

**THE VALIDITY OF THE TRANSFER OF ALL ASSETS THROUGH GRANTS
BEFORE THE HEIR'S DEATH AND ITS LEGAL CONSEQUENCES ON THE HEIR'S
RIGHTS**

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ABSTRACT

The transfer of assets through a grant is a legal act that is allowed as long as the grantor is alive. However, legal problems arise when grants are made to all assets so that when the heir dies, there is no longer an inheritance to be distributed to the heirs. This condition has the potential to cause disputes, especially if the grant reduces or eliminates the absolute rights (*legitieme portie*) of the heirs protected by the Civil Code (Civil Code). This study aims to analyze the validity of the transfer of all assets through grants before the heir dies and its legal consequences on the rights of the heirs. The research uses normative legal research methods with a statutory approach, a conceptual approach, and a case approach. Legal materials were obtained through literature studies which included laws and regulations, Supreme Court decisions, literature, and scientific journals, then analyzed qualitatively using prescriptive analysis. The results of the study show that the validity of the transfer of all assets through grants is not only determined by the fulfillment of the legal requirements of the agreement and authentic deed, but also depends on the legal status of the grant object, the authority of the grantor, and the suitability of the transfer mechanism with applicable legal provisions. The transfer of joint property must obtain the consent of the spouse, while a grant that reduces the *legitieme portie* is not null and void, but can be requested for a reduction (*inkorting*) to ensure the fulfillment of the rights of the heirs. Thus, legal protection in the civil inheritance system is realized through a balance between the freedom of a person to give his property and the guarantee of the absolute rights of the heirs, so as to create legal certainty, justice, and usefulness in the implementation of grants.

Keywords: Hibah, Transfer of assets, Heirs; Legit serving, Shortening.

ABSTRAK

Pengalihan harta melalui hibah merupakan perbuatan hukum yang diperbolehkan selama pemberi hibah masih hidup. Namun, permasalahan hukum muncul ketika hibah dilakukan terhadap seluruh harta kekayaan sehingga pada saat pewaris meninggal dunia tidak lagi tersedia boedel waris untuk dibagikan kepada ahli waris. Kondisi tersebut berpotensi menimbulkan sengketa, khususnya apabila hibah mengurangi atau menghilangkan hak mutlak (*legitieme portie*) ahli waris yang dilindungi oleh Kitab Undang-Undang Hukum Perdata (KUH Perdata). Penelitian ini bertujuan menganalisis keabsahan pengalihan seluruh harta kekayaan melalui hibah sebelum pewaris meninggal dunia serta akibat hukumnya terhadap hak ahli waris. Penelitian menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan kasus. Bahan hukum diperoleh melalui studi kepustakaan yang meliputi peraturan perundang-undangan, putusan Mahkamah Agung, literatur, dan jurnal ilmiah, kemudian dianalisis secara kualitatif menggunakan analisis preskriptif. Hasil penelitian menunjukkan bahwa keabsahan pengalihan seluruh harta melalui hibah tidak hanya ditentukan oleh terpenuhinya syarat sah perjanjian dan akta autentik, tetapi juga bergantung pada status hukum objek hibah, kewenangan pemberi hibah, serta kesesuaian mekanisme pengalihan dengan ketentuan hukum yang berlaku. Pengalihan terhadap harta bersama harus memperoleh persetujuan pasangan, sedangkan hibah yang mengurangi *legitieme portie* tidak batal demi hukum, melainkan dapat dimintakan

pengurangan (inkorting) untuk menjamin terpenuhinya hak ahli waris. Dengan demikian, perlindungan hukum dalam sistem kewarisan perdata diwujudkan melalui keseimbangan antara kebebasan seseorang menghibahkan hartanya dan jaminan atas hak mutlak ahli waris, sehingga tercipta kepastian hukum, keadilan, dan kemanfaatan dalam pelaksanaan hibah.

Kata kunci: Hibah, Pengalihan harta kekayaan, Ahli waris, Legitieme portie, Inkorting.

PENDAHULUAN

Grants are a form of legal act that gives a person the authority to transfer ownership of his property to another party while the grantor is still alive as stipulated in Article 1666 of the Civil Code (Civil Code). As a manifestation of property rights, a hibah reflects a person's freedom in determining the use and transfer of his property. However, this freedom cannot be separated from the inheritance legal system which also provides protection for the rights of heirs, especially through the regulation of *Legitimate portion* in Article 913 of the Civil Code. The problem arises when the transfer of assets through grants is carried out to most or even all of the grantor's assets so that when the heir dies, there is no longer an inheritance that can be distributed to the heirs.(Rajib et al., 2026) This condition raises questions about the limits of the validity of grants and the extent to which the law provides protection for the rights of affected heirs.(Hastarini, 2026)

This problem has repeatedly arisen in judicial practice. In Supreme Court Decision Number 2665 K/Pdt/2019, the grant is questionable because it is considered to reduce the heir's rights to the inheritance property so that the object of the grant is requested to be returned to the heir's estate. Similarly in Supreme Court Decision Number 2954 K/Pdt/2017 and Supreme Court Review Decision Number 1354 PK/Pdt/2024, the Supreme Court affirmed the importance of protecting the *Legitimate portion* through the mechanism *Summary* when the grant reduces the absolute share of the heirs. The variety of approaches used in these decisions shows that dispute resolution still relies on the interpretation of judges after the dispute occurs, while the Civil Code has not provided firm parameters regarding the limit of the transfer of all assets through grants before the heirs die.(Kristina et al., 2026)

Research on grants in inheritance law generally focuses on the validity of grant deeds, grant cancellations, or protection *Legitimate portion* heirs. This approach focuses more on resolving legal consequences after the occurrence of disputes.(Suciati et al., 2026) Instead, this study focuses on the study of The Validity of the Transfer of All Wealth through Grants as a Normative Issue and legal consequences on the rights of the heirs, so that it is expected to provide legal parameters regarding the limits of a person's freedom in transferring all his assets without eliminating the rights of heirs guaranteed by the Civil Code.

Based on this description, this study raises two main problems, namely: (1) whether the transfer of all assets through grants before the heir dies can be justified according to the legal construction in the Civil Code; and (2) what is the legal effect of the transfer of all assets through grants on the fulfillment of the rights of heirs in the civil inheritance legal system. This study aims to analyze the validity of the transfer of all assets through grants before the heir dies based on the provisions of the Civil Code and analyze the legal consequences caused to the rights of heirs as the basis for the formulation of legal certainty in the practice of transferring assets through grants.

METODE

This study uses normative legal research methods with a statute approach, a conceptual approach, and a case approach.(Zainuddin & Karina, 2023) The legislative approach is carried out through the study of the provisions of the Civil Code that govern grants and inheritance, while the conceptual approach is used to analyze the concepts of grant validity, heirs' rights, and legitieme portie. The case approach is carried out by reviewing the Supreme Court's decision related to grant disputes and heirs' rights.

The legal materials used consist of primary legal materials in the form of the Civil Code, court decisions, and related laws and regulations, as well as secondary legal materials in the form of books,

scientific journal articles, and the opinions of relevant experts. The collection of legal materials is carried out through literature studies, then analyzed qualitatively using prescriptive analysis to obtain legal arguments regarding the validity of the transfer of all assets through grants before the heir dies and its legal consequences on the rights of the heirs.

DISCUSSION

The Validity of the Transfer of All Assets through Grants Before the Heirs Die

The transfer of all assets through grants is a legal act that cannot be assessed solely based on the provisions regarding grants in the Civil Code (Civil Code). The legal issue that determines the validity of the transfer does not lie in the fulfillment of the legal conditions of the agreement alone, but in the existence or absence of the authority of the grantor to transfer all objects that are the substance of the grant. Therefore, the validity test must be carried out systematically by paying attention to the relationship between marriage law, material law, land law, notary law, and civil law as a unit in Indonesia's positive legal system.(Mardhiah et al., 2026)

The validity of the transfer of all assets begins with the determination of the legal status of the object transferred. Indonesia's positive law distinguishes property in marriage into congenital property and joint property as stipulated in Article 35 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. This distinction not only serves as a classification of property, but also determines a person's authority in carrying out legal acts against property that is in his control. Thus, the phrase "all property" cannot be interpreted as all property that is physically controlled by the grantor, but only includes property that is legally within the full authority to be transferred.(Windani & Meiliawati, 2023)

If the object of the grant is an inherited property, the grantor in principle has the authority to transfer rights as long as it complies with the applicable legal provisions. (Daniel Nainggolan et al., 2025)However, if the object of the grant comes from common property, then the authority is restricted. Article 36 of the Marriage Law stipulates that legal action on joint property is carried out with the consent of both parties. This provision shows that Indonesia's positive law does not give absolute authority to one spouse to unilaterally transfer all joint property. Spouse consent is a material condition that determines whether or not the transfer of a part of the property that is a joint right is legal.

The limitation of authority is a consequence of the principle of material law that a person can only transfer rights that are in his control.(Nova et al., 2023) Principle *nemo plus iuris ad alium transferre potest quam ipse habet* emphasizing that the transfer of rights cannot exceed the rights owned by the party making the transfer. In the context of grants, the principle places the authority of the grantor as the main parameter of the validity of the transfer. Thus, even though a grant deed has fulfilled the provisions of Article 1320 of the Civil Code regarding the legal conditions of the agreement, the transfer of all assets cannot still be considered valid if the object transferred still includes a part of the property that is not legally the right of the grantor.

This understanding must also be applied to the transfer of land rights as one of the most frequently disputed grant objects. Based on Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights must indeed be carried out through a mechanism determined by laws and regulations. However, the fulfillment of land administration procedures does not necessarily prove that the grantor has full authority over the object being transferred.(Andreyvelan & Lyanthi, 2025) A land rights certificate only provides certainty regarding the juridical data and physical data recorded, but does not remove the possibility that the land is part of the common property subject to the provisions of the Marriage Law. Therefore, the administrative legality of the transfer of rights cannot be equated with the material validity of the transfer of rights.

The validity of the transfer is also not enough to be proven by the existence of an authentic deed. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position and the provisions regarding the deed of the Land Deed Making Officer provide evidentiary

power to the form of legal acts carried out by the parties. However, such evidentiary power does not eliminate the obligation to test the substance of the legal relationship between the grantor and the object transferred. An authentic deed proves that a grant has been made, but does not necessarily prove that the entire object of the grant is within the legal authority of the grantor. Thus, the formal validity of the deed and the material validity of the transfer are two different aspects and must be assessed simultaneously.(Dharma & Bliss, 2025)

This approach is in line with the development of judicial practice. In various grant disputes, the court does not stop at examining the existence of the grant deed, but assesses the origin of the property, the ownership status of the object, and the authority of the grantor in carrying out the transfer. This pattern of consideration shows that the measure of the validity of a grant in practice is determined not only by the formal aspects of the agreement, but also by the legality of the control over the object of the grant. Thus, the object of the grant becomes the central point in determining whether or not the transfer of all assets is legal.

The construction shows that the validity of the transfer of all assets through grants is the result of testing three cumulative elements, namely the legal status of the grant object, the authority of the grantor over the object, and the suitability of the transfer mechanism with the provisions of positive Indonesian law.(Nisfa Lailah Sya'ban & Eva Fauziah, 2024) These three elements must be fulfilled simultaneously so that the validity of the transfer cannot be concluded only from the fulfillment of the legal conditions of the agreement or the existence of an authentic deed. Therefore, the transfer of all assets through grants can only be declared valid if all objects transferred are truly within the legal authority of the grantor and the transfer process is carried out in accordance with the positive legal provisions that govern the status of assets and the transfer of rights.

Legal Consequences of the Transfer of All Assets Through Grants to Heirs' Rights

The transfer of all assets through grants does not eliminate a person's position as an heir according to Article 832 of the Civil Code (Civil Code), because the right to inherit is born at the time of the inheritance is open due to the death of the heir. The legal problem lies in the reduction or even unavailability of the heir's estate which is the object of the implementation of the heir's rights because all assets have been transferred while the heirs are still alive. Thus, the legal consequence of the transfer of all property through grants does not remove the right of inheritance, but affects the object on which the exercise of the right is based. This construction shows that a grant dispute is essentially a dispute regarding the protection of the rights of the heirs against the reduction of the inheritance property that should be the basis for the distribution of inheritance.(Agustian et al., 2023)

In the event that the transfer is carried out on property derived from joint property, the first legal consequence that must be resolved is the separation of the share of the common property as stipulated in Article 35 and Article 36 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. The surviving part of the spouse is not an object of inheritance because the right has been born since the formation of joint property during the marriage. Therefore, the part must first be removed from the entire property before determining the amount of the inheritance.(Rachman et al., 2022) The transfer of all assets to one of the children without taking into account the separation of joint property results in a reduction in the assets that are still legally owned by the spouse as well as affecting the amount of inheritance to be inherited.

After the separation of the joint property is carried out, the share that is the heir's right forms the heir's boedel which is then distributed to the heirs.(Suciati et al., 2026) At this stage, the provisions of Article 913 of the Civil Code regarding *Legitimate portion* acquire its relevance. *Legitimate portion* is an absolute part guaranteed by law to certain heirs and cannot be extinguished by grant or will. Therefore, the transfer of all property to one child cannot be assessed only by the validity or not of the grant, but must also be taken into account whether the transfer results in a reduction or loss of the absolute share of the other heirs.(Daulay et al., 2025) Thus, the heir's freedom to donate his property during his life is

limited by the legal protection of the absolute rights of the heirs that have been stipulated in the Civil Code.

The Civil Code does not specify that any grant that reduces *Legitimate portion* null and void. Protection of beneficiaries is provided through a mechanism Summary as stipulated in Articles 920 to 929 of the Civil Code. The provision shows that the grant is still recognized as a valid legal act as long as it does not exceed a limit that reduces the absolute rights of the heirs. When the hibah is proven to be in violation of *Legitimate portion*, the heirs have the right to file a claim for a reduction against the grant so that the portion that exceeds the legal protection limit is recalculated as part of the heir's boedel. (Sahid, 2025) Thus, the legal consequence of the transfer of all assets is not always in the form of cancellation of the grant, but an adjustment to the part of the grant that reduces the absolute rights of the heirs.

The calculation of whether or not there is a violation of *legitieme portie* is not only based on the assets that remain at the time of the heir's death. Article 921 of the Civil Code stipulates that the determination of *legitieme portie* is carried out by taking into account all existing heritage assets plus the value of grants that have been given during life, then deducting the heir's debt. This provision shows that Indonesian inheritance law does not allow grants to be used as a means to avoid fulfilling the rights of heirs. Even though the object of the grant has passed to the grantee, its economic value is still taken into account in determining the absolute amount of the share that the heir is entitled to.

This approach is reflected in the Supreme Court's judicial practice. In Supreme Court Decision Number 703 PK/Pdt/2016, the Supreme Court did not immediately cancel the grant that had been made by the heir, but tested whether the grant had reduced the *legitimacy of* the heir's portie. These legal considerations show that the focus of legal protection does not lie in the existence of the grant deed, but in the legal consequences caused to the absolute rights of the heirs. A similar approach is also seen in various Supreme Court rulings that place *inkorting* as an instrument to restore the balance of inheritance distribution without eliminating the existence of grants as a legal act.

The legal construction shows that the legal consequences of the transfer of all assets through grants do not stop at the transfer of property rights to the grantees. The transfer changes the composition of the inheritance boedel which is the basis for the distribution of inheritance, so that the rights of the heirs must be assessed based on the provisions regarding *legitieme portie* and the *inkorting* mechanism. Therefore, legal protection for heirs in Indonesia's positive law is not provided by neverifying a person's freedom to bequeath his property, but by ensuring that the transfer does not eliminate the absolute rights of the heirs that are expressly guaranteed by the Civil Code.

CONCLUSION

Based on the results of the study, it can be concluded that the transfer of all assets through grants before the heirs pass away is in principle not prohibited by law, as long as the object of the grant is property that is legally within the full authority of the grantor and its implementation meets the provisions of laws and regulations. The validity of the grant is not only determined by the fulfillment of the legal conditions of the agreement and the existence of an authentic deed, but must also take into account the legal status of the property granted, including the consent of the spouse if the object of the grant is joint property as stipulated in the Marriage Law. Therefore, the transfer of all assets cannot be justified if it exceeds the authority of the grantor or is contrary to the provisions of the law that govern the status of property ownership.

The transfer of all assets through grants also does not remove the position of the heirs as the subject entitled to receive the inheritance, but can reduce or even eliminate the boedel of the inheritance that is the object of inheritance. In the civil inheritance legal system, protection of the rights of heirs is provided through provisions regarding *legitieme portie* and the mechanism of *inkorting* as stipulated in Article 913 and Articles 920 to 929 of the Civil Code. Thus, a grant that reduces the absolute share of the heirs is not necessarily null and void by law, but can be requested for a reduction so that the heir's rights are still fulfilled in accordance with the provisions of the applicable law.

It is necessary to improve the arrangements regarding grants in the Civil Code, especially related to the limit of the transfer of all assets before the heir's death, so that there are clearer legal parameters to prevent disputes in the future. Notaries and Land Deed Making Offices (PPAT) should apply the principle of prudence by conducting a thorough examination of the ownership status of the property, the origin of the property, as well as ensuring that the legitimate rights of the heirs are not violated before pouring the transfer of property in the deed of grant. People who will make grants to most or all of their wealth need to consider the legal consequences that can be caused to the rights of heirs and prioritize the principles of justice and legal certainty so that the transfer of assets does not cause family conflicts or legal disputes in the future

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GOVERNANCE: Jurnal Ilmiah Kajian Politik Lokal dan Pembangunan

ISSN: 2406-8721 (Media Cetak) dan ISSN: 2406-8985 (Media Online)

Volume 13 Nomor 10 Oktober 2026

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