

Reassessing the Legal Validity of Non-Notarial Gifts Between Parents and Children Under Indonesian Law: A Doctrinal and Judicial Perspective

Yuyun Yuningsih^{1*}, Tri Lisiani Prihatinah², Sulistyandari³

¹Faculty of Law, Universitas Jenderal Soedirman, Indonesia

¹Yuyunyuningsih293@gmail.com, ²tri.prihatinah@unsoed.ac.id,

³sulistyandari2605@unsoed.ac.id

Abstract

Gifts (hibah) from parents to children are a common practice within family legal relations in Indonesia. However, the frequent execution of such gifts without notarial deeds raises serious concerns regarding their legal validity and the protection of other heirs' rights. This study reassesses the legal status of non-notarial gifts within the framework of Indonesian civil law and Islamic inheritance law. Employing a normative legal method through doctrinal and jurisprudential approaches, the research analyzes statutory provisions and judicial decisions to evaluate the enforceability and evidentiary strength of gifts made without authentic deeds. The findings reveal that non-notarial gifts generally fail to meet the formal legal requirements under Indonesian positive law, and are often declared invalid by courts, particularly when challenged by other heirs. Consequently, such gifts may infringe upon the legitime portie (compulsory inheritance share) and trigger intra-family inheritance disputes. This study asserts that legal formalities are not mere administrative procedures but serve as essential instruments to uphold legal certainty, balance competing interests, and achieve intergenerational justice. Accordingly, it recommends enhancing public legal literacy, expanding access to notarial services, and reforming regulatory frameworks to align customary practices with adequate legal protection.

Keywords: gift; legal validity; inheritance rights; Indonesian civil law; notarial deed

Abstrak

Hibah dari orang tua kepada anak merupakan praktik yang lazim dalam hubungan hukum kekeluargaan di Indonesia. Namun, pelaksanaannya yang kerap dilakukan tanpa akta notaris menimbulkan persoalan serius terkait keabsahan hukum dan perlindungan hak-hak ahli waris lain. Penelitian ini menilai kembali validitas hukum hibah non-notariil dalam kerangka hukum perdata Indonesia dan hukum waris Islam. Dengan menggunakan metode yuridis normatif melalui pendekatan doktrinal dan yurisprudensial, kajian ini menganalisis ketentuan peraturan perundang-undangan serta putusan-putusan pengadilan untuk mengevaluasi keberlakuan dan kekuatan pembuktian hibah tanpa akta otentik. Temuan penelitian menunjukkan bahwa hibah non-notariil umumnya tidak memenuhi syarat formal sebagaimana ditentukan oleh hukum positif Indonesia, sehingga sering kali dinyatakan tidak sah oleh pengadilan, khususnya apabila

***Yuyun Yuningsih**

Tel.: +62 823-2317-7551

Email: Yuyunyuningsih293@gmail.com

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digugat oleh ahli waris lain. Akibatnya, bentuk hibah tersebut dapat melanggar hak waris mutlak (legitime portie) dan berpotensi memicu sengketa antar ahli waris. Penelitian ini menegaskan bahwa formalitas hukum bukan sekadar prosedur administratif, melainkan merupakan instrumen penting untuk menjamin kepastian hukum, menjaga keseimbangan kepentingan para pihak, serta mewujudkan keadilan antargenerasi. Penelitian ini merekomendasikan peningkatan literasi hukum, perluasan akses terhadap layanan notaris, dan reformasi regulasi yang mampu menyelaraskan praktik sosial dengan perlindungan hukum yang memadai.

Kata kunci: akta notaris; hak waris; hibah; hukum perdata Indonesia; keabsahan hukum

1. INTRODUCTION

Gifts (hibah) represent a voluntary legal act in which an individual transfers an asset to another without any reciprocal compensation. In practice, such acts are commonly found within family relationships, particularly from parents to their children. Gifts serve as an important legal mechanism for managing family assets, often aimed at securing the economic future of a child and minimizing inheritance-related disputes. Moreover, they function as a method for distributing wealth during the giver's lifetime. However, many of these gifts are carried out informally, often without the involvement of a notary or a land deed official (PPAT), which are legally required to ensure the formal validity of the transaction. This informal practice, known as non-notarial or under-the-table gifting, raises significant legal concerns when later contested, especially in inheritance proceedings. Hence, a juridical examination of the legal standing of such informal gifts within parent-child relationships is crucial in the context of Indonesian civil and family law.

According to the Indonesian Civil Code (KUHPperdata), a gift is defined as an irrevocable, gratuitous transfer of property made during the donor's lifetime. The Code further stipulates, particularly in Article 1682, that all gifts must be executed through a notarial deed to be deemed valid. This reflects the legal system's emphasis on formalism and legal certainty in civil transactions. However, societal practices often diverge from these formal requirements. Many families rely on verbal agreements or handwritten letters without the involvement of legal professionals, especially when the gift is made within close familial ties. This reliance on trust and kinship, while culturally

understandable, can create legal vulnerabilities, especially when disputes arise after the donor's death.¹ Thus, it is essential to analyze the juridical status of such informal gifts, particularly regarding their evidentiary strength and enforceability under Indonesian law.

The absence of formal documentation often results in legal uncertainty, particularly when conflicts arise among heirs. Courts frequently reject non-notarial gift letters as lacking sufficient evidentiary weight, especially in the absence of corroborating legal instruments. This situation often leads to legal disadvantage for the recipient child, despite the donor's genuine intent. The problem intensifies when the gift favors one child over others, which may trigger inheritance disputes rooted in perceived inequity. Moreover, under Indonesian inheritance law, all heirs hold legitimate rights (*legitime portie*), which must not be undermined by disproportionate *inter vivos* transfers. Therefore, the issue of gift validity extends beyond mere formalism to encompass fundamental questions of fairness, justice, and intra-family balance.

In legal theory, the validity of a gift is assessed not only through the donor's intent but also through compliance with formal legal requirements. Indonesian civil law prioritizes legal certainty, particularly in property transfers, where authenticity of documents plays a crucial role. Without a notarial deed, a gift lacks the probative strength of an authentic legal instrument, reducing it to a form of supplemental or weak evidence. In court proceedings, such documents often fail to meet the burden of proof, resulting in the nullification of the gift. Judges tend to adhere strictly to codified requirements, particularly when adjudicating family disputes involving land or property. Consequently, a comprehensive analysis of statutory provisions and relevant court decisions is necessary to assess the legality and enforceability of gifts made outside formal procedures.

Previous studies have highlighted the legal ambiguities surrounding informal gifting practices in family settings. Resta Yudi Saptomo² in 2022, for instance, examined

¹ Nasrul Hisyam Nor Muhamad et al., "Inter Vivos Gift as Land Inheritance Mechanism for FELDA Land Holding," *Journal of Politics and Law* 13, no. 2 (May 27, 2020): 226, <https://doi.org/10.5539/jpl.v13n2p226>.

² Resta Yudi Saptomo, "Putusan Hakim Dalam Pemberian Hibah Terhadap Anak Yang Masih Dibawah Umur," *Jurnal Akta Notaris* 1, no. 2 (January 21, 2023): 107–16, <https://doi.org/10.56444/aktanotaris.v1i2.402>.

judicial decisions on gifts made to underage children and revealed inconsistencies in how judges interpret such transactions. Some rulings emphasize strict compliance with formalities, while others adopt a more contextual approach. Meanwhile, Zul Kifli ZA³ in 2023 analyzed the legal ramifications of gifting to one heir without the consent of others, arguing that such practices often result in legal inequality and intra-family disputes. Deannira Patrisya Tumbelaka⁴ in 2024 further emphasized the legal weakness of land gift letters not formalized through notarial or PPAT deeds, particularly in land registration and title transfer processes. These studies collectively underscore the legal importance of formal documentation and the potential risks of informal gifting, especially in contexts involving inheritance and intergenerational wealth transfer.

Beyond legal formalism, the widespread practice of informal gifting reflects a broader gap between law and social reality. In many Indonesian communities, inter vivos transfers are still governed by custom and familial consensus rather than statutory law. Strong kinship traditions foster the belief that trust among family members suffices to legitimize property transfers. However, when disputes arise, these informal arrangements lack the legal robustness needed for judicial protection. The failure to engage legal professionals or comply with statutory requirements often leaves recipients vulnerable to legal challenges. This mismatch between formal law and social practice indicates a pressing need for legal approaches that are both normatively sound and socially responsive.

Another layer of complexity arises when parents gift property to only one child without informing or involving the others. Although the donor retains full rights over their property during their lifetime, such actions often provoke perceptions of favoritism and injustice among the remaining heirs. If conducted close to the donor's death, these transfers can be viewed as de facto inheritance, potentially violating the legal shares

³ A. ZA, Z. K., Pati, S., & Rifai, "Tinjauan Yuridis Terhadap Akta Hibah Kepada Ahli Waris Tanpa Persetujuan Ahli Waris Lainnya," *UNES Law Review* 6, no. 1 (2023): 219–42, <https://doi.org/https://doi.org/10.31933/unesrev.v6i1.849>.

⁴ Deannira Patrisya Tumbelaka, "Tinjauan Hukum Surat Hibah Tanah Oleh Orang Tua Kepada Anak Yang Di Buat Tanpa Adanya Akta Ppat Dan Akta Notaris," *Lex Crimen* 12, no. 4 (2024): 1–13, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/59049>.

reserved for heirs under civil law. The legitime portie principle dictates that inter vivos transfers must not infringe upon the lawful inheritance portions of other heirs. Thus, gifts within the family should ideally be supervised or formalized to ensure transparency and prevent future disputes. Legal professionals such as notaries and PPATs play a critical role in this preventive legal function.

From the perspective of family law, gifts are more than property transfers; they are expressions of familial bonds and moral obligations. However, these sentimental values must be balanced with principles of justice and legal clarity. Family law, while rooted in kinship norms, still mandates procedural safeguards to protect the interests of all members. Unilateral or secretive gifting practices may undermine family unity and foster long-term resentment, particularly when assets of substantial value are involved. Hence, the law must strike a balance between respecting familial autonomy and ensuring procedural justice. One effective means to achieve this is through encouraging the use of authentic legal instruments in all intra-family transactions.

This study focuses on a juridical analysis of informal gifts from parents to children under Indonesian civil law. It seeks to determine the legal validity of such gifts and their implications for the rights of other heirs. Utilizing a normative legal approach, the study examines statutory provisions, legal doctrines, and relevant court rulings to evaluate the enforceability of non-notarial gift arrangements. It also explores how Indonesian courts have interpreted the legal standing of informal gifts within family relationships and the extent to which formal legal requirements are essential for validity. The study thus bridges doctrinal analysis and real-world legal application.

The findings of this study are expected to contribute to the development of civil and family law in Indonesia. On a practical level, they provide guidance for the public on how to legally secure gift transactions. For legal practitioners, the research offers a jurisprudential framework for handling gift-related disputes. For policymakers, the study highlights the need for regulatory reform to align formal legal requirements with common social practices. By clarifying the legal position of non-notarial gifts, this research aims to reduce legal uncertainty and protect the rights of all parties involved. Ultimately,

strengthening legal awareness and reforming outdated regulations are key steps toward a more equitable and functional family law system.

2. RESEARCH METHODS

This study applies a normative juridical method (doctrinal legal research), which is primarily concerned with the analysis of legal norms and principles as contained in statutory regulations and doctrinal writings. The research focuses on assessing the validity of non-notarial inter vivos gifts (*hibah*) between parents and children from the perspective of Indonesian positive law. As Peter Mahmud Marzuki⁵ emphasizes, normative legal research seeks to discover the *lex lata* (the law as it is), and analyze it through a systematic interpretation of statutory texts, legal principles, and court decisions to construct logical and justifiable legal arguments. This approach is suited for issues that lie in the domain of written law, such as the formal validity of gift deeds and their legal consequences in family and inheritance contexts.

The methodology incorporates two main approaches: the statutory approach and the conceptual approach. The statutory approach involves examining applicable legal instruments such as the Indonesian Civil Code (*Burgerlijk Wetboek*) particularly Articles 1666–1693 concerning gifts as well as the Compilation of Islamic Law (KHI), notably Article 211 regarding gifts within family relations. Additional sources include Government Regulation No. 24 of 1997 on land registration and the Notary Law (Law No. 2 of 2014).⁶ Complementing this, the conceptual approach explores legal theories, doctrines, and scholarly interpretations that explain the concepts of inter vivos transfers, formal requirements of authentic deeds, the role of notaries and PPAT (Land Deed Officials), and the balance between private autonomy and inheritance justice.

Legal materials are classified into primary, secondary, and tertiary sources. Primary materials include statutory texts, judicial decisions (e.g., Supreme Court rulings), and Islamic legal texts (e.g., Qur'an, Hadith). Secondary sources encompass textbooks, legal

⁵ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)* (Jakarta: Kencana Prenada Media Group, 2013).

⁶ Soerjono Soekanto dan Sri Mamuji., *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013).

commentaries, journal articles, and academic theses relevant to hibah and inheritance law. Tertiary sources such as legal dictionaries and encyclopedias are used to support conceptual clarity.⁷ All data are examined using qualitative legal analysis, allowing the researcher to interpret legal norms in light of doctrinal consistency and practical implementation. This method is intended to bridge gaps between formal legal provisions and the socio-cultural practices of hibah in Indonesia, particularly when such gifts are executed without notarial authentication.

3. RESULTS AND DISCUSSION

3.1. Legal Validity of Non-Notarial Gifts Between Parents and Children under Indonesian Law

Gifts, or hibah, are regulated under Article 1666 of the Indonesian Civil Code which defines a gift as a legal act wherein one-party transfers ownership of property voluntarily and without any compensation to another party during their lifetime. This definition implies that the donor must act freely and that the gift must be perfected during the donor's life. More importantly, Article 1682 of the Civil Code prescribes that a gift of immovable property must be executed by an authentic deed made before a notary. Without this deed, the gift is considered legally defective and unenforceable. The requirement of notarial involvement in such transactions reflects a broader legal principle that demands formal legal instruments in property transfers in order to ensure legal certainty and prevent future disputes. In practice, however, many gifts between parents and children are executed informally through private letters or verbal agreements.⁸ These informal acts are often justified by the presence of familial trust and mutual understanding. Nonetheless, the absence of notarial formality weakens their legal standing, particularly when conflicts emerge among heirs. As a result, despite their cultural acceptance, such informal gifts

⁷ Jonaedi Efendi & Johnny Ibrahim, *Metode Penelitian Hukum Normatif & Empiris*, vol. 1, cet. 2 (Jakarta: Kencana, 2016).

⁸ Dyah Ayu Vijaya Laksmi, "The Principle of Justice in Islamic and Civil Inheritance Law: Legal Disparities, Dispute Resolution, and Harmonization," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 10, no. 1 (January 31, 2025): 122–33, <https://doi.org/10.30863/ajmpi.v10i1.8352>.

cannot be considered legally valid within the Indonesian legal system, especially in matters involving inheritance and land ownership.

In Indonesian civil law, the distinction between an authentic deed and a private deed is fundamental. According to Article 1868 of the Civil Code, an authentic deed is one made in the presence of a public official authorized for that purpose, such as a notary. Such deeds carry the highest evidentiary value and are binding upon all parties involved, including third parties. On the other hand, private deeds are only valid between the signatories and do not possess the same legal force. In the context of gifts, a non-notarial deed does not meet the legal threshold required for property transfer, particularly of immovable assets.⁹ Therefore, when a parent provides a gift to one child through an informal letter or verbal promise, it cannot be defended in court without corroborating evidence or legal formalities. The law regards formality not merely as a technicality but as an essential element for validating legal actions. As such, the use of private deeds in gift transactions within families fails to meet the objective criteria of legal validity as required by Indonesian law.

Judicial interpretation of gift transactions has consistently emphasized the importance of formality and adherence to procedural requirements. Indonesian courts generally reject non-notarial gifts unless there is overwhelming and credible evidence to prove the donor's intention and the legitimacy of the transfer. In the case of Decision Number 911/Pdt.G/2021/PA.Mks, the Supreme Court rejected a claim based on a land gift made by a parent to one of their children because the transaction was not supported by an authentic deed. Even though the recipient had possessed the land and maintained it for several years, the absence of formal documentation and the objections raised by other heirs led the court to declare the gift invalid. This case demonstrates that even prolonged possession or familial consensus is insufficient when the formal requirements under civil

⁹ Safira Ayudiatrini and Akhmad Budi Cahyono, "The Legality of Grants by Foreign Citizens on Land Objects in Indonesia: Case Studies of Court Decisions," *SIGN Jurnal Hukum* 4, no. 1 (May 25, 2022): 30–45, <https://doi.org/10.37276/sjh.v4i1.131>.

law are not fulfilled.¹⁰ Consequently, the court reaffirmed the principle that the transfer of immovable property must always adhere to the formal rules established by law, particularly when the transaction affects the rights of third parties, such as other heirs.

In addition to civil law, Islamic family law in Indonesia provides another framework through which the validity of gifts is assessed. The Compilation of Islamic Law, which serves as a codified reference for Muslims in Indonesia, particularly in family matters, addresses the issue of gifts in Article 211. According to this provision, a gift from a parent to a child may be included as part of the inheritance if it disrupts the proportional division of the estate. This interpretation is based on the Islamic principle of fairness among heirs and seeks to prevent the donor from disadvantaging one child over others without justification. If a gift made outside of the inheritance process significantly alters the balance among heirs, it may be subjected to redistribution or annulment by the court. This provision reinforces the notion that even within religious legal systems, gifts are not beyond legal scrutiny, particularly when they impact the rights of lawful heirs.¹¹ Thus, both civil and Islamic legal traditions in Indonesia converge in emphasizing that fairness and formal legal process are essential elements in validating gift transactions.

Legal formality is further reinforced by land law in Indonesia, which governs the registration of property ownership. Government Regulation Number 24 of 1997 on Land Registration stipulates that any transfer of land rights, including through a gift, must be made with a deed prepared by a Land Deed Official and must be registered at the National Land Agency. This regulation implies that even if the donor has the intention to gift the land and the recipient accepts it, the transaction remains legally ineffective unless it is documented by an official deed and registered accordingly. Failure to register the transfer renders the gift null in the eyes of the law and makes it impossible for the recipient to obtain a certificate of ownership. This gap between the donor's intention and the

¹⁰ Gibtha Wilda Permatasari, Yuliati Yuliati, and Herman Suryokumoro, "Position Replacement By Inheritee Who Refuses A Heritage According To Heir Civil Law Dan Islamic Heir Law," *Unram Law Review* 2, no. 2 (October 20, 2018): 153–65, <https://doi.org/10.29303/ulrev.v2i2.47>.

¹¹ Ahmad Redi and Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective," 2022, <https://doi.org/10.2991/assehr.k.220404.135>.

recipient's legal recognition as owner becomes a critical issue in inheritance disputes, especially when other heirs contest the gift.¹² Thus, land registration law introduces an administrative layer that reinforces the requirement for notarial formalization in property-related gifts.

Doctrinal perspectives support the necessity of both subjective and objective validity in legal acts. A legal act must not only reflect a genuine intention but also comply with formal requirements imposed by law. In the context of gifts, subjective validity refers to the donor's free will and the recipient's acceptance, while objective validity requires adherence to legally prescribed forms, such as notarial documentation and proper registration. A transaction that fails to fulfill these elements may be deemed legally void, regardless of the parties' intentions. This dual standard ensures that legal actions are both authentic and legally enforceable. The emphasis on substance and form reflects the legal system's commitment to predictability, fairness, and the protection of public trust in legal institutions.¹³ Accordingly, non-notarial gifts fall short of this standard and are likely to be invalidated when legally challenged.

While familial relationships often promote trust and informality, the law does not exempt family transactions from the requirements of legal formality. In fact, legal scholars argue that the emotional complexity and potential for future disputes make formal documentation even more crucial in intra-family dealings. The closer the relationship, the greater the need for legal clarity, especially when immovable assets are involved. Formalization through notarial deeds serves not only as a legal requirement but also as a safeguard to preserve family harmony and avoid future litigation. The presence of an official deed protects the rights of both the recipient and other heirs by ensuring that the transaction is transparent, deliberate, and legally defensible. Therefore, rather than

¹² Anggi Wicaksono and Zainal Arifin Hosein, "Comparison of Inheritance Law in Islamic Law and Civil Law," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 4 (November 30, 2024): 165–79, <https://doi.org/10.59059/mandub.v2i4.1754>.

¹³ Umi Aliffa and I Wayan Wiryawan, "Kewenangan Notaris Dalam Pembuatan Akta Perjanjian Hibah Atas Tanah," *Acta Comitas* 6, no. 02 (June 30, 2021): 426, <https://doi.org/10.24843/AC.2021.v06.i02.p16>.

undermining trust, legal formalities uphold the integrity of family relations by providing a stable legal framework.

It is true that in rare circumstances, courts may recognize informal gifts when they are supported by compelling factual evidence. These include cases where the recipient has taken possession of the property for a long period, made significant improvements to the land, and paid taxes in their own name. Such facts may convince a judge that the gift was indeed made and accepted, despite the lack of a notarial deed. However, these cases are exceptions and are highly dependent on judicial discretion. They are also fraught with legal risks, particularly when other heirs object or when the documentation is ambiguous. Therefore, relying on such exceptions is not advisable, as it provides no legal certainty and exposes the transaction to potential annulment.

Timing is also a critical factor in assessing the validity of a gift. If a gift is made shortly before the donor's death, especially when it disproportionately benefits one heir, it may be seen as an attempt to circumvent inheritance laws. Under civil law, such a transaction could be interpreted as a disguised testament, which would then be subject to the formal requirements of a will. Islamic law also places restrictions on deathbed gifts, limiting them to one-third of the donor's estate unless approved by all heirs.¹⁴ The legal and ethical considerations surrounding the timing of a gift thus serve as additional safeguards against manipulative practices and help preserve the integrity of the inheritance system.

In conclusion, the legal validity of non-notarial gifts from parents to children is highly questionable within the Indonesian legal framework. The requirements of authentic deeds under civil law, the emphasis on fairness under Islamic law, and the procedural obligations under land law collectively render informal gift transactions legally weak. The absence of proper documentation not only undermines the enforceability of the gift but also opens the door to family conflict and legal uncertainty. Courts and legal scholars alike support the view that formalization is not optional but

¹⁴ Betty D. Laura Sihombing et al., "Kekuatan Pembuktian Surat Hibah Tanah Di Bawah Tangan Perspektif Hukum Perdata Indonesia," *Locus Journal of Academic Literature Review*, October 21, 2023, 846–60, <https://doi.org/10.56128/ljoalr.v2i10.238>.

essential in matters involving property and inheritance.¹⁵ Therefore, parties intending to execute a valid and enforceable gift must adhere to the legal procedures, particularly involving notaries and land deed officials, to ensure legal clarity and protect the rights of all parties involved.

3.2. Evaluation Legal Consequences of Non-Notarial Gifts Toward the Rights of Other Heirs

The legal implications of non-notarial gifts within a family context, particularly from a parent to a child, are often most evident after the death of the donor. When a gift is executed without the presence of a notary or without proper legal documentation, it may be challenged by other heirs who perceive the gift as diminishing their rightful share of inheritance. Under Indonesian inheritance law, especially in the civil law tradition, the doctrine of legitime portie guarantees that certain heirs are entitled to a minimum portion of the estate. If a gift is deemed to have disproportionately benefited one heir and undermined the inheritance rights of others, it may be reduced or annulled. The Civil Code recognizes this through the doctrine of inkorting, which allows for the adjustment of excessive gifts that encroach upon the compulsory portion of inheritance.¹⁶ Therefore, a non-notarial gift may have serious legal consequences, not only in terms of its validity but also in the way it affects the equilibrium of inheritance distribution among the heirs.

In Islamic law, which applies to Muslim families in Indonesia through the Compilation of Islamic Law (KHI), a similar principle exists. Article 211 of the KHI stipulates that a gift from a parent to a child may be considered part of the inheritance if it disrupts the equitable share among heirs. This provision enables courts to reassess a gift that has been given without consideration of other heirs' rights, particularly when such gifts are made close to the donor's death. Additionally, Islamic inheritance law imposes a general limitation on inter vivos transfers before death, whereby a donor may not give

¹⁵ Gangsar Prasetyo, "Akta Perikatan Hibah Dan Akta Kuasa Hibah Dalam Sistem Hukum Pertanahan Di Indonesia," *Jurnal Officium Notarium* 3, no. 1 (May 1, 2023): 40–48, <https://doi.org/10.20885/JON.vol3.iss1.art5>.

¹⁶ Alyatama Budify, Jelitamon Ayu Lestari Manurung, and Satria Braja Hariandja, "Pembatalan Akta Hibah Di Pengadilan Negeri Pematangsiantar: Kajian Putusan Nomor 33/Pdt.G/2019/PN.Pms," *SIGN Jurnal Hukum* 2, no. 1 (September 2, 2020): 72–85, <https://doi.org/10.37276/sjh.v2i1.77>.

away more than one-third of their estate unless approved by the other heirs. This legal framework ensures that gifts, even those made during the donor's lifetime, cannot be used to unjustly deprive other heirs of their legal entitlement.¹⁷ Accordingly, non-notarial gifts that exceed the permissible threshold and lack transparency may be reclassified as inheritance assets subject to redistribution.

The lack of a notarial deed also complicates the evidentiary process when disputes arise. Since non-notarial gifts are not automatically considered authentic under Article 1868 of the Civil Code, they must be proven through supporting evidence. This includes the testimony of witnesses, documents such as tax receipts, or indications of long-term use and possession of the property. However, the burden of proof in such cases lies with the party asserting the validity of the gift, often the recipient. If the court finds the evidence insufficient, it may declare the gift null, returning the asset to the estate for distribution. This scenario is particularly common in land-related gifts, where the absence of registration further weakens the recipient's legal position.¹⁸ As such, non-notarial gifts are not only procedurally vulnerable but also substantively unstable in terms of enforceability.

The psychological and emotional consequences of non-notarial gifts are also significant, especially when other heirs perceive the gift as an act of favoritism or exclusion. Even if the donor acted in good faith, the lack of formal procedure and consultation with other heirs may be interpreted as a breach of familial trust. In some cases, heirs may initiate litigation not merely for financial reasons but as a response to perceived injustice or marginalization. This dynamic often leads to prolonged legal disputes, deterioration of family relationships, and, in some cases, reputational harm. Hence, the legal consequences extend beyond the courtroom and deeply affect family

¹⁷ Muhammad Amin Almunazar, Manfarisyah Manfarisyah, and Hamdani Hamdani, "Analisis Yuridis Pemberian Dan Pembatalan Akta Hibah Tanah Nomor 590.4/23/2007 Menurut Hukum Perdata Dan Kompilasi Hukum Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 7, no. 2 (November 23, 2019): 14, <https://doi.org/10.29103/sjp.v7i2.2032>.

¹⁸ Ramadhani Nova, Rani Marnia, and Fajar Hidayat Muhammad, "Kajian Pencantuman Persetujuan Anggota Keluarga Sekandung Selain Penerima Hibah Dalam Akta Hibah Berdasarkan Kitab Undang-Undang Hukum Perdata," *Peradaban Journal of Law and Society* 2, no. 2 (December 12, 2023): 130–46, <https://doi.org/10.59001/pjls.v2i2.97>.

cohesion and social harmony. The law, therefore, plays a preventive role by encouraging formal documentation to minimize misunderstandings and protect all parties involved.

Government Regulation Number 24 of 1997 on Land Registration further stipulates that any transfer of land rights, including through gifts, must be formalized through a deed executed by a Land Deed Official (PPAT) and must be registered with the National Land Agency. If these requirements are not met, the gift is considered legally ineffective and cannot be used to update the ownership status in official land records. Consequently, recipients of such gifts face significant barriers when attempting to sell, mortgage, or legally defend their ownership. Moreover, other heirs may use the lack of registration as a basis for challenging the gift in court.¹⁹ In practical terms, the regulatory system reinforces the legal consequences of informal gifts by denying recipients access to the full benefits of ownership and legal recognition.

Judicial decisions consistently reflect a tendency to uphold inheritance rights over informal gift claims. Courts often apply a strict interpretation of formal requirements, particularly in inheritance disputes involving valuable property. In one case reviewed by the Religious High Court of Makassar, a child who received a non-notarial gift was ordered to return the property to the estate after the court found the gift to have interfered with the rights of other heirs. Although the gift had been made during the donor's lifetime, the lack of notarization, registration, and familial consent led the court to classify the gift as legally void.²⁰ This illustrates the judiciary's approach, which prioritizes transparency, formality, and fairness in determining the validity and effect of inter vivos gifts.

Legal scholars in Indonesia have long recognized the risks associated with informal intra-family transactions. Many argue that gifts given without proper consultation and legal documentation often conflict with the principle of justice among heirs, especially when such gifts lead to unequal distribution of family wealth. Legal commentators on

¹⁹ Anisa Rahma Hadiyanti, Rachmad Safa'at, and Tunggul Anshari, "Kedudukan Akta Hibah Dalam Sengketa Kepemilikan Hak Atas Tanah," *E-Journal Lentera Hukum* 4, no. 3 (December 14, 2017): 205, <https://doi.org/10.19184/ejlh.v4i3.5316>.

²⁰ I Gusti Ngurah Bagus Pramana and Gde Made Swardhana, "Perlindungan Hukum Atas Kriminalisasi Terhadap Notaris Karena Terjadinya Pembatalan Perjanjian Jual Beli Hak Atas Tanah," *Acta Comitatus* 5, no. 3 (December 14, 2020): 514, <https://doi.org/10.24843/AC.2020.v05.i03.p07>.

civil law emphasize the importance of adhering to formal procedures, particularly when the transaction involves immovable property or affects the rights of third parties. From a doctrinal standpoint, the absence of formality increases the potential for future disputes, exposes recipients to legal challenges, and places judges in a difficult position when adjudicating claims based on incomplete or unverifiable evidence. Consequently, the academic consensus aligns with judicial practice, which strongly favors legal formalization and family-wide transparency in all gift-related transactions.

The potential liability of legal professionals also arises in cases where formal requirements are overlooked. Notaries and Land Deed Officials who prepare or witness gift deeds without ensuring the presence and knowledge of all relevant parties may be held accountable for professional negligence. Although notarial deeds are presumed valid, this presumption may be rebutted if the process violates legal norms or if fraud or coercion is proven. Several cases have emerged where notarial acts were annulled due to procedural defects, such as the absence of informed consent or failure to verify the donor's mental competence.²¹ These outcomes show that even when formalities are ostensibly observed, the underlying process must also adhere to substantive legal standards. This underscores the broader legal implication that formality must be accompanied by procedural integrity and good faith.

From a policy perspective, the consequences of non-notarial gifts call for greater legal literacy among the public. Many families remain unaware of the legal requirements and risks associated with informal gifting. This ignorance often stems from a cultural preference for verbal agreements and the assumption that familial ties suffice to guarantee trust. However, as legal systems become more complex and property values rise, the need for formality becomes more pressing. Government agencies, legal practitioners, and community leaders all play a role in educating the public about the importance of legal procedures in maintaining justice and preventing familial conflict. Public campaigns, simplified legal processes, and accessible notarial services could reduce the frequency of disputes and enhance legal certainty in family transactions.

²¹ Aliffa and Wiryawan, "Kewenangan Notaris Dalam Pembuatan Akta Perjanjian Hibah Atas Tanah."

In conclusion, the legal consequences of non-notarial gifts from parents to children are far-reaching, particularly in the context of inheritance law. These gifts not only lack the procedural validity required under civil, Islamic, and land law but also risk undermining the principles of fairness and equality among heirs. The courts, legal doctrine, and regulatory framework all affirm that informal gifts, while culturally common, are legally precarious. Without proper documentation, consultation, and registration, such gifts are likely to be contested and may be declared void. To protect the interests of all parties and uphold the integrity of family law, formal procedures must be followed. This includes the involvement of notaries, PPATs, and full disclosure to all heirs. Ultimately, legal formalization is not merely a procedural necessity but a foundation for justice, harmony, and legal certainty in intergenerational wealth transfer.

CONCLUSION AND SUGGESTION

Legal evaluation of the norms contained in the Indonesian Civil Code, the Compilation of Islamic Law, and land administration regulations confirms that non-notarial gifts involving immovable property are weak in legal standing. Authentic deeds are required to validate such transactions under both civil and administrative law. The absence of these formalities often results in judicial rejection, especially when other heirs challenge the transaction. Court precedents indicate a consistent pattern in upholding inheritance rights and legal certainty over informal familial arrangements. In Islamic law, gifts perceived as unjust toward other heirs may be reclassified as inheritance and subject to redistribution. Judicial reasoning, doctrinal arguments, and administrative mechanisms all converge on the necessity of procedural compliance to protect the legitimacy of inter vivos transfers and preserve fairness within the family structure.

Legal safeguards should be strengthened through public education, wider access to notarial services, and clearer procedural guidance for intra-family transactions. Increased legal literacy is essential in communities where informal practices remain dominant. Legal professionals are expected to ensure transparency and include all relevant heirs in the documentation process to avoid future disputes. Policies promoting accessible and accountable legal services can reduce conflicts stemming from undocumented property

transfers. Legislative refinement may also be considered to reconcile socio-cultural gifting practices with legal standards without compromising justice or inheritance protection. Formal procedures should be viewed not as rigid constraints but as tools to uphold equity, legal clarity, and sustainable familial harmony.

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