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WITHDRAWAL OF PARENT-TO-CHILD GRANTS IN THE PERSPECTIVE OF THE ḤANAFIYYAH SCHOOL AND THE PRINCIPLE OF WEALTH DISTRIBUTION IN SHARIA ECONOMIC LAW

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Abstract
This study examines the legal issue of revoking parental gifts (hibah) to children from the perspective of the Ḥanafī school and its relevance to the principles of wealth distribution in Islamic economic law. The focus is directed toward analyzing the views of Ḥanafī scholars who emphasize the prohibition of revoking hibah to children, as hibah is regarded as a transfer of ownership that must remain stable once completed, while the parent–child relationship itself is considered a non-material compensation ('iwāḍ ma'nawī) that nullifies the right of revocation. The research employs a conceptual and statutory approach within the framework of normative legal study, with data obtained from library sources and analyzed descriptively-prescriptively. The findings conclude that parental hibah to children must be regarded as a final and irrevocable transfer, ensuring ownership certainty, justice, and trust within the family, and aligning with the objectives of Islamic law (maqāṣid al-sharī'ah) in preserving wealth (ḥifẓ al-māl) and lineage (ḥifẓ al-nasl).

Keywords: Revocation of hibah, Parent–child, Ḥanafī, Wealth distribution

Abstrak

Penelitian ini membahas permasalahan hukum mengenai penarikan kembali hibah orang tua kepada anak dalam perspektif mazhab Ḥanafiyyah serta relevansinya dengan prinsip distribusi harta dalam hukum ekonomi syariah. Fokus kajian diarahkan pada analisis pandangan ulama Ḥanafiyyah yang menegaskan larangan rujuk hibah kepada anak karena hibah dipandang sebagai akad pemindahan kepemilikan yang harus dijaga stabilitasnya, serta hubungan orang tua–anak dianggap sebagai kompensasi nonmaterial (ʻiwāḍ maʻnawī) yang menggugurkan hak rujuk. Metode penelitian yang digunakan adalah pendekatan konseptual dan undang-undang dengan jenis penelitian hukum normatif. Data diperoleh dari bahan kepustakaan, dan analisis bersifat deskriptif-preskriptif. Hasil penelitian menyimpulkan bahwa hibah orang tua kepada anak harus dipandang sebagai pemberian final yang tidak dapat ditarik kembali, demi menjaga kepastian kepemilikan, keadilan, dan kepercayaan dalam keluarga, serta sejalan dengan maqāṣid syarīʻah dalam menjaga harta (ḥifẓ al-māl) dan keturunan (ḥifẓ al-nasl).

Kata Kunci: Penarikan hibah Orang tua–anak, Ḥanafiyyah, Distribusi Harta

INTRODUCTION

Grant is one of the matters of muamalah/civil law, the provisions of which are regulated in Islamic jurisprudence and positive law, the Indonesian Civil Code. Hibah is a legal act or contract of giving ownership by a person of his property to another person while he is still alive without a will.[1] Giving property means giving a certain amount of property to the grantee, determined by the grantor. The transfer of ownership of the grant property is carried out while the grantor is still alive.[2]

According to a positive legal perspective, especially in the Civil Code Article 1666 stipulates that a grant is an agreement by which a grantor hands over an item free of charge without being able to withdraw it, for the benefit of a person who receives the delivery of the goods. The law only recognizes gifts among living people.[3]

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[1]Sayyid Sābiq, *Fiqh Al-Sunnah*, (Terj: Abu Aulia & Abu Syauqina), (Jakarta: Republika, 2018), p. 413.

[2]Abdurraḥmān Al-Jazīrī, *Fiqh 'Alā, Al-Mażāhib Al-Arba'ah*, Volume 4, (Terj: Arif Munandar), (Jakarta: Pustaka Al-Kautsar, 2017), p. 441; In the concept of grant law, the main requirement for the grantor is that it must be alive, the pronunciation of the grant will is carried out while still alive, and the distribution of the grant object to the grantee must also be carried out while the grantor is still alive. The legal position of this grant is different from a will, because in a will it must be done after the testator dies. Wahbah Al-ZuḥAilī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Volume 10, (Terj: Abdul Hayyie al-Kattani, et al), (Jakarta: Gema Insani Press, 2012), p. 155.

[3]Joni Emirzon and Muhamad Sadi Is, *Hukum Kontrak: Teori dan Praktik,* (Kencana Prenada Media Group, 2021), p. 72.

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One of the legal issues of grants in civil law is that property that has been donated cannot be withdrawn. This is expressly stated in the provisions of Article 1666 of the Civil Code. Another provision is emphasized in Article 1688 of the Civil Code, which stipulates that the grant cannot be revoked and therefore cannot be canceled, except in cases where the conditions of the grant are not fulfilled by the grantee, the person who is granted the grant is guilty of committing and participating in an attempt to murder or another crime against the grantor, and if the grantor falls into poverty while the grantee refuses to provide maintenance to him. So, in the Civil Code, it is emphasized that this grant cannot be withdrawn or canceled when the grant process has been carried out perfectly. This applies both to the property of a person to another and to the grant of a parent to his child.

According to the perspective of Islamic law, madhhab scholars seem to differ when it comes to establishing the law of parents withdrawing grants to their children. In this context, the majority of scholars of the madhhab, consisting of the Mālikī, Shafi'ī, and Ḥanbalī schools, are of the opinion that parents are allowed to withdraw the property of the grant from their children. In fact, according to Al-Nawawī (scholar of the Al-Shafi'ī madhhab), parents can absolutely withdraw the property given to their children.[4]

Taking back a grant that has been given by law is not allowed, or prohibited, except for the grant of the parent to his child. This is based on the narration of Ibn Abbas and Ibn Umar, who stated that there is a prohibition on taking or withdrawing property that has been granted, except from parents to their children.[5] This means that there is an exception to the property that is donated, which can be withdrawn if it is in the case of a parent's grant to their child. This view is different from the view of the Ḥanafī sect. The Ḥanafī school is of the view that parents are forbidden to withdraw property that has been given to their children. Al-Kāsānī, a scholar of the Ḥanafī school, stated that a person who gives wealth to his relatives is forbidden to withdraw it. Likewise, for parents, there is a prohibition on withdrawing property donated to their children.[6] In the Ḥanafī

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[4]Yūsuf Al-Qaradhawi, *Min Hadī Al-Islām Fatāwā Mu'āṣirah*, (Terj: As'ad Yasin), (Jakarta: Gema Insani Press, 2008), p. 479.

[5]Muh. Hambali, *Panduan Muslim Kaffah Sehari-hari dari Kandungan Hingga Kematian* (Yogyakarta: Laksana, 2017), pp. 268-269.

[6]Alā'uddīn Abī Bakr bin Mas'ūd Al-Kāsānī, *Badā'i Al-ṢAnā'i fī Tartīb Al-Syarā'i* (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 2010), pp. 131-132; In addition to Al-Kāsānī, similar opinions are also commented on by scholars of the madhhab Ḥother anafī such as Al-Sarakhsī that a grant is a contract of transfer of ownership so that the origin does not contain the meaning of withdrawal, such as buying and selling. A withdrawal is contrary to the purpose of the transfer of ownership, and the contract is invalid if it results in something contrary to its intent. The right of withdrawal is only established before the grant is complete. See inside Abī Bakr MuḥAmmad Bin Aḥmad ibn

school, the basic principle is to maintain the certainty of ownership, so the withdrawal of grants is severely restricted. Abū Ḥanīfah and his followers, then Al-Ṡ aurī, Al-Anbārī, one of the narrations of Aḥmad, did not allow withdrawing grants because there is a hadith that states that a person who withdraws a grant is the same as swallowing back what he vomits.[7]

The withdrawal of parental grants to children has given rise to various legal polemics, especially regarding the certainty of property ownership. There are many cases of grant withdrawal, for example, the case of grant withdrawal by H. Rusli Bintang from his biological children. Rusli Bintang's action of withdrawing the grant that was previously given to the child raises problems in terms of legal norms, because it causes uncertainty in the ownership of property in the family, especially for his children.

From the perspective of Sharia economic law, the issue of withdrawing grants can be analyzed as a form of correction to the distribution of assets that was previously carried out through the *tabarru* (social contract) contract. The basic principle of the prohibition of withdrawing grant property from parents to children, according to Ḥanafiyyah, is to maintain the certainty of ownership, so that the withdrawal of grants is very limited. In the context of economic law, grants are not solely understood as *tabarru'* contracts or voluntary giving/social contracts, but as an instrument for the allocation of wealth distribution that has direct implications for ownership, justice between family members and the structure of economic stability in households. This is because the legal effect of a grant contract is the transfer of ownership of objects without compensation.[8]

Grants in this perspective are not only a matter of legal validity according to fiqh, but also how they function as a mechanism for equitable distribution of wealth within the scope of the family and society. Therefore, the discussion of the withdrawal of parental grants to children is not enough only from the aspect of what is permissible or not permissible according to jurisprudence, but must be able to be reviewed from its impact on the certainty of ownership and maintenance (*ḥifẓ al-māl*), justice (*'adl*), and benefit (*maṣlaḥah*). If legally valid

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Abī Sahl Al-Sarakhsī, *Kitāb Al-Mabsūṭ al-Fiqh Al-ḤAnnabeth,* (Beirut: Dār Al-Kutb Al-Ilmiyyah, 2016), p. 53; Wahbah Al-ZuḥAilī summarizing the views in the madhhab ḤAnafī about the seven conditions that prevent a person from withdrawing the grant property, namely the grant is given to the relatives of the mahram, the grant is given between husband and wife, the grant is given to another person but the other person has also given the reward (*mu'ātimeḍah*), the grant has come out of the possession of the grantee, there has been an additional that is integrated with the grant goods, the death of one of the contractors, and the destruction of the grant. See, Wahbah Al-ZuḥAilī, *Al-Fiqh Al-Ḥanafī al-Muyassar,* (Damascus: Dār Al-Fikr, 2010), p. 680.

[7]Yūsuf Al-Qaraḍhawi, *Min Hadī Al-Islām*..., p. 478.

[8]Nilam Sari, *Kontrak Akad dan Implementasinya pada Perbankan Syariah di Indonesia,* Editor: Nevi Hasnita (Banda Aceh: PeNA, 2015), p. 39.

grants are unilaterally withdrawn, there will be uncertainty in the property ownership system that has the potential to cause conflicts; in addition, it will hurt and weaken the sense of justice and disrupt the distribution of wealth in society.

Furthermore, grants as an instrument of wealth distribution and as one of the sources and causes of ownership in Sharia Economic Law must be understood within the broad framework of economic development in the family and society. When a grant is withdrawn, not only is the certainty of ownership compromised, but also social trust and a sense of security in transactions between family members. This can have an instability effect in the ownership structure, weaken family solidarity, or even create injustice in the division of property. Therefore, the study of grants in sharia economic law is important to be analyzed more comprehensively, especially in two questions that must be answered, namely how the Ḥanafiyyah school views the withdrawal of grants from parents to children, and what is the impact of grant withdrawals on justice, certainty of ownership, and benefits in the perspective of sharia economic law, in addition, how grant contracts can maintain a balance of ownership, and ensuring fair distribution. Therefore, this article aims to further analyze the withdrawal of parental grants to children from the perspective of the Ḥanafiyyah school and the principle of wealth distribution from the perspective of sharia economic law.

METHODS

This research includes normative *legal research*, whose research objects are in the form of legal norms, legal concepts, legal principles, and legal doctrine. Normative legal research that examines law from an internal perspective with the object of research is a legal norm that functions to provide juridical arguments when there is a void, ambiguity, and conflict of legal norms.[9] The objects studied are literary data and statutory provisions.[10] This research focuses on the legal norms of the withdrawal of parental grants to children from the perspective of scholars of the madhhab, especially the perspective of scholars of the Ḥanafiyyah madhhab, and is also reviewed through the principles of wealth distribution in the context of law and aspects of ownership in the sharia economy.

There are 2 (two) approaches used, the *conceptual approach* and the *statute approach*. *The statute approach* is legal, examining the norms regulated in laws and regulations. *Conceptual approach* is an approach that moves from legal views or

[9] I Made Pasek Diantha, *Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2017), pp. 2 and 12.

[10] Moh. Askin and Masidin, *Penelitian Hukum Normatif: Analisis Putusan Hakim* (Jakarta: Kencana Prenada Media Group, 2023), p. 17.

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doctrines that are in accordance with certain legal issues.[11] The data in the study were obtained from legal materials, namely primary, secondary and tertiary legal materials.[12] It consists of grant provisions in legal doctrine, especially in the view of the Ḥanafiyyah school, then the Civil Code, the Compilation of Sharia Economic Law (KHES), and other legal rules, books or legal books, journals, and legal encyclopedias. There are two stages of research data analysis, namely the descriptive stage (description of the problem) and the prescriptive stage (efforts in finding legal ideals).[13] This prescriptive analysis is intended to carefully review the coherence between legal norms and the existence of legal vacancies, so that it can be seen from the aspect of legal certainty and how the law should be applied to the legal issue being studied.

RESULTS AND DISCUSSIONS

The Concept of Hibah in Islam

The terminology of grant is originally an absorption term from the Arabic language, namely *al-hibah*, which is a noun as a derivative form of the term wahaba-wahban-hibah, meaning giving, giving, gifting property, giving.[14] Then, the word *al-hibah* was absorbed into the Indonesian language and became one of the standard words, given the meaning of a gift.[15] This meaning does not seem to be much different from the etymological meaning according to Arabic, because the meaning of grant as a gift here is a commonly used meaning for all types of use of the word grant. Grants in Arabic are only used for something of a material type. The gift referred to here is the gift in the form of material from one person to another. In the account of Al-Zuḥailī, the word hibah is interpreted as the act of giving something without return. Hibah is carried out on things that are material in the form of goods.[16] Through this opinion, it can be concluded that the word grant is used only for one gift in the form of material (goods or property) to another person as the recipient.

According to the terminology, quite a lot of the definition of a grant is put forward by experts. For example, in Al-Tuwaijīrī's explanation, a grant is the

[11]Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), p. 133.

[12]Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Jakarta: Kencana Prenada Media Group, 2018), p. 173.

[13]Marzuki, *Penelitian Hukum...*, pp. 41-42.

[14]Achmad W. Munawwir and M. Fairuz, *Kamus al-Munawwir: Kamus Arab-Indonesia* (Surabaya: Pustaka Progressif, 2007), p. 1584.

[15]W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia,* (Jakarta: Lembaga Bahasa dan Budaya, 1954), p. 257.

[16]MuḥAmmad Al-ZuḥAilī, *Al-Mu'tamad fī Al-Fiqh Al-Shafi'ī*, Volume 3, (Terj: Muhtadi), (Jakarta: Gema Insani Press, 2018), p. 121.

granting of the right of ownership of property to another person without any compensation.[17] According to Al-Jazīrī, a grant is the possession of something without any condition to replace it at that time.[18] Meanwhile, Sayyid Sabiq stated that a grant is a contract for the granting of property rights by a person to another person while he is still alive, which is carried out without an exchanger. Continuing his definition, Sayyid Sabiq stated that in the process, it is not said that there is no grant if there is no ownership, for example, borrowing. If the object of the property given is in the form of haram property, then it is not called a hibah. If the gift is made while alive and realized after death, this is called a will, and if there is an exchanger, it is called a sale.[19]

The three definitions above editorial have differences, but there are similarities in terms of their meaning. Specifically, Sayyid Sabiq's information is more detailed, which shows the meaning of grant as a gift that is different from the meaning of will, buying and selling and also borrowing. Grants are always associated with the provision of transfer of ownership, carried out and also realized while still alive and carried out without an exchanger. The definition tends to be the same as that put forward by Wahbah al-Zuḥailī. According to him, gifts that have rewards are not called grants because there are rewards (compensation) in them. Giving without ownership is not called a grant, but can be called a loan, treat, or it can also be in the form of waqf property. Similarly, giving with a reward, *iwad* or compensation is not called a grant, but is synonymous with a purchase and sale contract even though it uses the expression grant.[20]

The meaning of grant here seems to be similar to the meaning of gift and almsgiving, because alms or gifts are both gifts in the general sense, and the difference between them lies only in their respective purposes. If the goal is an award for an achievement achieved by someone or a gift as a form of affection, this is called a gift. Meanwhile, giving with the sole purpose of getting a reward in the hereafter is called alms.[21] The grant is only intended to follow the sunnah of the Prophet, without any interest and also the expectation of reward (compensation) and not appreciation.

Referring to the concept of a grant (hibah) according to Islamic legal scholars, there are several essential elements or pillars that must be fulfilled.

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[17]Muḥammad bin Ibrāhīm bin Abdullāh At-Tuwaijīrī, *Mukhtaṣar Al-Fiqhī Al-Islāmī,* (Terj: Ahmad Munir Badjeber et.al), Cet. 3, (Jakarta: Darus Sunnah Press, 2015), p. 962.

[18]Al-Jazīrī, *Fiqh 'Alah Al-Mażāhib...,* p. 438.

[19]Sābiq, *Fiqh Al-Sunnah...,* p. 413.

[20]Wahbah Al-ZuḥAilī, *Al-Fiqh Al-Shafi'ī Al-Muyassar*, (Terj: Muhammad Afifi and Abdul Hafiz), Volume 3, (Jakarta: Almahira, 2016), p. 323.

[21]*Ibid.*, p. 323; Hambali, *Panduan Muslim...,* p. 267.

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These elements include the presence of a grantor and a grantee, as well as the object of the grant, which must be in the form of goods or property (material), not services. In addition, the grant must be declared and executed while the grantor is still alive. The purpose of the grant is not merely to expect rewards or appreciation, but rather to follow the Sunnah of the Prophet Muhammad saw.[22]

The enactment of the grant law is basically part of the necessity to help each other. The imparting of material forms from one person to another is recommended in Islam. Muḥammad Alī alludes to this matter quite well. People who have goods and wealth are allowed to give grants, and the practice is highly recommended by Islamic law, even if the amount is not small.[23] Morally, the legal aspect of this grant provides an understanding of the high and good moral level of a person in the midst of society, helping each other in good to be an inseparable part of the common life of society and integrating the legal norms in Islam with ethics and morals in Muslim society.

Islam recognizes the applicability of the law of hibah by referring to the words of Allah SWT in the Qur'ān, the statements of the Prophet Muhammad PBUH in hadith/sunnah and through ijmak (consensus) of scholars. In the Qur'an, there is no evidence that specifically mentions the term grant, or at least there is no specific redaction about grants, but the Qur'anic verses only mention general foundations, such as the generality of the intention of giving property (*ātā al-māl*), helping each other in goodness, and so on. For example, it can be found in QS. Al-Baqarah [2] verse 177. This verse textually quite emphatically mentions that others, relatives, and others should give the property they love,

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[22]Regarding the pillars of grants, generally they must meet 5 (five) main elements, consisting of the grantor (*wāhib*), grantee (*Wow.*), the object of the grant (*Mawhub BIH*), Ijab Kabul (*ṣIghah Al-'Aqd*), and submission (*Qabḍ*). Even so, in some more specific opinions, there are still differences of opinion among scholars, for example, on the inclusion or absence of *Qabḍ.* This is a pillar of grants. Likewise, for the more specific conditions for each of these pillars, there are also differences of opinion between one scholar of the madhhab and another. For example, the conditions in the giver and recipient of the grant, whether he can withdraw the property that has been donated or not. Similarly, regarding the conditions of the grant, whether a grantor may give his property more than, equal to, or less than his total property or not. Therefore, for a more detailed description of the conditions and pillars of this grant, you can see in Al-ZuḥAilī, *Al-Mu'tamad fī Al-Fiqh...*, pp. 124-125; The Pillars and Legal Conditions of this grant can also be found in several other literatures, such as in the opinion, Abd Al-Azīz Mabrūk Al-AḥMadī et al., *Fiqh Al-Muyassar*, (Terj: Izudin Karimi), Cet. 3, (Jakarta: Darul Haq, 2016), p. 427; Indonesian legal experts have also explained and reviewed the problems of harmony and the conditions of grants, among which can be found in the work, Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, Revised Ed., Cet. 2, (Jakarta: Rajawali Pers, 2015), p. 378; Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia*, Revised Edition (Jakarta: Kencana Prenada Media Group, 2017), p. 344.

[23]Maulana Muhammad Ali, *The Religion of Islam*, (Terj: R. Kaelan and M. Bachrun), Cet. 8 (Jakarta: Darul Kutubil Islamiyah, 2016), p. 707.

because the gift of wealth is a form of benevolence, and is included by experts as the basis of the law of grants.[24] This is in line with the sound of the verse in QS. Al-Mā'idah [5] verse 2, which provides information about the command to help others in virtue and carry out Allah's commands.[25] In addition, the legal basis of grants also refers to hadiths, for example, the narration of Al-Bukhārī in *Adāb Al-Mufrad*, which informs the recommendation of the Prophet PBUH to give to each other.[26] This history shows information about the encouragement to give gifts among others, including grants. Every gift can be said to be a grant, but not all grants can be said to be a gift.[27] In addition to the Qur'ān and hadith, scholars have also agreed on the recommendation of grants.[28] So it is clear that in Islamic law, grants are highly recommended. The legal position of this grant is recognised as a form of mutual-help attitude, helping the weak and minimising the social gap between the rich and the poor. Grants are a powerful solution to improve a family's economic situation.

Withdrawal of Grants in Legislation in Indonesia

The rules for granting assets have also been regulated relatively well in several regulations in Indonesia. The authority to implement grants is the task of the Religious Court for Muslims, or the District Court for non-Muslims. The laws and regulations in question are limited to only three regulations, namely in the Civil Code (Civil Code), Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), and the Compilation of Sharia Economic Law (KHES).

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[24]Al-ZuḥAilī, *Al-Fiqh Al-Shafi'ī...*, p. 122; Abdul Rahman Ghazaly, Ghufron Ihsan, and Sapiudin Shidiq, *Fiqh Muamalat*, 1, Cet. 4th ed. (Jakarta: Kencana Prenada Media Group, 2015), p. 159.

[25]Ibn Jarīr Al-Ṭabarī, *Jāmi' Al-Bayān 'an Ta'wīl Ayy Al-Qur'ān*, (Terj: Amir Hamzah, et al), (Jakarta: Pustaka Azzam, 2009), pp. 289-290; Abī Bakr Al-Qurṭubī, *Jāmi' li Aḥkām Al-Qur'ān* (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 2006), p. 114; Nurul Huda Maarif, *Seruan Tuhan untuk Orang-Orang Beriman: Mengerti Rahasia dan Makna Ayat-Ayat Ya Ayyuhallazina Amanu*, 1, Cet. 1 ed. (Jakarta: Zaman, 2018), p. 154.

[26]Imam al-Bukhari, *Kitab al-Adab al-Mufrad*, Volume 1, Riyadh: Maktabah al-Ma'arif, 1998, p. 306.

[27]In the account of Sayyid Sābiq, Wahbah Al-Zuḥailī, MuḥAmmad Al-ZuḥAilī stated that the above hadith is one of the legal basis for grants. Even though the context of the hadith talks about gifts, the hadith can still be used as a postulate for grants, this is because gifts are part of grants but not all grants can be said to be gifts. See in Al-ZuḥAilī, *Al-Fiqh Al-Shafi'ī...*, p. 324; Sābiq, *Fiqh Al-Sunnah...*, p. 414; Compare in, Al-ZuḥAilī, *Al-Mu'tamad fī Al-Fiqh...*, p. 122.

[28]Several statements about the existence of ijmak ulama in the matter of recommending to do this grant can be found, for example, in, Al-ZuḥAilī, *Al-Mu'tamad fī Al-Fiqh...*, p. 123; Ibn Rusyd, *Bidāyah Al-Mujtahid wa Nihāyah Al-Muqtaṣid*, (Terj: Misbah), Volume 2, (Jakarta: Pustaka Al-Kautsar, 2016), pp. 617-618; Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat...*, p. 159; Muhammad Syakir Sula, *Asuransi Syariah (Life and General): Konsep dan Sistem Operational* (Jakarta: Gema Insani Press, 2016), p. 501.

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The Civil Code is one of the regulations that binds and regulates civil contracts for people in Indonesia related to the grant law. Grants in the Civil Code are regulated in Chapter X, from Articles 1666 to 1693,[29] which consist of four parts, namely Part 1 on general provisions, Part 2 on the ability to grant and receive grants, Part 3 on how to grant something, and Part 4 on the revocation and cancellation of grants. The arrangement of grants in some of these articles is also called pure grants, which are grants without any compensation in them.[30] Article 1666 of the Civil Code stipulates that a grant is an agreement by which a grantor hands over an item free of charge without being able to withdraw it, for the benefit of a person who receives the delivery of the goods. In this case, the law only recognizes gifts between living persons. Article 1667 of the Civil Code stipulates that grants may only be made to goods that already exist at the time the grant occurs. If the grant covers goods that do not yet exist, then the grant is void only for goods that do not yet exist. Article 1668 stipulates that the grantor may not promise that he shall retain the power to use his property rights to the donated goods; Such a gift is only valid in respect of the goods. As for Article 1670, it stipulates that a grant is void if it is made with the condition that the grantee will pay off debts or other burdens in addition to what is stated in the grant deed itself or in the attached list.

Taking into account the provisions of this article, grants are, in principle recognized in the Civil Code as understood in the redaction of Article 1666. The Civil Code is a common reference in grant law according to positive law. Contract arrangements in the Civil Code include contracts for the grant of property from one person to another.[31] The provisions of the article regulate grants that are included in a unilateral agreement, because only one party is burdened with the obligation to hand over something, while the other party is not burdened to hand over something. The provision also stipulates that, once the goods that have been donated and the donation process have been completed, the grantor may no longer withdraw the grant.

In KHI, the provisions of grants are contained in Articles 210 to 214. The birth of KHI and its content are legal material absorbed from the fiqh of the madhhab. Therefore, it is not wrong to say that KHI is part of the embodiment *of* the regulation of the content and values of Islamic law into positive law, codified in the KHI book. All provisions contained in the KHI, including the law of grants,

[29] Purwososilo, *Aspek Hukum Pengadaan Barang dan Jasa* (Jakarta: Kencana Prenada Media Group, 2017), p. 67.

[30] Munir Fuady, *Hukum Perusahaan dalam Paradigma Hukum Bisnis* (Jakarta: Citra Aditya Bakti, 2018), p. 59.

[31]Purwososilo, *Aspek Hukum...*, p. 67.

are laws that are absorbed in Islam, which are spread in the book of law of Islamic jurists (fukaha).[32]

This KHI is a collection of laws that covers the issue of marriage and inheritance in Islamic law. The presence of KHI is not separated from the efforts of law enforcement in absorbing Islamic law, which is informal in nature, to be formal juridical so that it can be used as material for the Religious Court. KHI regulates three books: Book I on Marriage, Book II on Inheritance, and Book III on Waqf. [33] In Book II About Inheritance, it is also mentioned that the law of grants. The provisions of the grant are regulated in Articles 210 to 214. Article 210 stipulates that a person who is at least 21 years old and of sound mind without coercion may bequeath as much as 1/3 of his property to another person or institution in the presence of two witnesses to be owned. The property that is donated must be the property of the grantor. Article 211 stipulates that a parent's grant to their child can be counted as an inheritance. Article 212 stipulates that grants cannot be withdrawn, except for grants from parents to their children. Article 213 stipulates that grants given when the grantor is in a state of illness close to death must be approved by his heirs.

The provisions of the KHI show that grants are permissible legal acts. Property that can be donated to another person can only be donated at most 1/3 of the total property of the donor. This provision seems similar to a will, which also regulates a maximum amount of 1/3 of the inheritance. KHI also stipulates that if the grant has been made, it cannot be withdrawn, unless the grant is made between parents and children, parents can legally withdraw the grant that has been given. Previously, it was enough to provide information that grants are an integral part of the law that applies in society. In this case, the transfer and distribution of property through the grant route is possible when all the terms and elements of the grant have been completed or perfected. Regarding the terms and pillars of the grant separately, it is stated in the next section.

The provisions made in the KHES also regulate the withdrawal of grant assets. In Article 709 of the KHES stipulates that the transfer of *ownership of mawhub bih* to *mawhub has* occurred since the acceptance *of mawhub bih*. Article 710 stipulates that *the wahib* may withdraw his grant at his own will before the grant property is handed over. This means that the grantor can withdraw the grant if the process of giving and transferring assets from the grantor to the

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[32]Mahkamah Agung, *Himpunan Peraturan Perundang-Undangan yang Berkaitan dengan Kompilasi Hukum Islam serta Pengertian dalam Pembahasannya.* (Jakarta: Mahkamah Agung RI, 2011), p. 12; Imanuddin, " Kedudukan Kompilasi Hukum Islam (KHI) Sebagai Normative Considerations Hakim Pengadilan Agama," *Wafeya Journal,* Vol. 1, no. 2 (2020): p. 6, https:// uin-arranry.academia.edu/IMANUDDINAB.

[33]Shomad, *Hukum Islam...,* p. 384.

recipient is not complete (mawhublah). Then Article 711 stipulates that if *the wahib* prohibits the grantee from taking his grant after the grant contract, it means that he withdraws the grant. Article 712 stipulates that the grantor may withdraw his grant property after the handover is carried out, provided that the recipient agrees to it. Meanwhile, Article 713 stipulates that if the wahib withdraws the mawhub bih that has been handed over without the approval of the mawhub lah, or without a court decision, then the wahib is designated as a confiscator of someone else's goods. If the item is damaged or lost while under his control, he must make restitution.

Furthermore, Article 714 of the KHES stipulates that if a person gives a grant to his parents, or to his brother or sister, or to his children, or to his aunts, then he is not entitled to withdraw his grant. If a parent gives a grant to their children, then he has the right to withdraw the grant as long as the child is still alive. According to KHES, the parents' grant to their child is considered an inheritance if the grant is not agreed upon by other heirs. So, it is clear that the parents, according to KHES, have the right to withdraw the grant property that has been given to their children.

Based on the three rules above, it can be known that KHI and KHES provide legality for parents to withdraw the grant property from their child, and the grant is counted as an inheritance. Meanwhile, if the hibah is given to another person, including family (other than children) or other people, it cannot be withdrawn unless the property of the hibah has not been transferred to the recipient of the hibah. Meanwhile, in the Civil Code, property that has been granted, whether it is parents to children, or vice versa, or to other people who are not family/relatives, cannot be withdrawn. For this reason, the rules for withdrawing parental grants to children are still not cohesive, especially between KHI and KHES and the Civil Code.

Analysis of the Withdrawal of Parental Grants to Children: Perspective of the Hanafiyah School and Its Review of the Principles of Wealth Distribution in Sharia Economic Law

The Ḥanafī school is one of the schools of legal thought in the Islamic scientific tradition pioneered and initiated by Nu'mān bin Śābit, popularly called Imām Abū Ḥanīfah. The scholars who followed his views were then considered to be scholars among the Ḥanafiyyah. About the law of grants, especially the withdrawal of grants from parents to children, the scholars of the Ḥanafiyyah school tend to differ from the scholars of other schools (Mālikī, Shafi'ī, and Ḥanbalī). The scholars of the Ḥanafiyyah madhhab do not allow parents to withdraw the hibah that has been given to their children.

In the madhhab Ḥanafī, the basic principle that applies in this hibah is to maintain the certainty of ownership, so that the withdrawal of the hibah is severely restricted. In this context, Abū Ḥanīfah and his followers, then Al-Ṡ aurī, Al-Anbārī, one of the narrations in the opinion of Aḥmad, does not allow or prohibit withdrawing grants because there is a hadith that states that a person who withdraws a grant is the same as swallowing something from what he vomits.[34] Imām Al-Kāsānī Al-Ḥanafī stated that one of the reasons why it is not permissible to withdraw the grant property is because of the existence of kinship, including mahram (for nasab, for the sake of milk and for the reason of marriage). Al-Kāsānī Al-Ḥ anafī expressly states that it is not permissible to withdraw grants given to relatives of mahrams in the madhhab Ḥanafī.[35]

A similar explanation is also put forward by Al-Sarakhsī in his book Al-Mabsūṭ: hibah is a contract of transfer of ownership, so that in its original law, Al-Sarakhsī considers this hibah to be irrevocable. This is the same as a sale and purchase agreement. A withdrawal is contrary to the purpose of the transfer of ownership, and the contract is invalid if it results in something contrary to its intent. The right of withdrawal is only established before the grant is complete.[36] This means that this grant is associated as a form of legal means of transfer of ownership, so that if the grant procedure has been met, and the process of transferring assets has been carried out, then the grantor may not withdraw the grant, including from parents to their children.

Wahbah al-Zuḥailī has identified 7 (seven) conditions that cause a person not to withdraw property that has been given to others, including to his family or children, namely:

a. Mahram relationship of relatives. When a hibah is given to a relative, then it cannot be withdrawn. The relative referred to here is a biological child.
b. Marital relationship (husband and wife). If a man gives property to a woman and then marries her, then he can withdraw it. But if he gives property to his wife, and then divorces her, he may not withdraw the grant. Because the marriage relationship is considered a relative relationship, it is proven by the existence of inheritance rights between husband and wife.
c. There is compensation (*al-'iwaḍ*). With compensation, the right of withdrawal is lost.
d. Grants come out of the recipient's possession, such as the grant property that has been sold or given to someone else.

[34]Yūsuf Al-Qaraḍhawi, *Min Hadī Al-Islām*..., p. 478.
[35]Al-Khashan, *Badā'i Al-Ṣwhen...,* pp. 131-132.
[36]Al-Sarakhsī, *Al-Mabsūṭ...,* p. 53.

e. The occurrence of a unified addition (*ziyādah muttaṣilah*). Integrated additions, such as planting trees on grant land, construction on grant land or colouring of grant objects carried out by grantees and other additions that are integrated with the object. A recall is only valid on the grant item, while the add-on is not part of the grant, so it cannot be withdrawn. As for separate additions, such as children from animals, the grantor may withdraw the original goods without additions, because they can be separated. In contrast to buying and selling, because the sale and purchase contract is a compensation contract, the return of the original goods without additional compensation can cause usury.
f. Death of one of the parties (grantee or grantor). When the grantee dies, then the ownership passes to his heirs. If the grantor dies, then his right to vote is lost, and not inherited, as is the right to see goods or conditional rights.
g. The destruction of grant goods. If the grant item is damaged or destroyed, then a recall is impossible.[37]

The seven points above are the barrier to the withdrawal of grants in general in the Ḥanafī school, i.e. one cannot withdraw the grant that has been given when there is an additional one that is integrated in the object of the grant, the death of one of the parties, the existence of compensation, the withdrawal of the grant from the ownership of the recipient, the relationship of marriage, the relationship of relatives, the destruction of the grant property.

Specifically, scholars of the Ḥanafiyyah madhhab stipulate that it is not permissible for parents to withdraw the property of the hibah from their children. In this context, Imām Al-Kāsānī acknowledged the existence of differences of opinion on this matter. He also cited the opinion in the madhhab Shafi'ī, which states that parents can withdraw the grant property that has been given to their child, because there is a hadith evidence that mentions the exception of the withdrawal of grants from parents to children.[38] This means that a person is prohibited from withdrawing grants except for grants from parents to their children.[39] The following hadith reads:

عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ نَبِيَّ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَرْجِعْ أَحَدُكُمْ فِي هِبَتِهِ إِلَّا الْوَالِدَ مِنْ وَلَدِهِ. (رواه ابن ماجة).

[37]Al-ZuḥAilī, *Al-Fiqh Al-ḤAnnabeth...*, p. 680.
[38]Al-Khashan, *Badā'i Al-Ṣwhen...*, pp. 131-132.
[39]Abu Ahmad Najieh, *Fiqh Mazhab Syafi'i* (Bandung: Marja, 2018), p. 587.

From Amru bin Shu'aib from his father, from his grandfather, the Prophet PBUH said: "Do not take back the things that he has given, except to the parents of his son. (HR. Ibn Mājah).[40]

Al-Ma'ālī adds that the prohibition of withdrawing parental grants to children occurs before *taslīm* or before the property is handed over. Al-Ma'ālī mentions that grants to foreigners or non-relatives, grants to relatives of mahrams, grants to relatives who are not mahrams, and grants to mahrams who are not relatives, in all types of grants, the grantor has the right to withdraw before the goods are handed over. Because, with withdrawal before submission, the contract is not perfect. However, after the handover, he is not entitled to withdraw the grant back to relatives.[41] Thus, the prohibition of parents to withdraw the hibah from their child according to the scholars of the Ḥanafī madhhab applies if the property of the hibah has been handed over to the child perfectly.

According to the madhhab Ḥanafī, the information of the above hadith is not the basis for the ability of parents to withdraw the grant property to their children. Although there are exceptions in the hadith above, it cannot be used as a legal postulate for the right to withdraw grants between parents and their children. Because there is another hadith history that also explicitly mentions the prohibition of withdrawing grants when given to relatives. This is understood in the following hadith:

عن سمرة رضي الله عنه، عن النبي صلى الله عليه وسلم قال: إذا كانت الهبة لذي رحم محرم لم يرجع فيها.

From Samarah Ra. From the Prophet PBUH, he said: If the grant is given to relatives, then it should not be withdrawn. (HR. Ḥākim and Al-Dārquṭnī)

The above evidence is supported by other histories that state that the person who withdraws the grant and the gift is the same as the person who swallows the vomit again.

This evidence is the main reference for scholars of the Ḥanafī school regarding the prohibition of withdrawing the grant property from parents to their children. In this context, the Ḥanafī school establishes the prohibition on the withdrawal of parental grants to children through two important axes, namely the basic character of the grant as a transfer of ownership that must be stable after completion, and the strengthening of the value of friendship as *'iwāḍ ma'nawī*

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[40]Abī Abdillāh Muḥammad ibn Yazīd Ibn Mājah Mājah, *Sunan Ibn Mājah* (Riyadh: Bait al-Afkār al-Dauliyyah Linnasyr, 1999), p. 441.

[41] Burhānuddīn Abī Al-Ma'ālī Al-ḤAnnabeth, *Al-Muḥiṭ Al-Burhānī fī Al-Fiqh Al-Nu'mānī: Fiqh Al-Imām Abī Ḥanīfah,* (Beirut: Dār Al-Kutb Al-'Ilmiyyah, 2004), p. 246.

(non-material compensation) which legally aborts the right of reference (withdrawal of grants). In this construction of the Ḥanafī school, the grant is indeed a *conceptual ghair lāzim* contract —because before *the qabḍ* (handover) the grantor still has room to cancel—but after the conditions of perfection (*ijab-qabul* and *qabḍ*, as well as the transfer of the use of property) are met.

The Ḥanafī school emphasizes that a grant is a contract of transfer of ownership that must be maintained after it is fully implemented, so the withdrawal of the grant is very limited, even prohibited under certain conditions. In the context of parent-child grants, the Ḥanafiyah scholars reject the ability to refer (withdraw) because the parent-child relationship belongs to the category of mahram relatives, and this relationship is seen as a form of nonmaterial compensation *('iwāḍ ma'nawī)* that aborts the right of reference.

The hadith evidence that equates the person who withdraws the grant with the person who swallows the vomit is understood as a stern warning against behaviour that undermines the purpose of the grant, namely to strengthen affection and friendship. Therefore, within the framework of Ḥanafiyyah thought, the prohibition *of referencing/redrawing* is not only a matter of legal technicality, but also the protection of the social and moral values contained in the grant. In harmonizing the evidence, the scholars of Ḥanafī refuse to make the hadith the exception "*except for the parent to his child*" as the basis of referability. They interpreted the hadith in *a majazi manner*, which is the prohibition of buying back goods that had been donated, so that it does not contradict the general rule that grants to relatives of mahrams should not be withdrawn. On the other hand, another narration that affirms: "*The grantor is more entitled to his grant as long as he has not been compensated*" is used as a basis that the right to withdraw the grant only applies before there is *an 'iwāḍ*, while the relationship of the mahram's relatives is sufficient to be *'iwāḍ ma'nawī* which aborts the right of reference. In this way, the Ḥanafī school maintains consistency between the text of the hadith and the purpose of the grant contract, which is the certainty of ownership.

The withdrawal of the parents' grant to the child is considered contrary to *the maqāṣid* of the grant itself, because the grant is not just a transaction of property, but a means of strengthening social-emotional bonds in the family. Thus, despite the differences with other schools, such as Shafi'ī that allow parents to withdraw grants to their children, Ḥanafī still consistently rejects them because the general postulates of prohibition on mahram relatives are stronger and more in accordance with the purpose of the Shari'ah.

This view of Ḥanafī implies that parents who give property to children should not use grants as a means of control or a threat to withdraw, because it will damage the stability of ownership and trust in family relationships. The

provisions of the seven reference barriers formulated by the scholars of the Ḥanafī, as explained earlier (mahram relationship, marriage relationship, the existence of compensation, the exit of the grant from the recipient's possession, integrated additions, the death of one of the parties, the destruction of the grant goods) become a comprehensive system to prevent manipulation after the delivery of the grant. Thus, the position of Ḥanafī maintains legal consistency, protecting the grantee, namely the child, from potential withdrawal by his parents.

In contemporary practice, especially the principle of wealth distribution in sharia economic law, the views of scholars of the Ḥanafiyyah school encourage more mature family asset planning, where grants can be understood as final irrevocable gifts. This shows that the Ḥanafī school established a coherent, ethical, and logical legal framework, which balanced between the text, the goals of the sharia, and the social needs of the family.

The perspective of Sharia economic law requires that the principles of wealth distribution place more emphasis on the certainty of ownership, justice, and the sustainability of social relations. Parental grants to children are placed as part of the mechanism of wealth distribution in the family, local, and domestic contexts. The goal is to strengthen the bond of affection while ensuring the economic sustainability of children. Therefore, the withdrawal of grants after the property has changed ownership is seen as contrary to the principle of Sharia distribution. This can cause legal uncertainty over ownership and also potential injustice. The Ḥanafī school affirms that grants to the relatives of the mahram, including children, should not be withdrawn again because the kinship relationship itself is considered compensation or *'iwāḍ ma'nawī* (substitute for nonmaterial compensation), which aborts the right of reference. Thus, the distribution of property through the grant of parents to children must be seen as a final gift that should not be disturbed, so that the purpose of Sharia in the form of certainty of ownership and also family protection, can be achieved. This happens when the grant property has been handed over to the child, as stated by Al-Ma'ālī earlier.

The principle of wealth distribution in Sharia is not only oriented to material aspects, but also to the social and moral values contained in giving. Parental grants to children are not just a transfer of assets; for example, the transfer of assets that are usually carried out on behalf of parents to children in general, but as an instrument to maintain the family's economic balance and strengthen the family's internal solidarity. If the grant can be withdrawn unilaterally, then the distribution of assets loses certainty, potentially undermining trust in family relationships. Therefore, the prohibition of withdrawing parental grants to

children in the madhhab Ḥanafī is in line with *maqāṣid al-syarī'ah,* which is to protect property (*ḥifẓ al-māl*) while safeguarding offspring and family (*ḥifẓ al-nasl*). With this kind of pattern and analysis, Sharia economic law ensures that the distribution of wealth through grants is truly a means of justice, certainty, and also sustainability in the family structure.

CONCLUSION

The Ḥanafiyyah school's view of the withdrawal of a parent's grant to a child emphasizes that a grant is a contract of transfer of ownership that must be maintained after it is complete, so that it cannot be withdrawn, including in the relationship between parents and children. The existence of this prohibition is based on the hadith narration, which likens the withdrawal of grants to swallowing vomit again, and also the hadith history about the prohibition of withdrawing grants given to relatives.

The principle of prohibition of withdrawal of grants by parents is that kinship is non-material compensation ('*iwāḍ ma'nawī*), which legally aborts the right to refer/withdraw grants. Thus, the grant of parents to children must be seen as a final gift, able to maintain the certainty of ownership, justice, and trust in the family. From the perspective of sharia economic law, this provision is in line with *the values of maqāṣid shari'ah*, namely safeguarding property (*ḥifẓ al-māl*) and safeguarding offspring (*ḥifẓ al-nasl*), so that the distribution of property through grant procedures truly becomes an instrument of justice in the family, sustainability, and certainty of ownership.

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