

Legal protection of legitieme portie heirs in Indonesian inheritance law

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ABSTRACT

The grant is one of the instruments of transfer of rights to property that is carried out when the grantor is still alive. In practice, grants are often used as an effort to avoid inheritance disputes in the future. However, legal problems arise if the grant given to one of the heirs exceeds the proper portion so that it reduces or violates the absolute rights (legitieme portie) of other heirs. This condition causes a clash between a person's freedom to transfer his wealth and the legal protection of heirs guaranteed by the Civil Code and the compilation of Islamic law. This study aims to analyze the form of legal protection for the heirs of the grantee with the existence of legitieme portie and legal consequences if the grant received exceeds the absolute share of other heirs. This research uses normative juridical research method with statute approach and historical approach. Legal materials used include primary, secondary, and tertiary legal materials that are analyzed qualitatively. The results showed that grants that violate legitieme portie are not necessarily null and void, but are resolved through the mechanism of importing (reduction) and inbreng (re-entry into the inheritance boedel) as stipulated in the Civil Code. Meanwhile, the compilation of Islamic law restricts the granting of grants to at most one-third of the grantor's estate and takes into account the parent's grant to the child as part of the inheritance. Thus, legal protection for the heirs of the grantee remains provided as long as the grant is carried out in accordance with legal provisions and does not violate the absolute rights of other heirs, so as to create a balance between legal certainty, justice, and expediency in the inheritance law system in Indonesia.

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1. INTRODUCTION

Assets and wealth—both movable and immovable, as well as tangible and intangible, acquired before and during the marriage bond—play a vital role in the order of social life, especially in the family sphere. Ownership of property can provide benefits for the recipient, but on the other hand has the potential to trigger a rift in family relationships. This kind of dispute is prone to arise between parents and children, as well as among siblings and adoptive. The main issue is generally triggered by a sense of injustice over the proportion of the inheritance obtained. In general, the mechanism of alienation of ownership of these assets can be taken through two paths, namely inheritance and

grants. Until now, Indonesia has enacted and recognized three pluralism inheritance law systems, namely inheritance law according to the Civil Code (KUHPerdata), Islamic law, and customary law.

This condition cannot be separated from the historical traces of Dutch colonialism, the dominance of the majority religion, and the existence of Indigenous people as the root of the nation's culture. The implication is that every citizen has the flexibility to determine the basis of inheritance law to be applied in their domestic sphere. The choice is often based on the firmness of religious beliefs or adherence to local customs. The process of transferring rights to property from the original owner to its recipients is known as inheritance. Even so, it is not uncommon for someone to design certain stipulations regarding the ownership of their assets while still alive, such as drafting a will (Testament) or making a grant. In the context of customary inheritance law, a grant is defined as the distribution of a person's wealth to his children while he is still alive. This alienation generally takes place when the children begin to be independent or have built a household, which is intended to anticipate the emergence of family divisions after the owner of the property dies. (Manan, 2006) Therefore, in the customary law order, grants are categorized as an integral part of the inheritance mechanism. This is because customary law does not make the death of the owner of the property an absolute condition for the start of the inheritance process. This condition is contrary to the regime of the Civil Code and Islamic law, where the grant and inheritance are positioned as two separate entities and isolated from each other. In these two legal systems, inheritance is definitively defined as all property belonging to the deceased that is transferred to the donee after he dies. Meanwhile, the grant is interpreted as a voluntary surrender of assets without a contract that is carried out when the owner of the property is still alive (Saepullah, 2015).

Referring to Article 1666 of the Civil Code, a grant is defined as a form of agreement in which a person gives up an object free of charge and absolutely (irrevocably) during his lifetime for the benefit of the recipient. The position of the grant is classified as a one-way transaction or unilateral agreement. The main characteristic of this legal relationship is the emergence of obligations that are imposed only on the giver, while the donee acquires rights purely without the Binding of reverse obligations (Azni, 2015a). According to the provisions of Article 1666 of the Civil Code (Civil Code), a grant is an agreement made when the grantor is still alive, free of charge, and irrevocably, which aims to hand over an object to the donee to be owned. The phrase "at the time of his life" is intended to distinguish the grant from the provision through a will (testament), because a new Will has legal force after the testator dies. Thus, the grant is an inter vivos legal act, while the Will is a legal act that applies post mortem (Firdausy, 2022).

The regulation on grants in Islamic law in Indonesia is contained in Article 171 letter (g) of the compilation of Islamic law (KHI) which states that a grant is the Giving of an object voluntarily and without compensation from someone to another living person to be owned. Furthermore, Article 210 paragraph (2) of KHI confirms that the donated object must be the property of the giver. Therefore, when a person donates an object that is not his right, the grant is null and void. The arrangement indicates that one of the legitimate requirements of the grant is the full authority of the grantor over the object being donated (Priyadi, 2026).

In principle, grants can be given to anyone regardless of religion, race, or class. In practice, grants are often used as an instrument of transfer of property to avoid disputes over the division of inheritance in the future. However, if the grant is granted by a parent to his child, article 211 of the KHI determines that the grant can be taken into account as part of the inherited property. This provision indicates the close relationship between the grant institution and inheritance law, so that the implementation of the grant cannot be separated from the protection of the rights of the heirs (Khairuddin, 2022).

Grants can only be made by someone who is capable of doing legal acts and given without any element of coercion. The implementation of the grant when the heir is still alive aims to provide legal certainty to the grantee so that the property can be used immediately. In addition, grants are also seen as a form of estate planning that aims to improve the welfare of family members while minimizing the potential for disputes between heirs after the Heir Dies (Priyadi, 2026).

Basically, everyone has the freedom to determine the management of his wealth, both during life and after death. Such freedom includes the right to give part of his property to anyone through a grant or will. However, this freedom is not an absolute right, since it is limited by legal provisions that protect the rights of legitimate heirs. Therefore, giving grants to one of the heirs in excessive amounts to reduce the rights of other heirs has the potential to cause legal disputes after the Heir Dies (Ahmad & Budhiawan, 2024).

In the civil inheritance law system, restrictions on the freedom of the testator are realized through the concept of *legitime portie*, that is, the absolute part of the inheritance that must be given to certain heirs as stipulated in Article 913 of the Civil Code. The concept is intended to provide legal protection to heirs in a straight line so as not to lose their rights due to grants or wills made by the testator. Although the compilation of Islamic law does not explicitly use the term *legitime portie*, the substance of the protection of the rights of the heir is also reflected in the provisions regarding the share of inheritance that has been established in Sharia (*dzawil furudh*), so that in principle both legal systems both limit the freedom of the heir in transferring all his property to. (Lauhul Mahfudz., 2024)

Arrangements regarding *legitime portie* provide guarantees of legal protection to heirs if their rights are reduced by grants or wills. In practice, the injured heirs can file a claim for cancellation of the grant or claim for reduction (*inkorting*) against the grant that exceeds the absolute part. Thus, the law provides a balance between the freedom of a person to control his property with the protection of the rights of heirs guaranteed by law (Suciati et al., 2026).

However, the practice of distributing property through grants still often causes problems in people's lives, especially in communities that are still strongly influenced by customary law, such as Javanese and Betawi communities. It is not uncommon for a father during life to give different parts of his property to his children for certain reasons, for example giving a larger house to a son than a daughter. If there are heirs who feel aggrieved, then the condition has the potential to cause disputes regarding violations of absolute rights (*legitime portie*) owned by other heirs (Andriyani et al., 2021a).

Disputes regarding grants that violate the absolute rights of heirs indicate a conflict between the freedom of the testator in transferring his property with the principle of justice in the division of inheritance. On the one hand, the donee receives only the gift given by the testator without specifying its size. However, on the other hand, overstaying the grant can reduce the rights of other heirs, giving rise to lawsuits against the donee and the cancellation of the deed of grant that has been made (Suroso, 2021).

Various disputes regarding grants that violate the *legitime portie* show that legal arrangements regarding the protection of heirs still require a more comprehensive study, especially regarding the legal position of the donee when the grant exceeds the absolute part allowed by law.

To identify research gaps and demonstrate the novelty of this research, it is important to review previous studies related to grants (grants), *legitime portie*, and legal protection of heirs. Some experts have examined the legal consequences of grants that violate the forced division of heirs, the validity of such grants, and judicial approaches to resolving inheritance disputes. However, most of these studies focus on a single legal perspective, particularly the Indonesian civil code, or analyze specific court rulings without providing a comparative analysis of the Indonesian civil code and the compilation of Islamic law (KHI). Therefore, this study seeks to fill this gap by examining the legal protection of the heirs of grantees and the legal consequences of grants that exceed the *legitime* limit through comparative normative legal analysis. The comparison between the previous study and this study is presented in the following table:

Table 1. Comparison between the previous study and this study

No.	Author(s)	Title	Research Findings	Journal Source	Difference from the Present Study
1	Dewi Sartika Utami (2016)	<i>Legal Consequences of Grants Exceeding the Legitime Portie (Analysis of Mataram District Court Decision No. 109/Pdt.G/2009/PN.Mtr.)</i>	The study concludes that grants exceeding the <i>legitime portie</i> are not automatically void but may be subject to reduction (<i>inkorting</i>) to protect the rights of forced heirs (<i>legitimaris</i>).	Jurnal IUS: Kajian Hukum dan Keadilan, Vol. 4, No. 2 (2016).	This study focuses on the legal consequences of grants based on a specific court decision. In contrast, the present study examines the legal protection afforded to heirs receiving grants and compares the regulation of grants under the Indonesian Civil Code and the Compilation of Islamic Law (KHI).
2	Nurul Aqidatul Izzah, Saharuddin, & Bakhtiar Tijjang (2022)	<i>Legitime Portie in Testamentary Grants</i>	The research finds that testamentary grants violating the <i>legitime portie</i> remain valid unless challenged by the heirs, while	Jurnal Litigasi Amsir, Vol. 9, No. 2 (2022).	This study is limited to testamentary grants under the Civil Code, whereas the present study analyzes grants in general, legal protection for heirs, and compares the Indonesian Civil

No.	Author(s)	Title	Research Findings	Journal Source	Difference from the Present Study
			restoration of heirs' rights is carried out through the mechanism of <i>inkorting</i> .		Code with the Compilation of Islamic Law.
3	Awang Ahmadanur Reza Pahlevy & Tamsil (2022)	<i>Analysis of Supreme Court Decision No. 703 PK/Pdt/2016 on Tort Claims Concerning Grants Violating the Legitime Portie</i>	The study emphasizes the judges' legal reasoning (<i>ratio decidendi</i>) and the legal consequences of grants violating the <i>legitime portie</i> .	NOVUM: Jurnal Hukum, Universitas Negeri Surabaya (2022).	Unlike the present research, which adopts a normative legal approach, this study is a case analysis focusing on judicial reasoning. The present study further explores legal protection for heirs and harmonization between the Civil Code and the Compilation of Islamic Law.
4	Aldeo Nur Ahmad & Adlin Budhiawan (2025)	<i>Cancellation of Grant Deeds Due to Violation of the Legitimate Portion under the Indonesian Civil Code</i>	The study concludes that a grant deed may be annulled if it infringes upon the forced share (<i>legitime portie</i>) guaranteed by the Civil Code.	Al-Muamalat: Jurnal Hukum dan Ekonomi Syariah, Vol. 9, No. 2 (2025).	This study focuses on the cancellation of grant deeds. In contrast, the present study comprehensively examines legal protection, legal consequences, and the mechanisms of <i>inkorting</i> and <i>inbreng</i> while also considering the provisions of the Compilation of Islamic Law.
5	Nani Suciati, Azhar Syarif, & Andi Dewi Nurhalisa (2025)	<i>Protection of the Legitime Portie of Heirs against Inter Vivos Grants Resulting in Unequal Distribution of Inheritance under the Indonesian Civil Code</i>	The study finds that heirs' rights are protected through the mechanism of <i>inkorting</i> . Grants violating the <i>legitime portie</i> are not automatically void but require legal action by the disadvantaged heirs.	Ekspose: Jurnal Penelitian Hukum dan Pendidikan, Vol. 25, No. 1 (2025).	This study only discusses the protection of heirs' rights under the Indonesian Civil Code. The present study expands the analysis by comparing the Civil Code with the Compilation of Islamic Law, thereby providing a broader perspective on legal protection in Indonesia's inheritance law system.

From previous studies it can be seen that most studies only discuss the legal consequences of grants that violate the *legitime portie* or analyze certain court decisions. These studies are generally still focused on the perspective of the Civil Code, so they have not provided a comprehensive analysis of legal protection for the heirs of the grantee by comparing the provisions in the Civil Code and the compilation of Islamic law (KHI). Therefore, this study has a novelty by analyzing the form of legal protection, the mechanism of *inkorting* and *inbreng*, and comparing the two legal systems to realize legal certainty, justice, and expediency in inheritance law in Indonesia.

2. METHOD

This study uses normative juridical research methods, namely legal research that focuses on the study of legal norms contained in legislation, Court decisions, doctrine, and other legal materials related to the legal issues studied. Normative juridical research aims to find, examine, and analyze legal norms that regulate a legal problem in order to obtain arguments, concepts, and legal principles as a basis for answering the formulation of research problems (Marzuki, 2017). The statutory approach was employed because the legal issues examined in this study are primarily governed by statutory regulations, particularly the Indonesian Civil Code (*Burgerlijk Wetboek*) and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). This approach is necessary to identify and analyze the legal provisions regulating grants, *legitime portie*, and the legal protection of heirs, as well as to evaluate whether these regulations provide adequate legal certainty and protection when grants exceed the forced share of heirs. Meanwhile, the historical approach was adopted because the concept of *legitime portie* originates from the Dutch Civil Code and has been incorporated into the Indonesian Civil Code. Examining its historical development is essential to understand the rationale behind its regulation, its evolution within the Indonesian legal system, and its relevance to the current legal framework governing grants and inheritance (Marzuki, 2017). Through this approach, the researcher analyzed various provisions contained in the Civil Code, the compilation of Islamic law, as well as

other relevant laws and regulations to gain an understanding of Grant arrangements and the concept of *legitieme portie*. In addition to using the approach of legislation, this study also applies a historical approach (historical approach), which is an approach that is done by tracing the history of the development of legal arrangements regarding grants and *legitieme portie*, both in the civil law system originating from *Burgerlijk Wetboek* and in the development of Islamic law in Indonesia. The historical approach aims to understand the philosophical, juridical, and sociological background of the formation of a legal norm so that it can be known the intent of forming laws and the development of their application in practice (Ibrahim, 2006). This approach is particularly relevant because the concept of *legitieme portie* originates from the Dutch civil law system and has undergone adaptation within Indonesia's pluralistic legal framework. Understanding its historical development enables a more comprehensive interpretation of the current legal provisions and their application in resolving inheritance disputes involving grants. The legal materials used in this research consist of primary, secondary, and tertiary legal materials. These materials were analyzed using qualitative legal analysis through descriptive, systematic, and interpretative methods. The analysis was conducted by identifying relevant legal norms, comparing the provisions governing grants and inheritance under the Civil Code and the Compilation of Islamic Law, and interpreting their application based on legal doctrines and scholarly opinions. The findings were then synthesized to formulate legal arguments regarding the legal protection of heirs and the legal consequences of grants that infringe upon the *legitieme portie*.

3. RESULTS AND DISCUSSION

3.1 Legal protection for the heirs of the grantee with the *Legitieme Portie* in the inheritance law system in Indonesia

The inheritance regime enshrined in the Civil Code (Civil Code) imposes the principle of *Saisine*. Based on the normativity of Article 833 of the Civil Code, the occurrence of the event of the death of the testator immediately (by law) transfers All rights and obligations to the legal heirs according to the legislation. The scope of this transition covers the entire assets and liabilities including movable and immovable objects, rights to objects, receivables, to abandoned debts. Therefore, the death of a person becomes a legal event that establishes the heir as the successor to the legal position of the testator automatically, without the need for formalities or preliminary legal acts. Nevertheless, the calculation of the determination of the portion of the inheritance is obliged to take into account the presence or absence of legal actions that the testator once carried out on his property while he was alive. The act can be in the form of making a testament (Testament) or materialization, both of which have direct implications for the acquisition of the heirs' share according to the law (*ab intestato*). As a result, the track record of grants and Wills from heirs, including those allocated to one particular heir, becomes a crucial element that must be taken into account in the division of inheritance. In essence, the law provides space for freedom of action (private autonomy) for each individual to design the allocation of his property after death. The manifestation of this freedom is expressed through the testament (will), which is a deed of declaration of the will of one party whose conduct and legal consequences are only effectively binding after the will maker dies. (Suparman, 2022) In addition, the transfer of wealth that took place while the owner was alive was identified as a grant. The existence of the grant has a close attachment to the realm of inheritance law, considering that the transferred object is part of the portfolio of assets owned by the grantor. Consequently, if the giver later dies, his legal position is automatically transformed into an heir. (Sari, 2014) The implication is that assets that have been handed over through the grant mechanism remain the object of calculation in dispute resolution or inheritance division. As a result of such legal relations, the grantee will inevitably be dragged and directly involved in the process of calculating and distributing the inheritance (Mertokusumo, 2008).

In the Indonesian inheritance law, grants often rub against the legal rights of legitimate heirs according to the law, either related to the position of *saisine* rights or absolute rights of *Legitieme Portie* (LP). This problem arises due to the low understanding of the community on the rules of inheritance in Civil Law, Islam, and custom. A form of misunderstanding that often occurs is when the testator considers himself to have full authority in determining the division of property, even though the provisions regarding the parties who are entitled to be heirs and the portion of their share have been regulated definitively by applicable legal provisions (Pangemanan, 2016).

This condition is at risk of causing disputes in the future between good faith grantees and legitimate heirs, if the provision of pre-death grants by the testator exceeds the limits of absolute rights protected by law. There are two legal consequences for a breach of the *Legitieme Portie* due to a grant or probate grant, depending on the actions taken by the legitimate heirs. First, legitimists choose to let go and accept these conditions without filing a refutation (*zich berusten*). Second, legitimists who feel aggrieved take legal steps in the form of a lawsuit against their fellow heirs and grantees in order to recover a portion of their absolute rights (Andriyani et al., 2021b).

Until now, Indonesian legislation focuses more on providing legal protection for heirs whose absolute rights (*legitieme portie*) have been violated due to grants or Wills from the testator. Meanwhile, special protection for grantees whose income exceeds the share of other heirs has not been explicitly regulated. Settlement of disputes related to this condition depends on the choice of the legal regime of inheritance of the parties, whether customary, Islamic, or civil law. The term *legitieme portie* is only known explicitly in the Civil Law system (Civil Code). Although the compilation of Islamic law (KHI) does not use this term, the protection of the heirs' share is still guaranteed through limiting the quantity of grants. Under Article 210 KHI, grants are limited to at most one-third of the giver's entire estate to keep the heirs' share according to Islamic law. This rule provides legal certainty over the maximum grant limit in order to protect the balance of rights between heirs. Different from civil and Islamic law, customary inheritance law does not recognize the norm of *legitieme portie*. In practice, the grant is a tradition of handing over property from parents to children who have grown up or married. The falsity or validity of the customary grant depends on the condition that it is carried out openly and in cash in the presence of the head of the adat/village without neglecting the interests of the main heirs. Customary grant disputes are prioritized to be resolved through family deliberation, but if this fails, the settlement can take the path of Islamic or civil law according to the legal system that binds the parties. According to the Civil Code (Article 1666), grants cannot in principle be withdrawn unilaterally. However, this principle is not absolute because the law provides for exceptions. In certain situations that are limitatively regulated by law, the grantor may apply for cancellation or recall. That is, the irrevocable nature of the grant remains subject to the mechanisms and legal restrictions of the cancellation of the agreement. (Suparman, 2022) Withdrawal against a grant is possible only on the grounds listed in Article 1688 of the Civil Code, including:

- a. If the conditions are not met, while the execution has been carried out (Article 913 of the Civil Code);
- b. If the grantee has been found guilty of a crime aimed at taking the life of the grantee;
- c. If the grantee refuses to provide alimony to the benefactor, after the grantee falls into poverty or bankruptcy.

The norm indicates that the Civil Code essentially provides for the autonomy of each individual to transfer his property through grants to any party, including to his own heirs. However, this freedom of action is not absolute. Article 913 of the Indonesian Civil Code establishes limitations on a person's freedom to dispose of property through the institution of *legitieme portie*, which guarantees a compulsory share of the estate for certain heirs. The purpose of this provision is to ensure legal protection for heirs by preventing the transfer of assets that would deprive them of their statutory rights. However, the effectiveness of this legal protection remains debatable. In practice, inheritance disputes involving grants that exceed the *legitieme portie* continue to arise, indicating that the existing legal framework has not fully prevented conflicts among heirs. Although the Civil Code provides mechanisms such as *inkorting* (reduction) and *inbreng* (re-entry of grants into the inheritance estate) to restore the compulsory share, questions remain as to whether these remedies are sufficient to ensure fairness and legal certainty for all parties. Furthermore, judicial decisions have demonstrated varying interpretations in applying these mechanisms, leading to inconsistencies in legal protection and dispute resolution. These issues highlight the need for a comprehensive analysis of the effectiveness of legal protection for heirs, the adequacy of the existing legal remedies, and the manner in which courts interpret and enforce the concept of *legitieme portie* within Indonesia's inheritance law system. Through this construction, the law seeks to harmonize the right to privacy of a person in transferring his assets with the protection of the normative rights of the legitimate heirs. In practice, this situation often triggers an antinomy between the principle of legal certainty which guarantees the rights of the donee on the basis of a valid deed and the principle of Justice which demands that the absolute portion of the heir is not injured by the legal act of the testator.

Furthermore, article 920 of the Civil Code affirms that grants that encroach on or violate the *legitieme portie* are not automatically null and void. The juridical resolution is taken through the mechanism of *inkorting* (deduction/reduction) or *inbreng* (calculation/re-entry into the inheritance *boedel*). The explanatory provisions of articles 921 to Articles 924 of the Civil Code determine that the object of the grant is not necessarily obliged to be completely reassigned to the inheritance bundle. The grantee remains entitled to maintain the portion of the grant as long as it is still in the corridor of the free part (*beschikbare gedeelte*) of the heir. Withholding or returns are only emphasized in the amount of the nominal required to recover the *legitieme portie* of the aggrieved heirs. Therefore, grants that meet the legal validity qualification still have juridical binding power as long as they are not issued a claim for reduction by the legitimate heirs.

The form of legal protection for the grantee is also expressed in Article 929 paragraph (4) of the Civil Code which sets the expiry date (expiry of the lawsuit) of the incorporation. The right to demand the withholding of the grant falls if it is not executed within a three-year period from the moment the heir declares acceptance of the inheritance. The past time resulted in claims for violations of *legitieme portie* can no longer be advanced, so that the legal position of the grantee obtain legal certainty that is unassailable (can not be contested).

From a series of *ratio decidendi* regulations above, it can be concluded that the Civil Law Order in Indonesia does not necessarily cancel grants that exceed the absolute part. Legal protection remains attached to the grantee as long as the legal act is formalized in accordance with the provisions including the pouring in the authentic deed before a notary or PPAT. The donee remains entitled to control the object of the gift as long as there are no legitimate demands within the stipulated deadline, or as long as the remaining inheritance of the testator is sufficient to cover the *legitieme portie*. However, this regulatory framework does not fully guarantee solid legal certainty for the donee, because the continuity of his rights still depends on the discretion of the heirs' demands. In fact, in the legal bond of gift, the grantee is merely a passive party who receives the gift free of charge, while the determination of the quantity and object of the grant is the sole will of the grantee.

3.2 The portion or share of the heirs of the donee exceeds the portion of the legal inheritance of the other heirs

In principle, inheritance law provides autonomy for each individual to condition the transfer of his property portfolio, both during life through grant instruments and after death through a testament (will). However, this autonomy is not absolute because it is limited by regulations designed to fortify the normative rights of heirs. Juridical issues arise when the heir carries out the donation to one of the heirs in a proportion that exceeds the limits of reasonableness, to injure or even negate the portion of absolute rights (*legitieme portie*) belonging to other heirs. In this situation, the resistance between the interests of the grantee and the exclusive rights of the legitimate heirs triggers a legal clash that demands a conclusion based on the prevailing norms. At the empirical level, this type of dispute is often escalated because the implementation of the grant is carried out when the heir is still alive, so that the object of giving has been separated from the *boedel waris* group. The implication is that when the heir dies and the division of the inheritance begins, the most accumulated assets have changed hands to one of the heirs through the grant. The complexity of the case increases when the object of the grant is the right to land that the process behind the name has been completed, so that it is handled factually and judicially for years before the death of the testator. Such a condition triggers an Antinomy of interests between the grantee who holds the right to legitimate legal action against other heirs who feel that their portion of the *legitieme portie* has been eroded or violated. Generally speaking, a grant is defined as the free transfer of wealth by one person to another while the owner is still alive in the absence of a contract. Similar things are accommodated in Article 171 letter g of the compilation of Islamic law (KHI), which defines a grant as the delivery of an item voluntarily and without compensation from someone to another party who is still alive to be owned. Referring to the norm, the grant qualifies as a legal act that stimulates the transfer of property rights to objects from the moment they are handed over, while referring to the terms and conditions established by it in the legislation. (Ulya, 2017) In the order of Islamic inheritance law as accommodated by the KHI, this limitation instrument is realized through the determination of the maximum threshold for granting grants, which must not exceed one third (1/3) of the entire calculation of the heir's property portfolio. This normative limitation in Article 210 of the KHI is intended to ensure the creation of equity and proportional justice among the heirs.

Furthermore, article 211 of the KHI explicitly specifies that the transfer of a grant from a parent to his child qualifies for recalculation as a portion of the inheritance. In addition, the normativity of Article 212 of the KHI confirms the principle of the inadmissibility of unilateral withdrawal of grants, except for grant actions carried out by parents to their own children. The provisions of this regulation have two legal implications: if the granting of a grant from the parents does not trigger a rebuttal from the other main heirs, then the act purely qualifies as an absolute grant. Conversely, if the grant does not have the consent of all heirs, the transfer of property while the parents are still alive must be calculated as part of the accumulation of the child's inheritance (Juli et al., 2024).

Referring to the provisions of the KHI, the cancellation or withdrawal of grants is basically prohibited by laws and regulations, including grants between relatives or married couples whose value exceeds the share of other heirs. The only grant that can be withdrawn is the gift of a parent to a child, provided that the donee fails to fulfill the obligations or conditions in the implementation of the grant. Therefore, regardless of differences in views regarding the law on granting grants that exceed the portion to one child, the main key is that the implementation of grants must be carried out by deliberation and with the consent of all children or main heirs in order to maintain family harmony (Azni, 2015b).

The provision for the division of inheritance between sons and daughters in the amount of 2:1 is often seen as an absolute dogmatic doctrine, considering that its textual basis comes from the arguments that are qath'i al-wurud and qath'i al-dilalah (firm postulates of the Qur'an and Sunnah) so that it is closed from the space of reinterpretation. Nevertheless, the sociological reality of muslim societies in Indonesia shows a tendency to establish an equal proportion of boys and girls. In response to this situation, many religious muslim families choose to distribute their wealth while still alive through a non-discriminatory provision scheme, so that the portion that remains as a heirs boedel is only a small amount.

This phenomenon is essentially an adaptive strategy to deviate from the 2:1 division formula and align it towards the 1:1 ratio. Therefore, as long as there are no objections from the heirs to the pre-death grant, the remaining estate can be distributed to all heirs in accordance with the legal proportion. On the other hand, if there is a rejection or objection from one of the parties, the grant that has been submitted must be recalculated (inbreng) into the inheritance bundle. This mechanism is carried out by taking into account the value of the grant to the right of inheritance ideally: if the receipt of the grant is still under the right of the heir, the party is entitled to the shortfall; however, if the value of the grant exceeds the portion of the heir, the excess can be withdrawn in order to recover the share of the disadvantaged heir. In a practical level, granting grants to certain heirs is often accompanied by an agreement that the donee renounces his right to claim inheritance in the future after the owner of the property dies. The legal construction of such an agreement is known as takharruj (resignation of heirs). Referring to Fatchur Rahman's view, takharruj is defined as an agreement between heirs to remove or resign one of the subjects of law from the acceptance of an inheritance, which is compensated by the fulfillment of a feat-either sourced from the individual assets of the heir who asked him to resign or withdrawn directly from the inheritance to be divided (Rofiq, 2000).

Unlike the khi order, the Civil Code (Civil Code) basically does not outline quantitative restrictions on grants transferred by property owners. In principle, the grant is irreversible (irrevocable unilaterally), except when it meets one of the three exception qualifications as provided for in Article 1688 of the Civil Code, namely:

- a. Failure to comply with the terms of the agreement: if the recipient of the alpa grant or fails to comply with the terms of the agreement. In this condition, the object of the grant remains under the control of the grantor, or the grantor has the right to demand the return of assets in a pure state (free from any burden of collateral/mortgage rights that may have been placed by the recipient), along with the surrender of all proceeds and benefits that have been enjoyed since the onset of such negligence.
- b. Criminal act or crime against the grantee: when the grantee is proven to have committed a crime, attempted murder, or other criminal act directed at the grantee. In this context, the transfer, encumbrance of a mortgage or the alienation of assets by the donee to a third party remains protected by law, unless the lawsuit for the cancellation of the grant has been officially registered in court and is listed in the announcement in accordance with the provisions of Article 616 of the Civil Code.

- c. The grantee refuses to provide a living when the giver is poor: if the grantee experiences an economic downturn to poverty, while the grantee is reluctant to support his needs. Refusal to provide maintenance is a legal basis for the giver to revoke or withdraw the object of the grant that has been submitted.

On the other hand, the Civil Code introduces the doctrine of *legitieme portie*, which is the portion of absolute inheritance guaranteed by law for heirs in a straight line (children and parents) whose nature should not be eroded by any legal action, including grants or wills. Violation of the *legitieme portie* due to the grant or bequest grant gives birth to legal consequences whose effectiveness is largely determined by the response of the legitimate heir whether he chooses to passively accept the situation (*zich berusten*) or file a resistance lawsuit to the court to demand his absolute share. To combat this violation, the Civil Code provides for an instrument of *inkorting* (withholding of a will or probate grant). Based on the legal ratio of Article 920 of the Civil Code, the panel of judges should make this provision as a basis for legal consideration in restoring the absolute rights of the heirs.. The legitimate heirs have the right to demand the fulfillment of their absolute share through the act of *inkorting* (withholding) of the proportionally distributed will. The sequence of stages of *inkorting* consists of:

- Reduction in the rights of non-legitimate heirs (relatives, widows / widowers, or sideways lines);
- Withholding of probate provisions (probate grants and *erfstelling*); and
- Deductions for grants submitted while the heir is still alive, when the first and second stages of deductions have not been able to meet the *legitieme portie* (in accordance with Article 916a of the Civil Code). Therefore, if the pre-death grant exceeds the legal portion and violates the *legitieme portie* of other heirs, then: grants are not automatically null and void: grants that meet the legal requirements remain valid; improvements are only applied to aspects of inheritance calculation, unless there is a formal defect in the deed/agreement; filing a claim for deduction (*Inbreng/Inkorting*) under Articles 1086-1097 of the Civil Code: the injured heir has the right to request deduction or partial return of the object to the inheritance bundle; recalculation of property: the value of the grant object is recalculated together with the total estate to ascertain the amount of violation of *legitieme portie*.

Return of the difference: the grantee is obliged to give up the excess difference in the property he received so that the absolute rights of the claimant's heirs can be fulfilled. To provide a comprehensive understanding of the legal framework governing grants and the protection of heirs in Indonesia, it is necessary to compare the provisions of the Indonesian Civil Code (*Burgerlijk Wetboek*) and the Compilation of Islamic Law (*Kompilasi Hukum Islam*). Although both legal instruments regulate grants (*hibah*), they differ in their legal basis, limitations, mechanisms for protecting heirs, and legal consequences when a grant affects the rights of compulsory heirs. This comparison is essential because Indonesia applies a pluralistic inheritance law system in which different legal regimes may produce different legal outcomes. The comparative analysis presented in Table 2 highlights the key similarities and differences between these two legal frameworks.

Table 2. Comparison of Grant Regulations under the Civil Code and the Compilation of Islamic

Aspect	Civil Code (Burgerlijk Wetboek)	Compilation of Islamic Law (KHI)
Legal Basis	Articles 1666–1693 and Articles 913–929 of the Civil Code	Articles 171(g), 210–214 of the Compilation of Islamic Law
Concept of Grant	A gratuitous transfer of property made during the donor's lifetime that is generally irrevocable.	A voluntary transfer of property made during the donor's lifetime without compensation.
Limitation on Grant	No fixed quantitative limitation, provided that the grant does not infringe the <i>legitieme portie</i> of compulsory heirs.	Grants are limited to a maximum of one-third (1/3) of the donor's estate (Article 210 KHI).
Protection of Heirs	Protection is provided through the doctrine of <i>legitieme portie</i> , guaranteeing the compulsory share of certain heirs.	Protection is ensured by limiting grants and by treating grants from parents to children as part of the inheritance calculation (Article 211 KHI).
Legal Consequences of Excessive Grant	The grant remains valid but may be reduced through <i>inkorting</i> or recalculated through <i>inbreng</i> to restore the compulsory share.	Excessive grants may be recalculated as part of the inheritance distribution to maintain proportional shares among heirs.

Aspect	Civil Code (Burgerlijk Wetboek)	Compilation of Islamic Law (KHI)
Revocation of Grant	Possible only under limited circumstances stipulated in Article 1688 of the Civil Code.	Generally prohibited, except for grants made by parents to their children (Article 212 KHI).
Underlying Principle	Balances freedom of disposition with protection of compulsory heirs through <i>legitieme portie</i> .	Emphasizes fairness (<i>'adl</i>), family harmony, and equitable inheritance distribution according to Islamic principles.

The table above shows that although the Indonesian civil code (Burgerlijk Wetboek) and the compilation of Islamic law (KHI) regulate grants (*hibah*) and aim to protect the rights of heirs, both adopt different legal approaches. The civil code emphasizes the principle of freedom of disposition by allowing the donor to transfer his property during his lifetime, subject only to the limitation that the transfer may not violate the right of compulsory inheritance. As a result, legal protection is largely corrective, as disputes are generally resolved after awarding is made through judicial mechanisms such as *inkorting* and *inbreng*.

Instead, the drafting of Islamic law adopted a more preventive approach by setting a maximum limit of one-third of the donor's property and taking into account the grants given by parents to their children as part of the division of inheritance. These provisions are intended to reduce the likelihood of inheritance disputes by ensuring a fairer allocation of assets before succession occurs. As a result, KHI prioritizes family harmony and distributive justice over the donor's unlimited freedom to dispose of property.

These differences are significant because they reflect two different legal philosophies in regulating grants and protecting heirs. The civil code prioritizes individual autonomy while maintaining compulsory heirs through post-transfer legal efforts, while the KHI emphasizes preventive restrictions to maintain family justice and harmony. The coexistence of these two legal regimes in a pluralistic inheritance law system in Indonesia can have different legal consequences depending on the applicable legal framework. Therefore, a comparative analysis is needed to evaluate the effectiveness of each system in providing legal protection for heirs and to determine whether the existing mechanisms are sufficient to ensure legal certainty, fairness, and Prevention of inheritance disputes arising from grants that exceed the legal share of heirs.

4. CONCLUSION

This study concludes that legal protection for heirs in cases where grants exceed the *legitieme portie* is designed to preserve the balance between the donor's freedom to dispose of property and the compulsory inheritance rights guaranteed by law. Under the Indonesian Civil Code, a grant that infringes upon the *legitieme portie* does not automatically become null and void. Instead, the law provides corrective mechanisms through *inkorting* (reduction) and *inbreng* (re-entry into the inheritance estate) to restore the compulsory share of disadvantaged heirs while maintaining the validity of the grant. Likewise, the Compilation of Islamic Law adopts a preventive approach by limiting grants to one-third of the donor's estate and requiring grants from parents to children to be considered in the inheritance distribution. In addition, Article 929 paragraph (4) of the Civil Code establishes a three-year limitation period for claims relating to the *legitieme portie*, thereby strengthening legal certainty for grant recipients acting in good faith.

The findings also demonstrate that both the Civil Code and the Compilation of Islamic Law pursue the same objective of protecting heirs, although they employ different legal mechanisms. While the Civil Code emphasizes post-dispute legal remedies, Islamic law seeks to prevent disputes through statutory limitations on grants. Consequently, excessive grants should be resolved primarily through family deliberation and consensus to preserve harmony, with judicial remedies serving as a last resort. This study further suggests the need to harmonize the regulation of grants within Indonesia's pluralistic inheritance law system by providing clearer legal standards regarding grant limitations and inheritance calculations. Such harmonization would strengthen legal certainty, promote equitable protection for all heirs, and ensure that the principles of justice, legal certainty, and legal benefit are realized simultaneously in inheritance dispute resolution.

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