

Review of *Maqāshid al Syarī'ah* Regarding Grants Counted as Inheritance in Article 211 of the Compilation of Islamic Law

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ABSTRACT

A gift (*hibah*) involves the transfer of property to another without compensation during the giver's life, often to prevent disputes after their death. In Islamic law, *hibah* to non-heirs, like adopted children, can create issues. Article 211 of KHI limits *hibah* to a maximum of one-third of the benefactor's wealth, safeguarding legitimate heirs' rights. *Maqāshid al-syarī'ah* views *hibah* as a means to ensure the welfare of all, including the protection of wealth and lineage. This study examines *hibah* in Article 211 of KHI and analyzes it through *maqāshid al-syarī'ah*. Using a qualitative library approach, findings show that *hibah* given during the benefactor's lifetime may be counted in the inheritance to maintain fairness among heirs. *Maqāshid al-syarī'ah* stresses justice, family harmony, and collective welfare, aiming to prevent conflict and uphold balanced rights among heirs and the benefactor's intentions.

Keywords: *Hibah*, Inheritance, Article 211 KHI, *Maqāshid al-Syarī'ah*.

INTRODUCTION

In social life, granting a gift is one form of legal interaction that is often encountered. A grant is a gift from one person to another party for part of his property for free while he is still alive. In the tradition of customary law, grants are often made as a form of dividing property among children to avoid conflicts that may arise after the testator dies. Grants are usually given when children begin to become independent or when they have a family. (Subekti, 1995). The practice of giving gifts often raises problems, especially in the context of Islamic inheritance law. One problem that often arises is when a gift is given to an adopted child or another party who is not entitled to receive an inheritance, while the legal heirs feel disadvantaged. This is where questions arise regarding justice in the distribution of assets and how Islamic law and the Compilation of Islamic Law (KHI) view gifts that can be considered as inheritance (Anshari, 1986).

In Islamic law, the principle of justice is highly respected, including in the provision of gifts. The gift given must be in accordance with fair provisions and must not violate the rights of legitimate heirs. Islam teaches that a Muslim must

be fair in providing gifts and not give all his wealth to an undeserving party, such as an adopted child, while ignoring the rights of the heirs. This provision is explained in several verses of the Quran and Hadith, and is reinforced by the legal rules applicable in Muslim society, as regulated in the Compilation of Islamic Law (KHI)(Abu Zahra, 2003).

Article 211 of the KHI specifically discusses the limitations of grants, namely grants that are considered as inheritance. Grants given by parents to their children, or to other parties, may not exceed one third of the assets owned. This provision is in line with the principle of justice in Islamic law and aims to maintain a balance of the rights of heirs. On the one hand, grants function as a form of giving affection to those who are given, but on the other hand, grants must also consider the absolute rights (*legitime portie*) of the heirs. (Nasution, 1986).

In the perspective of *maqāshid al-syarī'ah* (objectives of sharia) of Islamic law, it does not only focus on the implementation of textual law, but is also oriented towards the welfare of the people. *Maqāshid al-syarī'ah* aims to protect five main aspects of human life, namely religion, soul, mind, descendants, and property. In the context of gifts, *Maqāshid al-syarī'ah* plays an important role in ensuring that property is distributed fairly, and the rights of heirs are maintained, so that the goal of public welfare can be achieved. The limitation of gifts in Article 211 of the KHI is a form of implementation of the protection of property and descendants in *Maqāshid al-syarī'ah*, which ultimately aims to create justice and harmony in the family. (Sudarsono, 1991).

Although the KHI strictly regulates the limits of gifts, in practice there are still various deviations. One of them is the provision of gifts that exceed the limit of one-third of the assets, which then causes disputes between heirs. In addition, the lack of understanding of Islamic law causes some parents to give all their assets to adopted children, without considering the rights of biological children as legal heirs. (Syarifuddin, 2003).

Based on this background, this study is important to conduct in order to examine more deeply the grants that are considered as inheritance in Article 211 of the KHI and to view it from the perspective of *maqāshid al-syarī'ah*. This study is expected to provide a more comprehensive understanding of the principle of justice in grants and how *maqāshid al-syarī'ah* can be the basis for regulating grants that are fair and in accordance with Islamic law.

RESEARCH METHODS

The type of research used in this study is library research with a qualitative doctrinal approach. This approach is based on legal research conducted descriptively, describing certain phenomena without using numbers

or statistics (Arifin, 2008; Movitaria et al., 2024). The data sources in this study consist of secondary data that include primary legal materials, namely the Compilation of Islamic Law articles 210-211 concerning grants and their relation to inheritance; secondary legal materials such as law books, research results, and draft laws; and tertiary legal materials such as legal dictionaries and encyclopedias that support the explanation of primary and secondary materials.

The data collection technique was carried out using the selected index reading method, namely by reviewing relevant library sources. This process includes recording data related to the research theme, understanding the data obtained, and classifying data for analysis (Margono, 2004). In analyzing the data, the content analysis and descriptive analytical methods were used, which aimed to describe the theory of *maqāshid al-syarī'ah* and analyze the rights and obligations of husband and wife in that perspective.

The validity of the data was tested through a deductive pattern, namely analyzing data in general based on theory and then drawing specific conclusions related to the limits of granting grants and the correlation of grants with inheritance (Amrin, 1995).

RESEARCH RESULTS AND DISCUSSION

The Position of Grants Considered as Inheritance According to Article 211 of the Compilation of Islamic Law

Grants in Islamic law serve as an alternative to regulate the distribution of assets, especially in the context of inheritance. Article 211 of the Compilation of Islamic Law (KHI) states that grants from parents to children can be considered as inheritance. Although grants are given during life and inheritance after death, both have an important role in avoiding disputes among heirs. The importance of agreement among heirs is key to preventing conflict, with the principle of deliberation being emphasized. KHI seeks to create a balance between legal certainty and justice, but the practice of grants often does not comply with the provisions of *faraid*, which has the potential to harm the rights of other heirs. Therefore, clear documentation in granting grants is essential to avoid future disputes and ensure a fair distribution of assets (Amir, 2011).

In the perspective of the four schools of thought, the views on the withdrawal of gifts differ. Hanafi and Maliki are of the opinion that gifts to children cannot be withdrawn, while Syafi'i allows the withdrawal of gifts under several conditions. According to Maliki, gifts can be withdrawn if they are only given on the basis of affection. Meanwhile, Hambali has several views, where withdrawal is permitted. Syafi'i emphasizes that gifts to children and their descendants can be withdrawn, as long as the goods have not been transferred. If they have been sold or donated, withdrawal is not permitted. Withdrawal of gifts is also permitted in cases of rent or mortgage. In Indonesia, the practice of

gifts is often used as a method of dividing inheritance, in accordance with Article 211 of the Compilation of Islamic Law. This aims to prevent disputes among heirs and ensure fair distribution, so that children can receive the gifted property with sincerity (Abdulkadir, 2017).

Article 211 of the Compilation of Islamic Law (KHI) stipulates that a gift given to an heir by the testator while he is still alive can be counted as part of the inheritance. This is intended to ensure justice among the heirs, especially if the gift is given in a large amount or to only one heir, so as not to harm the rights of other heirs (Kompilasi Hukum Islam).

In the perspective of Article 211 of the KHI, grants given before the testator dies must be recalculated in the distribution of inheritance to prevent inequality or injustice in the distribution of inherited assets. Grants given to heirs are recognized as part of the inheritance and are included in the assets to be divided according to Islamic inheritance law, unless there is an agreement among the heirs not to take them into account. The position of this grant, according to the KHI, is as a regulator of balance so that no heir receives excess assets compared to others, which can ultimately lead to conflict or injustice. Therefore, grants given to heirs before the testator dies are not considered as stand-alone gifts, but become part of the inheritance that will be taken into account in its distribution (Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam, n.d.).

In the context of *maqāshid al-syarī'ah*, this rule reflects one of the objectives of sharia, namely maintaining justice (*'adl*) and the welfare of the family in the distribution of property, which is part of maintaining property (*hifzh al-mal*) in order to create the welfare of the community. Thus, the position of the gift in Article 211 of the KHI not only functions to regulate the technicalities of inheritance distribution, but also reflects the principle of justice that is prioritized in Islam, as well as maintaining the balance of rights between heirs. In its implementation, the provisions regarding gifts that are considered as inheritance in Article 211 of the Compilation of Islamic Law (KHI) are closely related to the principles of justice and family harmony. This concept emphasizes the importance of maintaining equality among heirs and avoiding potential disputes that may arise due to the provision of disproportionate gifts. If an heir gives a large gift to one of the heirs during his lifetime, without considering the rights of the other heirs, then this has the potential to harm the other heirs (Moh, 2020).

In practice, a grant that is calculated as an inheritance based on Article 211 of the KHI requires heirs who have received a large grant to include it in the calculation of the total inheritance. After the calculation is made, the grant can be offset against the portion of the inheritance that will be received by the heir.

For example, if an heir gives a grant in the form of land to one of his children, the land is calculated as part of the child's inheritance rights and reduces his portion of the inheritance in accordance with applicable inheritance laws (Muhammad, 2015). Case Example: If an heir during his lifetime has given a piece of land to child A, while children B and C did not receive a grant, then when the heir dies, the land must be counted as part of the total inheritance. If the value of the land exceeds child A's share according to inheritance law, child A will not receive an additional share of the remaining inheritance, while children B and C will receive their full share. On the other hand, if the value of the land grant is less than child A's share of inheritance, then he has the right to receive the remaining share from the testator's inheritance (Nuh, 2018).

Relevance of *maqāshid al-syarī'ah*: In the view of *maqāshid al-syarī'ah*, this concept emphasizes that the goal of sharia is to create justice ('*adl*) in all aspects of life, including in the distribution of inheritance. Grants that are considered as inheritance play a role in maintaining equality and avoiding injustice among heirs. This is in line with the goal of sharia in maintaining property (*hifzh al-mal*) and maintaining relationships between family members (*hifzh al-nasl*) so that they remain harmonious (Al-Zuhaili Wahbah, 2006).

Furthermore, this regulation also accommodates the values of *maslahat* (public welfare) in the context of social and family life. With this regulation, not only individual rights are protected, but also family harmony and social stability can be maintained, in accordance with the principles of Islamic law (Hasan, 2014).

In addition, the provisions of Article 211 of the KHI also play a role in avoiding greed or injustice that may occur if a large gift is given to one of the heirs without any clear arrangements. In Islam, the distribution of inheritance is not only about dividing property, but also maintaining togetherness, harmony, and justice in the family, which is the essence of *maqāshid al-syarī'ah* (Fauzi, 2019).

Review of *Maqāshid al-Syarī'ah* Regarding Grants Calculated as Inheritance in Article 211 of the Compilation of Islamic Law

The first step that must be taken in relation to the use of *maqāshid al-syarī'ah* as an aspect of consideration, basis, and approach to legal formulation, is to detect and know the existence of *maqāshid al-syarī'ah* itself. This is very important in relation to minimizing the determination of *maqāshid al-syarī'ah* wildly based on speculative and baseless claims as *ijtihad*. There are five basic rights in this category, namely *Hifzh Al-Din* (protecting religion), *Hifzh Al-Nafs* (protecting the soul), *Hifzh Al-Aql* (protecting reason), *Hifzh Al-Nasl* (protecting descendants), and *Hifzh Al-Mal* (protecting property) (Busyro, 2016).

a. Maintaining Religion (Hifzh Al-Din).

Humans as creatures must believe in God who created them, protects them and regulates their lives. Religion or religiousness is vital for human life. Likewise regarding the issue of article 211 KHI, the explanation is that an heir is permitted to give a gift to one of his children provided that it must be based on the consent of his other children and must act fairly towards his children. If he cannot fulfill this, the gift given can be counted as inheritance.

The existence of Maqashid As-Syari'ah regarding the issue is categorized using the mujar method (Al-Amr wa An-Nahyi) al-ibtidai al-tasrihi. The content of this method shows that the command to carry out the ordered actions, and prohibits avoiding prohibited things. In this case, as a general understanding that in the Shari'a in its recommendations there are two possibilities with elements of maslahah and mafsadat. In this case, the law of enforcement that is in Allah views an heir as being allowed to make a gift to one of his children in the realm of being able to be fair among his other children, this law does not apply when the heir cannot be fair to the other children and it is required that the gift can be calculated as an inheritance (Busyro, 2016).

Further explanation is found in the Quran, Surah An-Nisaa, verses 13 and 14, that the content of the verse views the concept of implementing the division of property that should not favor one child over another, but thus it does not mean that the concept of division of property as above is a recommendation that must be implemented, but rather to narrow the door of convenience that can be taken only in emergency situations. As in His word QS. Al-Isra ': 70 as follows:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا
تَفْضِيلًا

Meaning: And indeed, We have glorified the children and grandchildren of Adam, and We carried them on land and in the sea, and We gave them sustenance from the good things and We preferred them above the many creatures that We created with perfect advantages. (QS. Al-Isra': 70) (Kementerian Agama RI, 2017).

In the maqāshid al-syarī'ah of maintaining religion (Hifzh Al-Din), the application of granting a gift that can be considered as an inheritance falls into the category of Al-Dharuriyyat because the Islamic religion does not easily give permission to give property to one of the children who does not pay attention to the other children and is seen as an effort to uphold the values of justice between the two, as well as presenting the position of the other children who are not biased with various rights to their parents' ownership (Busyro, 2016).

b. Maintaining the soul (Hifzh Al-Nafs).

Discussion that leads to the maintenance of the soul (Hifzh Al-Nafs), is too narrow if it only discusses the issue of basic needs and drinks to try to stay alive, in the continuity of a family it must have a strong relationship between parents and children, have the freedom to be creative in fulfilling the needs of their lives. Which leads to goodness in the family, and protects each other. Therefore, to maintain the soul (Hifzh Al-Nafs) in the family must always have an accessible way in trying to survive. Like maintaining peace between the two, like maintaining peace between the two, like the Word of Allah SWT. QS. An-Nisa': 29, namely:

Meaning: O you who believe! Do not devour each other's wealth in a false way, except in trade that is based on mutual consent between you. And don't kill yourself. Indeed, Allah is Most Merciful to you. (QS. An-Nisa': 29) (Kementerian Agama RI, 2017).

From the verse above it is clear that it is obligatory to be fair to children in giving property. One of the very important divisions carried out by parents to their children is property that can be used to support their lives in the future. If one of their children is given land then the other children must be given it, and vice versa if one of the children is not given property then the other children are also not given with a gift that is equal between one child and another so as not to cause jealousy between the children. There is no limit to the provision of gifts but what is obligatory is to meet the needs of the children appropriately, and their needs are adjusted to the situation and conditions which are generally very different. The existence of *maqāshid al-syarī'ah* regarding this issue can be categorized by paying attention to the context of the *illat* of each command and prohibition. The discovery of *illat* can be known from each command and its prohibition, if in the context of *illat* it is known then it must be followed and when *illat* is found there is a legal substance that is actually found as the existence between the command and prohibition. In the *maqāshid al-syarī'ah* of caring for the soul (Hifzh Al-Nafs), the application of gifts that can be counted as inheritance is included in the *Al-Hajiyat* category because a need that is considered if not fulfilled will not cause damage or chaos in family life, but there are difficulties involved. For example, there is a burden on an heir who wants to give property to one of his children and the other children do not agree, then the gift can be counted as an inheritance, as stated in article 21 of the KHI, if he cannot do justice between his children. Then the law of giving it becomes invalid

which results in damage to the family relationship between parents and their children (Abdel Wahab, 2012).

c. Maintaining reason (*Hifzh Al-Aql*).

In this case, the author is very concerned about the mind that will be experienced in the family, especially in parents and children, because it can cause irritation in each other's minds so that the sense of peace and harmony between the two will be reduced. The explanation related to *maqāshid al-syarī'ah* with maintaining the mind is as follows: The mind is a source of wisdom or knowledge of light, guidance, light of the heart's eyes and a medium for human happiness in the world and the hereafter. With reason, the command of Allah SWT is delivered, with Him also humans have the right to be leaders on this earth, and with it humans become perfect, noble and different from other creatures, if without reason humans do not have the right to receive glorification that can lift them to the ranks by the angels, with reason also the difference between parents and children who parents want to give wealth to one of their children and the child does not want it with many considerations, this can use a cool mind so that it can be controlled when not using a hot mind, so that this can bring deliberation between parents and children to an agreement between the two and be able to return to harmonious family life. Reason can also improve his way of life, his nature, and always walk forward with everything new, establishing harmony that should be created well, thus through his reason each parent and his children will gain knowledge of God. With his reason can worship and obey and establish the perfection and greatness of his God so that there will be no excessive disputes. Every time parents or children operate their minds and reason, and use their heart's eyes and attention, then they will gain a sense of security, feel peace and tranquility in the family. And the local community will also feel a peaceful atmosphere of life, a sense of affection, love, peace, and security for their property, soul, honor and freedom (Mohammad Hasyim, 2017).

In the *maqāshid al-syarī'ah* of maintaining reason (*Hifdzu Al-Aql*), the application of granting a gift that can be counted as a legacy category of *al-hajiyat*, with the existence of reason humans will get comfort, tranquility, and peace as individual beings or in groups. Islam also focuses on efforts to protect reason by making efforts against all potential human instincts and preventing all kinds of causal factors that damage and weaken it. By granting a gift that is counted as a legacy of the mind, parents will be more focused on providing comfort and peace in the family (Mohammad Hasyim, 2017).

d. Maintaining offspring (*Hifzh Al-Nasl*).

In the previous discussion, it has been explained about the letter that

explains the provision of gifts that can be counted as inheritance, namely in QS. An-Nisa' verses 13-14 where the explanation of the verse clearly shows the command of Allah SWT for Muslims in carrying out the division of property. The scholars agree that the gift of parents to children is recommended not to be biased between one child and another, the scholars differ in opinion regarding the meaning of not being biased or equalizing between their children. According to Abu Yusuf from the Hanafi school of thought, the Hambali school of thought, the Maliki school of thought and the Syafii' school of thought, what is meant by bias is equalizing between boys and girls in the provision of gifts. Regarding the maintenance of offspring, Islam hereby uses an analysis of the Nash that refers to commands and prohibitions, by knowing something contained by examining the existence of verses that call for commands and verses that lead to prohibitions, meaning first looking at the context clearly to the meaning of the commands and prohibitions, namely maintaining offspring and protection of honor in the family must be maintained (Abu Al- Hasan, 2011).

Allah SWT says in QS. An-Nisa' verse 7:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا

Meaning: For men there is a right to a share of the inheritance of both parents and their relatives, and for women there is a right to a share (also) of the inheritance of both parents and their relatives, whether it is little or much according to the portion that has been determined. (QS. An-Nisa': verse 7)(Kementarian Agama RI, 2017).

From this verse, it can be understood that Islam directs its great attention to establishing rules and cleansing the family from division, and protecting it with improvements and tranquility that guarantee its life. In this case, Islam does not leave out any side but bases it on wise regulations, and eliminates the crooked and corrupt ways that were carried out by previous sharia requirements in this matter. Children are the successors of all the property owned by their parents, so Islam pays great attention to protecting the rights of other children from anything that causes such division. Maintenance of offspring is one of the foundations in the continuity of the integrity of a family. So he is obliged to ensure happiness among his children because this is what concerns the happiness that is the right that parents should give to their children. (Abu Al-Hasan, 2011). So with that right if parents are not able to ensure this in Islam, it is better for them not to give their property to their children. In this case, Maqāshid Al-Syari'ah to maintain descendants (Hifzh Al-Nasl) in the context of

implementing grants that can be counted as inheritance falls into the category of Al-Dharuriyyat because protection of descendants is more guaranteed as an effort to maintain divisions between one heir and another, as well as the nobility of human dignity as a creature of Allah SWT who is in this world. (Abu Al-Hasan, 2011).

e. Maintaining assets (*Hifzh Al-Mal*).

Every human being is motivated to seek wealth in order to maintain their existence. Wealth can be interpreted as work to meet the needs of clothing, food and shelter. The need for wealth is a very important need, primary meaning it must be met absolutely. If this need is not met then human survival will be threatened. However, the way to produce wealth is by working and inheriting, so a person should not eat other people's wealth in a wrong way, Allah SWT said in QS. Al-Baqarah: verse 188, as follows:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ ۝

Meaning: And do not consume your property among yourselves unjustly, nor offer it as a bribe to judges with the intention that you may consume part of other people's property sinfully while you know. (QS. Al-Baqarah: 188) (Kementerian Agama RI, 2017).

From the verse above, it can be understood that wealth is wealth that Allah has entrusted to nature as a divine gift, which He supervises and submits to all humans. Thus, we are required to use wealth as well as possible. And if the testator wants to give his wealth to one of his children, then he must be able to give the wealth given to one of his children and be able to ensure that it is used for the path of goodness. Allah forbids wasting wealth in ignorance, as stated in the Word of Allah SWT in QS. An-Nisa ': verse 5, namely:

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

Meaning: And do not hand over to people whose minds are not yet perfect, your wealth (those who are in power) which Allah has made the basis of life. Give them shopping and clothes (from the proceeds of the wealth) and speak to them kind words. (QS. An-Nisa': 5)(Kementerian Agama RI, 2017).

Based on this verse, in this case the maqāshid al-syarī'ah of preserving property (*Hifzh Al-Mal*) in the context of implementing gifts that can be counted

as inheritance falls into the Al-Hajiyyat category, namely preventing actions that tarnish the property of one's descendants, which means something that must be maintained from harm to benefit, eliminating evil and bringing goodness, which will bring a family with good assets which will have an impact on social justice. With the intention of not spending wealth in the path of evil for things that are deemed less important in the survival of the child. (Manan, 2006).

CONCLUSION

Based on the research results and discussion above, the following conclusions can be drawn:

1. The status of a gift that is considered as an inheritance according to Article 211 of the Compilation of Islamic Law is that a gift given by the testator to the heirs while still alive can be included as part of the inheritance that will be distributed after the testator dies. This rule aims to maintain justice among the heirs, so that no heir gets more property than others, thus avoiding inequality in the distribution of inheritance and preventing conflict between heirs.
2. Review of *maqāshid al-syarī'ah* on gifts that are considered as inheritance in Article 211 of the Compilation of Islamic Law emphasizes efforts to maintain justice, harmony, and welfare in the family. *Maqāshid al-syarī'ah* focuses on five main objectives: maintaining religion, soul, mind, descendants, and property. Gifts that are considered as inheritance in this context aim to avoid conflict and injustice in the distribution of property, while still paying attention to the balance between the rights of the heirs and the intentions of the donor, so that it can realize the benefit for all parties involved.

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