land certificates even though the land was originally inherited from their parents, in order to avoid disputes or cases that could transfer ownership to others.<sup>11</sup> This indicates that the issue of changing inheritance status to gift status in the making of land certificates from an Islamic law perspective deserves further research.

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<sup>6</sup> Undang-undang (UU), *UURI No.5 Tahun 1960 Tentang Peraturan Pokok-Pokok Agraria* (Jakarta, 1960), p. 7.

<sup>7</sup> K. Kusmiarto, p. Sutanta, and T. Aditya, "The Level of Community Participation in Land Registration Activities in Indonesia," *BHUMI: Jurnal Agraria Dan Pertanahan* 6, no. 1 (2020), <https://doi.org/https://doi.org/10.31292/jb.v6i1.423>.

<sup>8</sup> See Kumar K, Saikia N, and Diamond-smith N, "Performance Barriers of Civil Registration System in Bihar: An Exploratory Study," *PLoS One* 17, no. 6 (2022), <https://doi.org/10.1371/journal.pone.0268832>.

<sup>9</sup> See Marten Bunga, Robby Waluyo Amu, and Leni Dwi Nurmala, "Certificate of Land Property Rights as an Evidence in Land Dispute Settlement," *IJRAEL: International Journal of Religion Education and Law* 2, no. 1 (2023).

<sup>10</sup> Liliana Sousa et al., "The Family Inheritance Process: Motivations and Patterns of Interaction," *Eur J Ageing* 7 (2010), <https://doi.org/10.1007/s10433-010-0139-3>.

<sup>11</sup> See "Certificate as Proof of Land Ownership," *IndonesiaRealEstateLaw.Com*, 2022, <https://indonesiarealestatelaw.com/certificate-as-proof-of-land-ownership/> (24 July 2024).

The issues examined in this research are: (1) What factors cause the change in land certificate status from inheritance to gift in the context of inheritance and gifts in Islam? (2) What is the legal standing of changing inheritance status to gift status in making land certificates from an Islamic law perspective?

The transition of inherited assets to gifted assets during land certification processes raises significant concerns warranting further investigation from an Islamic legal perspective. Public misconceptions about the distinction between inherited and gifted assets often lead to erroneous asset status determinations.<sup>12</sup> Additionally, the tendency to reclassify inherited assets as gifts, primarily to facilitate administrative procedures when inheritance evidence is insufficient, further complicates this issue.

This study aims to investigate the primary factors contributing to the change in land certificate status from inheritance to gift, and to examine the legal implications of this practice from an Islamic jurisprudential standpoint. Furthermore, it seeks to assess public understanding of asset classification, identify challenges within the existing land registration system, and propose recommendations for improving land certification processes in compliance with Islamic legal principles. The research will employ a mixed-methods approach, combining in-depth analysis of Islamic legal texts with semi-structured interviews of relevant experts and stakeholders.

The qualitative aspect of the research will involve a survey questionnaire distributed to a representative sample of the population, particularly those who have undergone the land certification process or have experience with inherited and gifted assets. The survey will aim to gather data on the prevalence of changing asset status, public understanding of the distinctions between inheritance and gifts, and the factors influencing such decisions.

Furthermore, a case study approach will be employed to examine specific instances where the status of inherited assets was changed to gifted assets during the land certification process. These case studies will provide valuable insights into the practical challenges, decision-making processes, and consequences of such actions.

The data collected from the various research methods will be triangulated and analyzed using appropriate qualitative and quantitative techniques. The qualitative data will be subject to content analysis and thematic coding to identify recurring themes, patterns, and perspectives. The quantitative data will be statistically analyzed to identify significant relationships, trends, and potential causal factors.

The research findings will be synthesized to provide a comprehensive understanding of the issue, including the legal standing from an Islamic law perspective, the factors contributing to the changing of asset status, and the implications for land ownership and certification. Based on these findings, recommendations and guidelines will be proposed to improve the land certification process, enhance public awareness, and ensure compliance with Islamic legal principles governing inheritance and gift transfers.

By employing a mixed-methods approach, this research aims to offer a holistic and multidimensional perspective on the issue, combining theological, legal, and practical considerations. The integration of qualitative and quantitative data will provide a robust foundation for developing informed solutions and recommendations.

The issue of inheritance becoming gifts and vice versa has been studied by previous researchers in various contexts. While some studies have touched upon the

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<sup>12</sup> safira Ayudiatr And Akhmad Budi Cahyono, "The Legality Of Grants By Foreign Citizens On Land Objects In Indonesia: Case Studies Of Court Decisions," *SIGN Jurnal Hukum* 4, no. 1 (2022), <https://doi.org/https://doi.org/10.37276/sjh.v4i1.131>.

transfer of inheritance to gifts in relation to land ownership, the specific problem of such transfers in the context of making land certificates from an Islamic legal perspective remains underexplored. This research aims to contribute to the existing body of knowledge by examining this particular aspect in depth, considering the unique challenges and implications it presents within the framework of Islamic law and contemporary land administration practices. Previous studies related to this research include the following literature:

The Book of *al-Fiqhu al-Islāmī wa Adillatuhu* by Wahbah al-Zuhayli<sup>13</sup> The Book of Islamic Jurisprudence and its Evidences by Wahbah al-Zuhayli is a book covering various topics in *fiqh* (Islamic jurisprudence). This book serves as the main *fiqh* reference for all madhhabs (schools of Islamic law) in Indonesia. It is unique in encompassing *fiqh* material from all madhhabs along with the process of deriving rulings (*istinbāt al-aḥkām*) from the sources of Islamic law and Sharia rules, traced back to valid textual and rational evidences (al-Qur'an, Sunnah, and *ijtihād* of the intellect) based on authentic general principles and legislation. Therefore, this book does not only discuss Sunni *fiqh* or *fiqh* based solely on logic, but also emphasizes the comparative method between opinions according to the four Imams (Imam Hanafi, Maliki, Shafi'i and Hanbali). The book consists of eight volumes, with volume five and eight containing specific discussions on gifts and inheritance. Among the topics covered are the definitions of gifts and inheritance, the terms and pillars of each.

The book of *Fiqh al-Sunnah* by Muhammad Sabiq (w. 2000 M).<sup>14</sup> While Sabiq's "Fiqh al-Sunnah" provides a comprehensive overview of inheritance and gifts in Islamic law, our research applies these principles to a specific contemporary issue: the reclassification of inherited land as gifted during land certification processes. Unlike Sabiq's general discussions, we analyze specific cases and factors leading to such status changes, combining Islamic legal principles with modern land administration practices. Our study offers practical insights into how Muslim communities reconcile Islamic inheritance laws with current land ownership documentation requirements. By examining legal implications from both Islamic and positive law perspectives, this research contributes new knowledge and proposes practical solutions for navigating the complex intersection of traditional Islamic law and modern administrative processes.

Kitab *al-Tahqiqāt al-Marḍiyyah fī al-Mabāhiṣ al-Farḍiyyah* karya Ṣāliḥ bin Fauzān bin Abdullah al-Fauzān.<sup>15</sup> While al-Fauzān's "al-Tahqiqāt al-Marḍiyyah fī al-Mabāhiṣ al-Farḍiyyah" comprehensively examines traditional Islamic inheritance law, our research addresses a novel aspect: the reclassification of inherited land as gifted during modern land certification processes. Unlike al-Fauzān's focus on classical principles, we explore the practical challenges arising when these principles intersect with contemporary land administration systems. Our study analyzes specific cases and factors driving such status changes, providing insights into how classical Islamic inheritance rules are adapted to modern bureaucratic requirements. This research bridges traditional *fiqh* and current legal-administrative practices, offering practical solutions for Muslims navigating these complex issues in today's context.

The book *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid* by al-Qaḍi Abdul Wahid Muhammad bin Ahmad bin Muhammad bin Rusḥd al-Qurtubi, better known as Ibn Rusḥd

<sup>13</sup> Wahbah Al-Zuhailī, *Al-Fiqh Al-Islam Wa Adillatuhu*, Cet. II (Suriah: Dār al-Fikr, 1985).

<sup>14</sup> Sayid Sabiq, *Fiqh Al-Sunnah*, Cet. IV (Beirut: Dār al-Kitab al-Arabi, 1983).

<sup>15</sup> Ṣāliḥ bin Fauzān bin Abdullah al-Fauzān, *Al-Tahqiqāt Al-Marḍiyyah Fī Al-Mabāhiṣ AlFarḍiyyah*, Cet. I (Kairo: Dār al-Ummah, 2018).

(born 520 AH, passed away 599 AH). While Ibn Rushd's "Bidāyah al-Mujtahid" offers a comprehensive analysis of juristic differences in Islamic law, including gift-related issues, our research focuses on a specific contemporary phenomenon: the reclassification of inherited land as gifted during the certification process. Unlike Ibn Rushd's theoretical exposition, we examine the practical implications of this status change from both Islamic and positive law perspectives. Our study uniquely bridges classical Islamic jurisprudence with modern land administration systems, providing novel insights into the challenges at the intersection of traditional Islamic law and contemporary bureaucratic practices.

The book *Panduan Mengurus Sertifikat Tanah* by Jimmy Joses Sembiring.<sup>16</sup> While Sembiring's "Panduan Mengurus Sertifikat Tanah" offers a general guide to land certification in Indonesia, our research specifically examines the reclassification of inherited land as gifted during the certification process. Our study uniquely integrates Islamic legal principles with contemporary land administration practices, providing new insights into how Muslim communities reconcile traditional inheritance laws with modern land registration requirements. This focused approach contributes a novel perspective on the intersection of Islamic law and current land administration procedures in Indonesia.

The undergraduate thesis written by Dermina Dalimunthe, Faculty of Sharia and Law (State Islamic Institute of Padangsidempuan) in 2020 with the title *Komparasi Pengalihan Harta Hibah Menjadi Harta Warisan Perspektif Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata*.<sup>17</sup> While Dalimunthe's thesis compares the transfer of gifted property to inherited property under the Compilation of Islamic Law and Civil Code, our research focuses on a distinct phenomenon: the reclassification of inherited land as gifted during the land certification process. Unlike Dalimunthe's theoretical legal comparison, we examine the practical implications of this status change in modern land administration. Our study uniquely combines Islamic legal principles with contemporary land registration practices, offering insights into how Muslim communities navigate traditional inheritance laws within current bureaucratic frameworks for land ownership documentation. This approach provides a novel perspective on the application of Islamic inheritance principles in today's administrative context.

A thesis written by Dermina Dalimunthe, Faculty of Sharia and Law (State Islamic Institute of Padangsidempuan) in 2020 titled *Comparison of Transferring Assets from Gifts to Inheritance according to the Compilation of Islamic Law and the Civil Code*.<sup>18</sup> Unlike Dalimunthe's thesis on gifts from parents being counted as inheritance per Article 211 of the Compilation of Islamic Law, our research examines the reclassification of inherited land as gifted during land certification. We focus on the practical implications of this status change in modern land administration, rather than theoretical legal provisions. Our study uniquely combines Islamic legal principles with contemporary land registration practices, offering new insights into how Muslim communities reconcile traditional inheritance laws with current land ownership documentation requirements. This approach contributes novel understanding of Islamic inheritance principles' application in today's administrative context.

The undergraduate thesis written by Ibnu Saha in 2013, Sunan Ampel State Islamic University Surabaya with the title *Tinjauan Hukum Islam Terhadap Hibah*

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<sup>16</sup> M.Hum Jimmy Joses Sembiring, SH, *Panduan Mengurus Sertifikat Tanah*, ed. Transmedia Pustaka (Jakarta Selatan, 2010).

<sup>17</sup> Dermina Dalimunthe, "Komparasi Pengalihan Harta Hibah Menjadi Harta Warisan Perspektif Kompilasi Hukum Islam Dan Kitab Undang-Undang Hukum Perdata," *Yurisprudencia: Jurnal Hukum Ekonomi* 6, no. 1 (2020).

<sup>18</sup> Naviri Masma Rahmita, "Analisis Pasal 211 Kompilasi Hukum Islam Tentang Hibah Dari Orang Tua Kepada Anaknya Dapat Diperhitungkan Sebagai Warisan" (Universitas Brawijaya, 2017).

*Sebagai Pengganti Kewarisan Bagi Anak Laki-Laki dan Perempuan Di Desa Petaonan Kecamatan Socah Kabupaten Bangkalan.*<sup>19</sup> Unlike Ibnu Saha's 2013 thesis on local gift practices substituting inheritance, our research examines the broader phenomenon of reclassifying inherited land as gifted during official land certification. We analyze how Islamic inheritance principles interact with modern land administration systems across Indonesia, exploring factors behind status changes and their legal implications from both Islamic and positive law perspectives. This study uniquely contributes to understanding the practical application of Islamic inheritance principles within contemporary administrative contexts.

The article compiled by Mia Kartika et al., Family Law Study Program (University of Muhammadiyah Malang) in 2021 with the title *Pandangan Tokoh Agama Tentang Harta Hibah yang Dianggap Sebagai Harta Waris dalam Perspektif Hukum Islam.*<sup>20</sup> The problem in this study is the practice of distributing inherited assets, especially gifted assets that are considered as inherited assets according to religious leaders in Indonesia, while the undergraduate thesis I wrote, the problem lies in the Islamic view of inherited assets whose status is changed to grants.

The journal article compiled by Anisa Rahma Hadiyanti et al., Faculty of Law (Brawijaya University) in 2017 with the entitled *Pertanggungjawaban Notaris dalam Pembuatan Akta Hibah dengan Menggunakan Keterangan Palsu.*<sup>21</sup> This research examines the creation of grant deeds containing false statements, involving notaries and appearers, aimed at benefiting certain parties or disadvantaging others. Using a normative juridical approach, the study analyzes this issue in the context of Law No. 2 of 2014 on Notary Positions. The research reveals the persistent occurrence of false information in authentic deed creation, such as misrepresenting land ownership status. Unlike previous studies, this research focuses on the Islamic perspective regarding the conversion of inherited assets to grants.

This study uniquely addresses the reclassification of inherited land as gifted land during Indonesia's official land certification process, a contemporary phenomenon at the intersection of Islamic law and modern land administration. It bridges traditional Islamic jurisprudence and current bureaucratic practices, offering novel insights into how Muslim communities reconcile Islamic inheritance laws with contemporary land ownership documentation requirements. Unlike previous research focusing on theoretical legal comparisons or isolated local practices, this study examines the practical challenges faced by Muslims across Indonesia in aligning traditional inheritance principles with current administrative systems. By analyzing factors leading to status changes, examining legal implications from both Islamic and positive law perspectives, and proposing practical solutions, this research contributes to understanding Islamic law's adaptation to modern bureaucratic contexts. It provides valuable guidance for addressing real-world issues in Indonesia's land administration system, advancing knowledge on the evolving relationship between religious law and state administration in Muslim-majority countries.

## 2. DISCUSSION

### 2.1 Review of Islamic Law on Inheritance and Grant

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<sup>19</sup> Ibnu Saha, "Tinjauan Hukum Islam Terhadap Hibah Sebagai Pengganti Kewarisan Bagi Anak Laki-Laki Dan Perempuan Di Desa Petaonan Kecamatan Socah Kabupaten Bangkalan" (UIN Sunan Ampel Surabaya, 2013).

<sup>20</sup> dan Soni Zakaria Mia Kartika, Idaul Hasanah, "Pandangan Tokoh Agama Tentang Harta Hibah Yang Dianggap Sebagai Harta Waris Dalam Perspektif Hukum Islam," *MAQASIDI: Jurnal Syariah Dan Hukum*, 2021.

<sup>21</sup> Aimee Thaliasya dan Liza Priandhini, "Pertanggung Jawaban Notaris Dalam Pembuatan Akta Hibah Dengan Menggunakan Keterangan Palsu," *Pakuan Law Review*, 2021.

The Arabic term for inheritance, ‘wariṣa’, comes from the root word *wariṣa-yariṣu*,<sup>22</sup> which means the transfer of something from one person to another, or the passing down of property to another after death.<sup>23</sup> This concept is not limited solely to the transfer of material possessions, but also includes intangible things as well, as stated by Allah Swt. in the Quranic verse: "And Sulaiman inherited from Daud" (Quran 27: 16). The inference here is that Sulaiman not only inherited the kingdom and wealth of Daud, but also his knowledge and wisdom.<sup>24</sup> Therefore, the Islamic conception of inheritance encompasses the passing down of both material and non-material things from the deceased to the living. It serves as a means by which the achievements, knowledge and virtues of one generation are transmitted to the next, allowing for human progress across time. The property and wealth aspect facilitates the livelihood of inheritors, while the non-physical dimension allows for the preservation and continuation of valued skills, qualities and learnings beyond one’s lifetime. This broad conceptualization of inheritance in Islam underscores its multilayered significance in enabling succession and legacy.

وَوَرِثَ سُلَيْمَانُ دَاوُدَ وَقَالَ يَا أَيُّهَا النَّاسُ عَلِّمْنَا مَنْطِقَ الطَّيْرِ وَأَوْتِينَا مِنْ كُلِّ شَيْءٍ إِنَّ هَذَا هُوَ  
الْفَضْلُ الْمُبِينُ

Means:

"And Sulaiman inherited from Daud, and he said, "O people! We have been taught the language of birds, and we have been given from all things. Indeed, this is an evident bounty."<sup>25</sup>

The Arabic term *farāiḍ* refers to the fractional allotments assigned to heirs in the Quranic laws of inheritance. It comes from the root word *farāḍa* meaning to determine, allot or apportion. *Farāiḍ* is the plural form of ‘faridha’, which technically means a fixed share of inheritance.<sup>26</sup> In Islamic jurisprudential terminology, the science of *farāiḍ* is defined as:

قَوَاعِدُ فِقْهِيَّةٍ وَحِسَابِيَّةٍ يُعْرَفُ بِهَا نَصِيبُ كُلِّ وَارِثٍ مِنَ التَّرَكَةِ<sup>27</sup>

Means:

“The jurisprudence rules and calculations by which the shares of all heirs from the estate can be determined.”

It is a field of Islamic studies that outlines the detailed rules and calculations for distributing the estate of the deceased among entitled beneficiaries according to Quranic injunctions. This systematic distribution takes into account the specific fractional shares assigned to different classes of heirs based on their relationship and dependence on the deceased. The science meticulously works out the precise portions for individuals when there are multiple heirs with competing claims, allowing for a fair and equitable allocation aligned with Shariah guidelines. Mastery of *farāiḍ* requires expertise in the scriptural sources of inheritance law as well as their methodical application and arithmetic

<sup>22</sup> Muḥammad bin Mukrim bin ‘Ali Abu al-Faḍl Jamāl al-Dīn al-Ifriqi Ibn Manzūr, *Lisān Al-‘Arab*, Cet. III (Bairūt: Dār Ṣādir, 1994), v. 2, p. 199.

<sup>23</sup> Sa’di Abu Jaib, *Al-Qāmūs Al-Fiqhi*, Cet. II (Dimasyq: Dār al-Fikr, 1988), 377.

<sup>24</sup> Abu Ja’far Muḥammad bin Jarīr Al-Ṭabari, *Jāmi’ Al-Bayān Fi Ta’wīl Al-Qur’ān*, Cet. I (Muassasah al-Risālah, 2000), v. 19, 437.

<sup>25</sup> Kementerian Agama Republik Indonesia, *Al-Qur’an Dan Terjemahnya* (Jakarta: Al Syarifah, 2016), p. 378.

<sup>26</sup> Nadīm Mir’asyli and Usāmah Mir’asyli, *Al-Ṣiḥāh Fi Al-Lughah Wa Al-‘Ulūm*, n.d., 3874.

<sup>27</sup> Al-Zuhailī, *Al-Fiqh Al-Islam Wa Adillatuhu*.



computation. Alongside its jurisprudential foundations, proficiency in the mathematical logic and fractional arithmetic of *farā'id* is equally essential. Hence, in essence, *farā'id* is the codified methodology for properly apportioning inheritance according to percentages and ratios specified by Divine law.<sup>28</sup>

The agreed causes of inheritance are three, namely kinship, spousal relationship, and authority (*al-wala'*).<sup>29</sup>

1. Kinship refers to any lineage by birth - it includes the descendants and ancestors of the deceased as well as the offspring of the deceased's ancestors. This blood relationship forms the basis for inheritor eligibility.
2. A valid marital relationship, meaning a legally binding marriage contract, gives the spouse inheritance rights over the partner's estate - whether the marriage was consummated or not.
3. Patronage or 'al-Wala' establishes a quasi-kinship tie due to manumission of slaves. The act of freeing slaves created a patron-client affiliation between emancipator and emancipated. This bestowed inheritance privileges to the patron over the estate of freed slaves in the absence of blood relatives.

These three mechanisms encompass the means by which inheritance rights are conferred in Shariah law. Kinship propagates the estate within the family lineage. Marriage integrates the spouse into quasi-kinship. And patronage incorporates the master-freed slave relationship into the kinship framework for inheritance allotment in lieu of actual next of kin. The respective entitlements of these inheritors are precisely quantified through the arithmetic formulas of *farā'id* (shares) and 'awl (residual).<sup>30</sup>

The pillars or essential components in Islamic inheritance law are indivisible prerequisites for the distribution of estates.<sup>31</sup> There are several fundamental pillars that enable the allotment of inheritance:<sup>32</sup>

1. Heirs - These are beneficiaries entitled to receive a share of the estate due to their kinship or relationship with the deceased. They must qualify under the designated inheritor categories prescribed in Shariah.
2. The Bequeather - This refers to the deceased person whose estate is being distributed or in certain cases, legal provisions e.g. a court ruling an absentee person as deceased for inheritance purposes.
3. The Estate - The properties, assets and rights transferred from the bequeather to the heirs. It constitutes the inheritance subject matter.

The Islamic concept of inheritance is predicated on this trifacta of indispensable pillars. As established in the Qur'anic verses 19: 5-6 which state the legislation of inheritance allotments, the transmission of wealth to next of kin after someone's passing is contingent on the existence of identifiable heirs, the deceased owner, and tangible estate. The Ayahs emphasize that for inheritance to materialize, the wealth must be redistributed only among rightful beneficiaries connected to the deceased via sanctioned relationships.<sup>33</sup> Allah Swt. says in Surah Maryam: 5-6

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<sup>28</sup> Fatimah Zahara and Syahrini Harahap, "The Concept of Justice in the Distribution of Inheritance from the Perspective of Islamic Legal Philosophy," *Akta* 10, no. 1 (2023).

<sup>29</sup> Al-Zuhaili, *Al-Fiqh Al-Islam Wa Adillatuhu*.

<sup>30</sup> See Muṣṭafa Al-Khin, Muṣṭafa Al-Buga, and 'Ali Al-Syarbaji, *Al-Fiqh Al-Manhaji 'Ala Maḏhab Al-Imām Al-Syāfi 'I*, Cet. IV (Dār al-Qalam, 1992), v. 5, 75-76.

<sup>31</sup> Fauzān, *Al-Tahqiqāt Al-Marḏiyyah Fii Al-Mabāhiṣ AlFarḏiyyah*.

<sup>32</sup> Al-Zuhaili, *Al-Fiqh Al-Islam Wa Adillatuhu*.

<sup>33</sup> See Abu al-Fidā Ismā'il bin 'Umar al-Qurasyi al-Dimasyqi Ibn Kaṣīr, *Tafsīr Al-Qur'ān Al-'Azīm*, Cet. I (Bairūt: Dār al-Kutub al-'Ilmiyyah, 1998), v. 5, 212.

وَإِنِّي خِفْتُ الْمَوَالِيَ مِنْ وَرَائِي وَكَانَتِ امْرَأَتِي عَاقِرًا فَهَبْ لِي مِنْ لَدُنْكَ وَلِيًّا ﴿٥﴾ يَرِثُنِي وَيَرِثْ  
مِنْ عَائِلٍ يَعْزُبُ عَزَابَهُ وَاجْعَلْهُ رَبِّ رَضِيًّا ﴿٦﴾

Means:

“And indeed, I fear my relatives after me, and my wife is barren, so grant me from Yourself an heir. Who will inherit me and inherit from the family of Ya’kub. And make him, my Lord, pleasing.<sup>34</sup>

Hibah stems from the Arabic *hubūb ar-rīh* meaning a freely given gift without compensation, like a gentle breeze. In Shariah, hibah constitutes giving one’s property to another while living without exchange. It includes *ibra’* - debt forgiveness by creditor, and alms for spiritual rewards.<sup>35</sup> Hibah can involve objects or benefits. There is consensus on permissibility of *hibah* without strings attached, though rules differ. Compensatory hibah entails reciprocity, further complicating regulations.

The essence of hibah is voluntary, gratuitous transfer of wealth while alive. This distinguishes it from inheritance, which transfers property to entitled heirs per Shariah after one’s death. Though often conflated, hibah and inheritance are distinct forms of asset transfer, with different governing laws. Delineating their divergence is crucial given the varied regulations.<sup>36</sup>

Hibah refers to voluntary gifts which may involve the transfer of tangible objects or intangible benefits. Gifts of physical assets include those meant as compensation and those given without such expectation. Islamic scholars unanimously agree on the permissibility of hibah that does not aim to gain favors or returns from others. However, differences do exist between schools of law regarding the exact rules and conditions regulating various hibah contracts and transactions. While the overarching permissibility is not disputed, the juristic details governing the execution and implications of hibah continue to be an area of diverse opinions between scholars. This is especially true for compensatory gifts where reciprocity is entailed, as opposed to gratuitous acts of charity and goodwill. Hence the consensus lies in the broad permission of hibah as voluntary charity, but the specifics of frameworks and restrictions governing it remain open to interpretation and *ijtihad*.<sup>37</sup>

## 2.2 Factors in the Transfer of Inherited Land Certificate Status to Grant

Indonesia implements an active land registration system requiring owners to proactively register lands to be processed by the National Land Agency. Unregistered lands remain outside the purview of authorities. This results in more unrecorded lands, escalating land disputes.

Objectives of systematic land registration include:<sup>38</sup>

1. Provide legal certainty and protection for registered land rights. Registered lands have greater legal force than unregistered ones. The law safeguards lands registered with the National Land Agency provided administrative requirements are duly met during registration.

<sup>34</sup> Kementrian Agama RI, *Al-Qur’an Tajwid Dan Terjemah* (Jakarta: Perum Percetakan Negara RI, 2015).

<sup>35</sup> Sulaiman Rasjid, *Fiqh Islam* (Jakarta: At Tahiriyah, 1954), p. 326.

<sup>36</sup> Sabiq, *Fiqh Al-Sunnah*.

<sup>37</sup> Muhammad ibn Ahmad ibn Muhammad ibn Rusyd al-Qurtubi, *Bidāyah Al-Mujtahid Wa Nihayah Al-Muqtasid*, ed. 1, Juz 3 (Mesir: Dar al-Jauzi, n.d.), p. 146.

<sup>38</sup> Mudakir Iskandar Syah, “Sertifikat Tanah Ganda Akibat Lemahnya Data Base Pertanahan,” *Hukum Dirgantara* 2, no. 4 (2014): p. 48.

2. Furnish land data to stakeholders like government and private institutions for seamless access when required.
3. Enable orderly land administration.

Methodical land registration aims to confer legal security to owners, equip authorities with comprehensive land data, and streamline administrative systems for efficient land governance. However, passive owners and system gaps lead to swathes of unregulated land lacking legal safeguards. Addressing these lacunae through active registration is imperative for strengthening property rights and order in Indonesia.<sup>39</sup>

A land certificate serves as documentary evidence of property rights, functioning as a legal proof of ownership. It attests that the state has officially registered the land to the certificate holder. This administrative recognition furnishes robust proof of the holder's rights as the lawful proprietor as stated on the certificate. For landowners, a certificate constitutes powerful evidence for asserting property claims since it is issued by a legally authorized government agency. The law upholds the rights of certificate holders, providing greater protection if the name matches the holder. Hence, transferee holders should duly register the land under their name to avoid disputes over rights and encroachment. The land certificate confers the backing of the state to cement the holder's property ownership. However, the full force of this legal shield depends on proper documentation affirming the holder as the rightful title bearer recognized by the law.<sup>40</sup>

In case of land disputes, the owner's certificate serves as evidence of their lawful claim over the property. The land rights certificate creates legal order in land governance and catalyzes economic activities by enabling land collateralization. This is because the certificate represents official proof that the land has been duly registered with the authorized state body as mandated by law. The document provides the weight of state recognition to affirm the registered owner's rights over the land. This allows the certificate to arbitrate competing claims during conflicts by legally verifying the legitimate owner. Moreover, collateralizing the certified land accessibly unlocks its economic value for the holder to utilize for financing. The certificate thus engenders both legal security and commercial opportunity for the titleholder through official state endorsement of their registered ownership. It formalizes land rights to prevent unlawful seizure while simultaneously unlocking the land's economic utility.<sup>41</sup>

The reclassification of inherited land as grants often occurs due to lost supporting documents, such as proof of inheritance or heir data, over time. This issue arises from insufficient emphasis on maintaining ownership documentation, especially problematic when rightful heirs have passed away. To circumvent legal ambiguities caused by missing legacy evidence, inherited lands are frequently registered as grants. This exploits systemic gaps in recording inheritance transfers, allowing owners to bypass the rigorous legacy verification required for inheritance titles. Owners, apprehensive about registering unrecorded inherited lands, often resort to declaring these properties as grants in registration applications. This tactic aims to streamline the process by avoiding complex legacy verification requirements. While grants only need witness testimonies, inherited lands require succession proofs. Although expedient, this practice circumvents vital safeguards protecting inheritance rights, potentially leaving ownership uncertain. It

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<sup>39</sup> See Barita Sidabutar, "Legal Security Of Land Ownership By The System Law In Indonesia And Judicia Practice," *Jurnal Gagasan Hukum* 5, no. 1 (2023).

<sup>40</sup> Jimmy Joses Sembiring, SH, *Panduan Mengurus Sertifikat Tanah*, p. 23.

<sup>41</sup> Mhd. Yamin Lubis dan Abd. Rahim Lubis, *Hukum Pendaftaran Tanah* (Jakarta: Mandar Maju, 2008), p. 205.

highlights systemic deficiencies in recording inheritance transfers, compelling makeshift solutions that may be detrimental to lawful heirs. Addressing these issues could prevent improper transfers and protect rightful inheritance.

### 2.3 *The Legal Standing of Transferring Inheritance Status to Grants in Making Land Certificates in the Perspective of Islamic Law*

Transferring asset ownership to preserve its utility across generations is enabled through inheritance in Indonesian communities. It allows passing down property functions and benefits from owners to heirs.<sup>42</sup> Inheritance and grants differ fundamentally. Grants are lifetime transfers, while inheritance occurs post-mortem. Yet both concepts share close linkages. Inheritance fulfills intergenerational succession by devolving possessions to beneficiaries after the owner's lifespan. Grants optimize asset utilization through living transfers, but do not intrinsically assure intergenerational continuity. However, grant allotments made in contemplation of mortality resemble wills, blending elements of both.

Moreover, Indonesian laws allow grants made from parents to children to distribute inheritance shares. This flexibility blurs lines between grants and inheritance.<sup>43</sup> Nonetheless, comprehending the conceptual divergence between voluntary lifetime gifts and compulsory testamentary succession remains essential for coherent policy and governance. Discerning these nuances can optimize the merits of both while upholding Islamic guidelines.

As explained previously, inheritance in Arabic comes from the word *wariṣa-yariṣu-irṣan* which means the transfer of something from one person to another or the transfer of property to another person after death.<sup>44</sup> This understanding is not limited only to matters relating to property but also includes things other than property, as stated by Allah Swt. in Q.S. al-Naml/27: 16,

وَوَرِثَ سُلَيْمٰنٌ دَاوۡدَ وَقَالَ اٰیۡهَا النَّسُّ عَلِمۡنَا مَنۡطِقَ الطَّيۡرِ وَاُوۡتِیۡنَا مِنۡ كُلِّ شَیۡءٍ ؕ اِنَّ هٰذَا هُوَ الْفَضۡلُ  
المبرین

Means:

“And Sulaiman inherited from Daud, and he (Sulaiman) said, "O people! We have been taught the language of the birds and given all things. Indeed, this is a clear blessing.”<sup>45</sup>

According to Islamic law, inheritance is a law that regulates the transfer of wealth left by a deceased person and its consequences for their heirs.<sup>46</sup> The conditions of inheritance are: the person inheriting remains alive after the death of the person bequeathing, the death of the person bequeathing, and knowledge of the science of inheritance.<sup>47</sup> From Abu Hurairah that Rasulullah said,

<sup>42</sup> Mia Kartika, Idaul Hasanah, “Pandangan Tokoh Agama Tentang Harta Hibah Yang Dianggap Sebagai Harta Waris Dalam Perspektif Hukum Islam.”

<sup>43</sup> Ikhfa Nur Afriani, Rohman Syah, and Nur Avita, “Parental Grants to Children and Their Relation to Inheritance in the Perspective of Positive and Customary Laws of Indonesia,” *Al-Bayyinah* 7, no. 1 (2023), <https://doi.org/DOI: 10.30863/al-bayyinah.v7i1.3064>.

<sup>44</sup> Muḥammad bin Mukrim bin ‘Ali Abu al-Faḍl Jamāl al-Dīn al-Ifriqi Ibn Manzūr, *Lisān Al-‘Arab*, Cet. III (Bairūt: Dār Ṣādir, 1994), v. 2, p. 199.

<sup>45</sup> Kementerian Agama Republik Indonesia, *Mushaf Al-Quran Dan Terjemah* (Jakarta: Ummul Qura, 2017), p. 378.

<sup>46</sup> Al-Sābūnī, *Al-Mawarīs Fī Al-Syarī‘ah Al-Islāmiyyah Fī Ḍawī Al-Qur‘ān Wa Al-Sunnah*, p. 34.

<sup>47</sup> Fauzān, *Al-Tahqiqāt Al-Marḍiyyah Fī Al-Mabāhiṣ AlFarḍiyyah*, p. 35.

عَنْ أَبِي هُرَيْرَةَ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهَا فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى وَهُوَ أَوَّلُ شَيْءٍ يُنَزَعُ مِنْ أُمَّتِي

Means:

“From Abu Hurairah that Rasulullah said, "O Abu Hurairah, study the science of faraid (inheritance) because truly the science of faraid is half of knowledge, it will be forgotten and it is the first knowledge that will be taken from my people." (Narrated by Ibn Majah)”<sup>48</sup>

In Islamic law, the purpose of grants is to strengthen the ties of kinship between people and closeness to Allah because the nature of grants is closely related to the relationship with Allah as proof of love among His created beings. Allah Swt. states in Surah al-Baqarah 2: 177,

وَأَتَى الْأَمْوَالَ عَلَىٰ حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ

Means:

“And give from the wealth you love to relatives, orphans, the poor, travelers in need, beggars, and to free slaves.”<sup>49</sup>

Also based on the hadith narrated by Bukhari regarding the provision and age of a person being expanded, the Messenger of Allah said,

عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ : مَنْ سَرَّهُ أَنْ يُبْسَطَ لَهُ فِي رِزْقِهِ أَوْ يُنْسَأَ لَهُ فِي أَثَرِهِ فَلْيَصِلْ رَحْمَهُ

Means:

“From Anas bin Malik (RA), he said: I heard the Messenger of Allah (SAW) say: "Whoever wants their provision expanded and age extended, then let them always strengthen the ties of kinship" .”<sup>50</sup>

Grants from parents to children or general heirs are permissible in Islam, and are even highly encouraged. It is allowed for owners of wealth to distribute their assets to children or family prior to death. Whoever grants to children, equal justice between them is recommended. This is the view of Abu Hanifah and Malik, being the preferred perspective per the Shafi'i school. Ahmad and Muhammad ibn Hasan opined prioritizing males over females as is inheritance distribution, the perspective of the Shafi'i school.<sup>51</sup>

Land ownership in Indonesia is generally controlled by the Indonesian people, but legally not yet. This is seen from the many Indonesians who own the land but do not have proof of legitimate ownership through the ownership of land certificates. The necessary certificate can be used as a means of proof that has an important role in modern society, because the act as a written document can provide proof of the existence of a legal event in which it regulates a right and obligation of each party making a covenant, the means of evidence are authentic writings or writings under hand.<sup>52</sup>

<sup>48</sup> Abu Abdillah Muhammad bin Yazid Al-Qazwini, *Kitab Sunan Ibnu Majah* (Dār Iḥyā' al-Kitāb al-'Arabīyah, n.d.), p. 908.

<sup>49</sup> Indonesia, *Mushaf Al-Quran Dan Terjemah*, p. 27.

<sup>50</sup> Abu Abdillah Muhammad bin Ismail bin Ibrahim bin al-Mugiroh ibnu Bardizbah al-Bukhari Al-Ja'fi, *Shahih Al-Bukhari*, Cet. I (Beirut: Dār ṭūq al-Najāh, 2012), p. 56.

<sup>51</sup> Rahmah al-Ummah fi Ikhtilaf Al-Aimmah, *Abu Abdullah Muhammad Bin Abdurrahman Al-Dimasqy Al-Syafi'i*, n.d., p. 198.

<sup>52</sup> Ulfa Amalyah Usman, “Keabsahan Sertifikat Pengganti Sebagai Dasar Pembuatan Akta Hibah,” n.d., p. 659.

Although not yet legally, Indonesians hold the majority of the country's land. This is evident from the large number of Indonesian landowners who lack land certificates as documentation of their legal ownership. As a written document that can attest to the existence of a legal event governing the rights and obligations of each party entering into a covenant, the required certificate can be used as evidence that plays a crucial role in modern society. The writings that are used as evidence are genuine writings or writings that are in the possession of the parties.

If reviewed from the Islamic perspective, the acquisition of evidence of land ownership marks can be said to bring interest to landowners and not to be forbidden. *al-Maṣlaḥah* means taking advantage or eliminating harm.<sup>53</sup> The Islamic legal principle of *al-maṣlaḥah*, or public interest, serves as a cornerstone in the interpretation and application of Shariah law. It aims to safeguard five essential aspects of human life: religion (*al-dīn*), life (*al-nafs*), intellect (*al-'aql*), property (*al-māl*), and lineage (*al-naṣl*), collectively known as *maqāṣid al-sharī'ah*. Within this framework, actions that protect these fundamental elements are considered to align with Shariah principles, while those that threaten them may be deemed contrary to Islamic law. In the context of property protection (*hiḍ al-māl*), practices such as land certification can be viewed as mechanisms to preserve wealth, thus fulfilling one of the core objectives of Shariah and demonstrating the practical application of *al-maṣlaḥah* in contemporary legal and social contexts.<sup>54</sup> Allah says in Surah al-Nisa: 29,

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا  
أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Means:

“O you who have faith! Save in an equal exchange between you, do not steal from one another's wealth, and do not murder one another. Indeed, Allah is gracious to you.”<sup>55</sup>

This explanation leads one to the conclusion that land certificates can be created in Islam in order to maintain ownership of the property. However, in this instance, because the landowner is unable to prove their inheritance, they must find another method to maintain their ownership rights. Land whose status is inherited from the parents can be converted to land granted by the parents in order to make managing the land certificate easier. This is one method of changing the status of land.

Granting assets to offspring may be construed as an act of bequeathing and is culturally acknowledged as a customary practice or ‘urf’ within the Indonesian context, particularly among those who opt to endow their children rather than partitioning inheritance.<sup>56</sup> Contrary to inheritance, a grant includes a *jayab*, which can take the form of "I give this thing to you" or "*ṣarīḥ*." Alternatively, with a *lafal*, which is frequently used to signify "I give it to you," "I make this a blessing for you," or "I have given this thing as yours." All of these phrases are used with the goal of granting something.<sup>57</sup>

<sup>53</sup> Zaid bin Muhammad Al-Rimmānī, *Maqāṣidu Al-Syarī'ah Al-Islamiyyah*, Cet. I (Riyad: Dār al-Fīṣ, 1994), p. 29.

<sup>54</sup> Fadhli Suko Wiryanto, “The Urgency and Strategic Role of Maqasid Shari’ah and Maslahah in Responding to The Legal and Economic Challenges of Muslim Business,” *Journal Middle East and Islamic Studies* 10, no. 1 (2023), <https://doi.org/DOI: 10.7454/meis.v10i1.158>.

<sup>55</sup> Indonesia, *Mushaf Al-Quran Dan Terjemah*, p. 378.

<sup>56</sup> Isnina, “Hibah Orang Tua Kepada Anak Dapat Diperhitungkan Sebagai Pengganti Waris (Analisis Konsep Maslahah Pasal 211 Kompilasi Hukum Islam),” in *Prosiding Seminar Nasional Kewirausahaan*, 2021, Vol. 2.

<sup>57</sup> Al-Zuhailī, *Al-Fiqh Al-Islam Wa Adillatuhu*, p. 8.

The Compilation of Islamic Law provides in Article 211 that "a parent's inheritance to his child can be counted as an inherited property." When this is examined, it reveals that the Hadith and the Qur'an do not really govern this; rather, they contain the element of 'urf. This indicates that the grant is considered inherited. Therefore, the grant that was handed to the son can be considered inherited even though the heir passed away and his inheritance was insufficient for him. Otherwise, as we return to the second definition—a legacy is shared after the heirs die, whereas a grant is given before the grantor dies—when the inheritance is divided before the heir dies, this is frequently the case in Indonesian society, where the Islamic law's review of the implementation of the division of property before the deceased heir is counted as a grant not inherited.<sup>58</sup>

Changing status in this case may include manipulation prohibited in Islam, Allah says in Q.S. al-Baqarah/2: 283.

وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ أَمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

Means:

"You must not conceal the testi mony, as the one who does so has a dirty heart. Allah knows everything about you."<sup>59</sup>

Unclear ownership status is a common source of land conflicts, where a single plot of land sometimes has two or more competing claims of ownership.<sup>60</sup> Disparities in the land interests of men and women have likely existed since land itself came into being. Land issues can crop up virtually anywhere across Indonesia. In such situations, there may be an urgent need to change the status of a land inheritance to a grant. If the certificate is not granted, issues could arise later or there would be no documented proof of ownership allowing the property to be retained. The lack of official certificates opens the door for competing claims from multiple heirs or sales by just one heir unaware of others' rights. Even sincere attempts to properly divide land amongst rightful heirs based on religious inheritance calculations can fall prey to logistical issues like minimum parcel sizes. By converting inherited land into an official grant with a certificate under the recipient's name, the new owner attains stronger legal protection against potential future claims. The certificate also facilitates the grantee's ability to obtain financing against the land. While the religious ideal remains equitable division amongst heirs, real-world complexities may at times necessitate changing inheritance into grant status.

From Abu Sa'id, Sa'ad bin Sinan al-Khudri ra., Indeed Rasulullah said:

لَا ضَرَرَ وَلَا ضِرَارَ

Means:

"You can't do anything harmful to yourself and others. (narrated by Ibnu Majah).<sup>61</sup>

One of the fiqh principles states that:

الضَّرُورَاتُ تُبِيحُ الْمَحْظَرَاتِ

Means:

<sup>58</sup> See Fatimah Zuhrah et al., "Indonesian Islamic Inheritance Law Reform: Case Study on Heirs Substitutes in Malay Societies," in *Proceedings of the 7th International Conference on Multidisciplinary Research (ICMR 2018)*, n.d., <https://doi.org/DOI: 10.5220/0008885203620366>.

<sup>59</sup> Indonesia, *Mushaf Al-Quran Dan Terjemah*, p. 47.

<sup>60</sup> Adrian Sutedi, *Sertifikat Hak Atas Tanah* (Jakarta: Sinar Grafika, 2012), p. 8-10.

<sup>61</sup> Abu Abdirrahman Muhammad Nasruddin, *Silsilah Al-Ahādīs Al-Şahīhah Wa Syai'un Min Fiqihā Wa Fawā'idihā*, Cet. I (Riyadh: Maktabah Ma'ārif li al-Nasyri wa al-Tauzī'i, 1995), p. 498.

“Every necessity justifies what is forbidden.”<sup>62</sup>

The maxim "every necessity justifies what is forbidden" provides for exceptional allowance of normally prohibited actions in cases of urgent need or harm. When adhering to a standard ruling results in substantial difficulty or damage, this principle permits taking otherwise impermissible measures to prevent that outcome. The threshold for such an exception is high and requires a direct, unavoidable cause-effect relationship where performing the regular prohibition leads to clear hardship, and violating the rule averts the hardship.

While deviations should be minimized, Islam recognizes there may be rare scenarios where bending a law to accommodate necessity is the lesser evil. For example, eating pork is strictly forbidden, but if the only food available to avoid starvation is pork, consumption becomes temporarily permissible based on this maxim. Preserving life outweighs the prohibition.

Similarly, in complex inheritance situations, heirs may have no viable way to properly distribute land according to sharia other than redistributing it as a gift to one person. The inability to implement standard inheritance divisions could lead to losing the land or conflict, which is a greater harm than the exceptional measure of altering its status on paper. While circumventing the law is not ideal, preserving family property and preventing disputes justifies this action in a narrow emergency exception according to the principle that dire need can temporarily permit otherwise unlawful acts. The maxim provides flexibility to uphold the objectives of sharia under constrained circumstances.

This principle relates to concessions in Islamic law. The evidence underlying this principle is the statement of Allah in Surah al-An'am/6: 119.

وَمَا لَكُمْ إِلَّا أَنْ تَأْكُلُوا مِمَّا دُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ

Means:

“And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled?”<sup>63</sup>

One of the emergency conditions referred to in this maxim is the absence of any viable alternative that could avert the harm or difficulty incurred, and the exception to the normal prohibition does not oppress or infringe upon the rights of others. The author argues that the conversion of inherited land status into a gift, which constitutes a form of legal manipulation, qualifies as such an emergency condition and fulfills the aforementioned criteria. When inheritors face obstacles to properly dividing the land according to their rightful shares, such as minimum parcel size restrictions imposed by the national land law, they may have no feasible alternative but to transfer the land to one heir as a gift to avoid future conflict or loss of the property. As long as the rights of the other heirs are not usurped against their wishes and they agree to the gift designation, this maxim allows such manipulation in emergency cases where sticking to the letter of inheritance law would lead to harm and injustice. The harm of losing the family land entirely outweighs the harm of diverging from standard inheritance division protocol. Through application of this established principle, the author contends the status change can fulfill sharia objectives under exceptional circumstances.

Another *fiqh* principle states:

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<sup>62</sup> Muhammad Shidqi, *Al-Wajiz Fi Idāh Qawā'id Al-Fiqhiyyah Al-Kulliyyah*, IV (Beirut: Muassasah al-Risalah, 1996), p. 234.

<sup>63</sup> Indonesia, *Mushaf Al-Quran Dan Terjemah*, p. 143.



الْعَبْرَةُ فِي الْعُقُودِ لِلْمَقَاصِدِ وَالْمَعَانِي لَا لِلأَلْفَافِ وَالْمَبَانِي

Means:

“The guiding principle in transactions is the intention and substance, not the expressions and formalities.”<sup>64</sup>

From this principle, the original inherited status of the land is likened to *al-maqāsid* or the substance of the matter, while the gifted status indicated on the land certificate is considered *alfāz* or merely a formality for obtaining the certificate.

Thus, from the explanation above, it can be concluded that acquiring a land certificate to protect the property (*ḥifz al-māl*) yet changing the inherited land status to gifted on the certificate to avoid harm is permitted in emergency conditions. This is only allowed for administrative purposes, but the land fundamentally remains inherited property despite being designated as a gift for the certificate.

The religious inheritance division may be unable to be implemented in reality due to legal constraints, but the substantive inheritance rights remain intact and the certificate status as a gift is merely a procedural formality. While not ideal, this administrative manipulation stems from a drive to uphold the ultimate objectives of sharia by retaining family property and preventing conflict. The principle that intentions supersede formalities grants some flexibility when following standard inheritance procedures proves unworkable or detrimental. As long as all heirs consent and their rights are not infringed upon, the gift designation can be deemed a permissible exceptional measure in specific cases of difficulty or emergency.

### 3. CONCLUSION

There are several factors that can lead to the transition of inherited land status into gifted land. These include a lack of understanding in the community about the differences between inheritance and gifts, missing or lost documentation to prove inheritance status, and a desire to facilitate straightforward land registration procedures. Many people may not fully grasp the nuanced distinctions between land obtained through inheritance versus being granted as a gift. Without proper knowledge, heirs may not take care to maintain the land's inherited status during the registration process. The absence of documentation also contributes to this issue, as inheritors may have no official records or papers tracing their rightful claims under inheritance law. Rather than navigate complex bureaucratic procedures to establish valid inheritance, registering the land as a gift from the start provides a simpler path. Though well-intentioned for practical reasons, this ends up converting the actual nature of the acquired land from an inheritance to a grant. Clearer public understanding of the implications, along with improved inheritance record keeping could help curb unintended status changes.

The legal position of changing the status of inherited land to gifted land in the issuance of a land certificate is due to the loss of supporting documents and to avoid future complications. This action is permissible based on considerations of *maslahah* (public interest) to safeguard property and prevent harm. It also falls under emergency conditions where the *fiqh* principle states that every necessity justifies what is forbidden. However, this is only for administrative purposes, and the land remains inherited land according to the *fiqh* principle that the intention and substance, not the expressions and formalities, are the reference points in transactions.

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<sup>64</sup> Shidqi, *Al-Wajīz Fī Iḍāḥ Qawā'id Al-Fiqhiyyah Al-Kulliyah*, p. 147.

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