



Juridical review of inheritance disputes arising from absence of gift deed in civil law

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ABSTRACT

This research examines inheritance dispute resolution caused by the absence of a deed of gift from a civil law perspective. Oral or informal gifts remain common, particularly among Muslim families, and often trigger disputes after the donor's death. The study aims to analyze: (1) the legal standing of inheritance disputes without a deed of gift, and (2) the juridical implications for donors, recipients, and other heirs. The research applies a normative-empirical juridical method, combining statutory, conceptual, and case study approaches. Primary data were collected through observation and interviews at Wahyudi and Partner Law Office, while secondary data were obtained from literature studies. The findings reveal that the absence of a deed weakens the recipient's legal position, leading courts to annul the gift and return the property to the estate. Thus, a deed of gift is essential not only as valid legal evidence but also as preventive legal protection to ensure certainty and avoid disputes.

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1. Introduction

Inheritance law in Indonesia is characterized by legal pluralism, encompassing the Civil Code (KUHPerduta), customary law, and the Compilation of Islamic Law (KHI) (Jamiluddin, 2024). One crucial issue in practice is gifts made orally or without an authentic deed (Nova et al., 2023). Although considered commonplace in society, especially in Muslim families, the absence of a gift deed often evokes memories when the inheritance is made public after the testator's death (Chomsah & Achmad, 2004). This demonstrates that gifts are not only moral but also a legal act that affects the certainty of ownership rights and the distribution of inheritance (Amanat, 2001).

Several previous studies have highlighted aspects of gifts and their importance in preserving inheritance (Anggraeni, 2006). Indah Ratna Sari examined the legal consequences of revoking a gift deed, while Muhammad Amin Almunazar examined the legal aspects of granting and revoking land gift deeds. Similarly, Khodadan Ryan Keano's research examines the validity of

oral land gifts under Islamic and civil law. However, most of these studies focus on gifts with existing deeds, while in-depth studies of the absence of a gift deed as a primary factor in protecting inheritance are still limited (Hr, 2013).

Based on this gap, this study aims to analyze the legal status of inheritance settlements triggered by the absence of a deed of gift and to examine the legal impact on the parties (Azikin, 2018). The strength of this research lies in its integrative perspective, combining normative and empirical approaches, highlighting actual practices in the field (Syuhada, 2019). Thus, this research offers novelties in the psychology of the theoretical aspects of legal certainty and the social dynamics of society (Padang & Harahap, 2024).

The urgency of having a deed of gift (*akta hibah*) in Indonesia's pluralistic inheritance law system lies in its function as legal evidence that bridges differences between the three legal systems civil law, Islamic law, and customary law. In the context of the Civil Code, a deed of gift ensures *legal certainty* and serves as written proof of the transfer of ownership, preventing disputes among heirs. In Islamic law, while oral gifts (*hibah lisan*) are recognized if there is consent and delivery, the deed formalizes these acts to align with state-recognized evidence. Meanwhile, in customary law, where communal ownership and kinship norms dominate, the deed acts as a harmonizing tool that converts traditional agreements into formally recognized rights. Thus, the gift deed becomes a unifying instrument that guarantees consistency, protects property rights, and minimizes potential conflicts across Indonesia's multi-legal framework.

Scientifically, this research is significant because it contributes to the development of Islamic civil and family law. Practically, it can serve as a guide for the public, legal practitioners, and policymakers (Almuntazar et al., 2019). By identifying key issues and offering solutions based on legal certainty, this research is expected to prevent conflicts between heirs and strengthen legal protection for all parties.

However, social, cultural, and religious factors continue to influence the persistence of informal gift practices. Many people still perceive the act of gifting as a matter of moral trust within families, assuming that verbal promises or witness-based agreements are sufficient to establish fairness and sincerity. In rural or traditional communities, the strong influence of kinship values and customary norms often discourages formal legal documentation, as it may be seen as a sign of distrust among relatives. Moreover, religious beliefs emphasizing good intentions mutual consent in Islamic giving further reinforce the assumption that a written deed is unnecessary when both parties share faith-based understanding. These factors collectively explain why oral or undocumented gifts remain socially accepted, despite their weak legal standing in court.

2. Method

This research uses a normative-empirical juridical method, combining analysis of applicable legal norms with a study of empirical facts in the field (Lubis, 1994). The research object focuses on inheritance disputes arising from the absence of a gift deed (Benuf & Azhar, 2020). This object was chosen because the practice of gifts without an authentic deed is still common in society, particularly in Muslim families, and often gives rise to legal conflicts after the testator's death (Muhaimin, 2020).

The normative approach is carried out through a review of relevant laws and regulations, including (Efendi & Ibrahim, 2018): a) The Civil Code (KUHPerdata), specifically Articles 1666–1692 and Article 1682 concerning the requirements for valid gifts; b) The Compilation of Islamic Law (KHI), specifically Articles 210–214 concerning gifts and their relationship to inheritance (Nadiffa & Saebani, 2024); c) Religious court decisions annulling gifts due to failure to meet formal requirements.

The empirical approach is used to understand social realities and legal practices in society (Bungin, 2012). Primary data was obtained through observations and interviews with advocates at the Wahyudi and Partner Law Firm in Serang, who handle inheritance cases involving gifts

without a deed (Sonata, 2014).

Research sources include (Armia, 2022): a) Primary data: interviews, observations of actual cases, and case documentation at the Wahyudi and Partner Law Firm (Marzuki, 2017); b) Secondary data: primary legal materials (statutory regulations), secondary legal materials (academic literature, theses/dissertations related to gifts), and tertiary legal materials (legal dictionaries, encyclopedias, official documents) (Bungin, 2012).

This method was chosen to address the main research questions, namely: (1) the legal status of resolving inheritance disputes without a gift deed, and (2) the legal implications for the donor, recipient, and other heirs (Zaini, 2011). By combining normative analysis and empirical findings, this research is expected to provide a comprehensive overview of the gap between legal theory and practice, while also offering practical recommendations to prevent future inheritance disputes (Yanova et al., 2023).

3. Analysis and Results

The research findings show that the absence of a deed of gift is consistently a major factor in the emergence of inheritance disputes in the community (Anshori, 2011). Based on observations and interviews at the Wahyudi and Partner Law Firm, it was found that gifts made only verbally or through underhand documents lack sufficient evidentiary force in court. As a result, gifts are often declared void, and the donated object is returned to the inheritance. This situation creates legal uncertainty and prolongs conflicts between heirs.

These findings emphasize that a deed of gift is not merely an administrative instrument, but also a means of preventative legal protection. With an authentic deed, the recipient's position in court is strengthened, and the potential for disputes can be minimized. Furthermore, the research findings highlight the role of legal practitioners who not only accompany clients in court but also educate the public about the importance of a deed of gift.

Compared to previous research, this study has a different focus. Indah Ratna Sari's study focuses more on the legal consequences of the cancellation of a deed of gift, while Muhammad Amin Almunazar's study focuses on the formal aspects of granting and canceling land gift deeds. Khodadan Ryan Keano's research examines the power of oral land gifts, but does not deeply link them to dispute resolution practices. The novelty of this research lies in its integrative analysis of the absence of a deed of gift as the root cause of inheritance disputes, as well as its direct link to empirical practice in the field (Suryadini & Widiyanti, 2020).

Thus, this study emphasizes the urgency of drafting a deed of gift as a form of effective legal protection and makes a novel contribution to the literature on Islamic civil and family law by highlighting the relationship between legal norms and social practices.

3.1. Legal Position of Settlement of Inheritance Disputes Caused by the Absence of a Deed of Gift from a Civil Law Perspective.

Settling inheritance disputes in civil law relies heavily on valid evidence, with the deed of gift playing a crucial role as authentic proof. However, the practice of making gifts without a deed is still common due to ignorance or reliance on kinship ties (Hadiyanti et al., 2017). The absence of an authentic deed has serious legal consequences, especially in disputes between heirs, as proof relies solely on witnesses or other weak evidence. According to Mr. H. Wahyudi, S.H., M.H., managing partner at the Wahyudi and Partner Law Firm, the legal standing of the absence of a deed of gift in the settlement of inheritance disputes from a civil law perspective.

"...A deed of gift serves as essential evidence in proving the legal transfer of rights in civil law. Without such a deed, the evidentiary process in court is weakened, as it must rely on alternative evidence such as witness testimony or private letters. In such circumstances, courts tend to apply the principle of prudence in deciding cases, which often results in the return of the gifted object to the inheritance. This practice, in reality, creates legal uncertainty and has the potential to create injustice for the recipient of the gift, who actually received the property in accordance with the testator's wishes. Administratively, a gift must be

granted using a deed of gift. This is stipulated in Article 1682 of the Civil Code, which states that no gift, except those covered by Article 1687, can be made without a notarial deed. The original must be kept with a notary. Failure to do so renders the gift invalid..."

Research findings at the Wahyudi and Partner Law Firm indicate that recipients of gifts without a deed often have difficulty defending their rights, while courts tend to return the gifted object to the inheritance. This aligns with the principle of legal certainty, where unclear gift administration increases the potential for disputes. Thus, the position of recipients of gifts without a deed in resolving disputes is very weak. It is important for people to make a gift deed to ensure legal certainty, prevent inheritance conflicts, and protect the rights of all parties.

3.2. Legal Implications for the Parties (Grantor, Recipient, and Other Heirs) if the Grant is Not Supported by an Authentic Deed in an Inheritance Dispute.

The legal implications of the absence of a deed of gift are complex and directly affect the legal standing of the parties involved in inheritance disputes. For the donor, the absence of a deed of gift means that their intention to distribute part of their assets during their lifetime risks not being legally recognized after their death. Assets transferred verbally or through informal statements are highly vulnerable to disputes by other heirs who feel aggrieved. This situation clearly disadvantages the donor, who essentially intends to carry out good intentions and ensure justice among the heirs. However, without authentic evidence, the donor's wishes are often not protected in the court process (Sari et al., 2018).

For other heirs, the absence of a deed of gift creates legal uncertainty regarding the portion of the inheritance they should receive. In many cases, heirs feel their rights are threatened because part of the assets have been unilaterally donated by the testator. Without official documents proving the validity of the gift, heirs have legal grounds to file a lawsuit to annul the gift to uphold the principle of fairness in the distribution of inheritance.

Meanwhile, for the recipient of the gift, the absence of a deed weakens their legal status to a quasi-possessor – someone who may hold or use the property but lacks ownership certainty. When a dispute arises, the recipient must prove both the donor's intention and the actual transfer of possession, which is often difficult without written evidence. Consequently, the court usually prioritizes the heirs' claims, as inheritance rights are more formally recognized. This creates a systemic vulnerability where recipients, though morally entitled, are legally disadvantaged compared to heirs with recognized inheritance rights. Such situations often trigger internal family conflict, lead to disputes between siblings, and prolong the legal process.

A study by Suryadini and Widiyanti emphasized that gifts not documented in an authentic deed and ignoring provisions regarding specific portions or rights of the inheritance that must be given to heirs drawn from the legal line (legitime portie) are highly likely to be annulled by the court, as an effort to protect the rights of legitimate heirs. Even if the recipient of the gift believes they legally acquired the property, their legal position remains weak without formal evidence that meets the requirements of civil law.

For other heirs, the absence of a gift deed creates uncertainty regarding their share of the inheritance. In many cases, heirs feel their rights are threatened because part of the property was unilaterally given as a gift by the testator. When there is no official document validating the gift, the heir has legal grounds to file a lawsuit to annul the gift to protect the principle of fairness in the distribution of inheritance. A gift can be revoked or cancelled if the conditions stipulated in Article 1688 are met, namely: a) If the grantee fails to fulfill the conditions of the gift; b) If the recipient of the gift is guilty of committing or participating in an attempted murder or other crime against the grantor; c) If the grantor becomes impoverished and the recipient refuses to provide for him or her.

The Compilation of Islamic Law states the following requirements for making a gift: a) The person must be at least 21 years old, of sound mind, and without coercion from any party; b)

May donate a maximum of 1/3 of their property to another person, witnessed in the presence of two heirs; c) The property donated must be the right of the grantor.

This situation often triggers internal conflict within families, increases the potential for disputes between siblings, and leads to protracted legal proceedings. Based on the experience of the Wahyudi and Partner Law Firm, disputes such as these not only impact the legal aspects but also significantly disrupt harmonious family relationships.

From a legal perspective, this situation demonstrates that the absence of a deed of gift creates legal vulnerabilities that adversely impact all parties involved. Both the grantor, the grantee, and other heirs face legal uncertainty and the potential for prolonged conflict. Furthermore, for judges, the absence of a deed of gift also complicates the evidentiary process, thus making it difficult to render a fair and legally based decision. Therefore, it is important to understand that a deed of gift is not merely an administrative document but also an essential piece of legal evidence to protect the rights and wishes of all parties involved in the gift process.

In conclusion, this study confirms that the application of a valid deed of gift is a crucial element in realizing the principles of justice and legal certainty in resolving inheritance disputes. The absence of such a deed significantly weakens the recipient's position in comparison to other heirs, as they lack formal ownership proof recognized under the Civil Code. Consequently, heirs can more easily challenge or revoke the gift, leading to prolonged litigation and familial discord. With a deed of gift, the grantor's wishes are guaranteed to be valid, the recipient's rights are protected by strong legal protection, and the rights of other heirs are respected. On the other hand, without a valid deed, all parties risk facing protracted legal uncertainty.

Therefore, the strategic role of notaries and Land Deed Officials (PPAT) becomes crucial in preventing future inheritance gift disputes. Notaries serve not only as drafters and authenticators of legal documents but also as educators who guide the public toward lawful and transparent gift-making practices. Through proper documentation, verification of the donor's capacity, and the inclusion of witnesses, notaries ensure that each gift fulfills both the formal and material legal requirements. Likewise, PPATs play a key role in ensuring the registration and transfer of land-based gifts, preventing overlapping ownership claims and safeguarding property rights. Their proactive involvement, including providing legal counseling and emphasizing the necessity of an authentic deed before any transfer of rights, can significantly reduce potential disputes and strengthen legal certainty for all parties involved.

4. Conclusion

This study concludes that the absence of a deed of gift creates significant legal vulnerabilities in resolving inheritance disputes, as recipients without authentic documentation face weakened legal standing, often resulting in the annulment of the gift and the return of the property to the estate. The findings highlight the deed of gift not merely as administrative evidence but as a preventive legal instrument ensuring justice and legal certainty for all parties. Future research is recommended to expand this discussion through comparative analyses of gift disputes across regions or legal systems to understand variations in resolution practices; quantitative studies on the frequency and causes of gift cancellations without deeds in court decisions; and socio-legal analyses exploring public awareness and cultural factors behind informal gifting practices. Further studies could also evaluate the preventive role of notaries and Land Deed Officials (PPAT) in promoting formalization of gifts, or conduct comparative assessments between gift deeds and wills to identify their relative effectiveness in safeguarding property rights within Indonesia's pluralistic legal framework. In practical terms, this research provides valuable implications for policymakers in formulating clearer and more comprehensive technical regulations on gift deeds. The findings suggest the need for standardized procedures governing the preparation, registration, and validation of deeds of gift, as well as mandatory public

awareness programs to educate citizens on their legal importance. Policymakers could also strengthen the coordination between notaries, PPATs, and local land offices to ensure that every transfer of property through a gift deed is properly documented and legally recognized. By incorporating these measures into technical regulations, the government can enhance legal certainty, reduce inheritance-related disputes, and promote equitable protection for all parties involved in property transfers.

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