The Dynamics of Family Property Arrangement before the Opening of Inheritance in the Perspective of Islamic Inheritance Law

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Abstract

The arrangement of family property before the opening of inheritance often raises problems when the family plan or agreement is considered as a final distribution of inheritance. This study aims to analyze the form of family property arrangement before the opening of inheritance and its legal position and consequences based on Islamic inheritance law. This research is normative legal research with a statutory approach and a conceptual approach. Primary legal material is in the form of a Compilation of Islamic Law (KHI), while secondary legal material includes books and journal articles on Islamic inheritance law and the Kediri Religious Court Decision Number 324/Pdt.G/2010/PA. Kdr as a judicial illustration in analyzing the grant model. Legal materials were collected through literature studies with inventory, identification, and classification techniques, then analyzed qualitatively using descriptive-analytical methods. The concept of *Penentuan Sebelum Pembagian* (PSP) developed by the Centre for Mawarith Studies (CMS), Universitas Darussalam Gontor, is used as an analytical knife to distinguish the phase of determination (*al-taqsim*) and the phase of division (*al-tauzi'*). The results of the study show four models of arrangement, namely family deliberation, appointment of assets to potential heirs, wills, and grants, which have different legal positions and consequences. Deliberation and appointment of assets do not automatically transfer ownership, whereas wills and grants are subject to the provisions of their respective laws. This research emphasizes the importance of ascertaining the status of the assets and rights of the parties before the division is made. The PSP framework helps

to distinguish the determination of rights from the exercise of division without superseding the provisions of the *farāʾiḍ*.

Keywords: Family Property Arrangement; Grants; Islamic Inheritance Law; *Penentuan Sebelum Pembagian* (PSP).

Abstrak

Pengaturan harta keluarga sebelum terbukanya pewarisan kerap menimbulkan persoalan ketika rencana atau kesepakatan keluarga dianggap sebagai pembagian warisan yang telah final. Penelitian ini bertujuan menganalisis bentuk pengaturan harta keluarga sebelum terbukanya pewarisan serta kedudukan dan akibat hukumnya berdasarkan hukum kewarisan Islam. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Bahan hukum primer berupa Kompilasi Hukum Islam (KHI), sedangkan bahan hukum sekunder meliputi buku dan artikel jurnal tentang hukum kewarisan Islam serta Putusan Pengadilan Agama Kediri Nomor 324/Pdt.G/2010/PA.Kdr sebagai ilustrasi yudisial dalam menganalisis model hibah. Bahan hukum dikumpulkan melalui studi kepustakaan dengan teknik inventarisasi, identifikasi, dan klasifikasi, kemudian dianalisis secara kualitatif menggunakan metode deskriptif-analitis. Konsep Penentuan Sebelum Pembagian (PSP) yang dikembangkan oleh *Centre for Mawarith Studies* (CMS), Universitas Darussalam Gontor, digunakan sebagai pisau analisis untuk membedakan fase penentuan (*al-taqsim*) dan fase pembagian (*al-tauzi'*). Hasil penelitian menunjukkan empat model pengaturan, yaitu musyawarah keluarga, penunjukan aset kepada calon ahli waris, wasiat, dan hibah, yang memiliki kedudukan serta akibat hukum berbeda. Musyawarah dan penunjukan aset tidak dengan sendirinya mengalihkan kepemilikan, sedangkan wasiat dan hibah tunduk pada ketentuan hukum masing-masing. Penelitian ini menegaskan pentingnya memastikan status harta dan hak para pihak sebelum pembagian dilakukan. Kerangka PSP membantu membedakan penentuan hak dari pelaksanaan pembagian tanpa menggantikan ketentuan *farāʾiḍ*.

Kata kunci: Hibah; Hukum Kewarisan Islam; Penentuan Sebelum Pembagian (PSP); Pengaturan Harta Keluarga.

A. Introduction

The implementation of Islamic inheritance law in Indonesia continues to face various dynamics along with changes in socio-cultural, economic, and family structure conditions in

society.[1] Although Islamic inheritance law has clearly regulated who is entitled to inheritance and the amount of share they receive, in fact the practice of distributing inheritance in people's lives does not always work as well as the normative provisions contained in Islamic inheritance law.[2] Various considerations, such as the desire to maintain family harmony, prevent disputes, accommodate the economic condition of children, and respect family members who have taken care of their parents,[3] encourage some families to start arranging property intended as inheritance while the owner is still alive. These conditions show that the implementation of Islamic inheritance law always interacts with the social dynamics that develop in society.[4]

One form of dynamics that develops in society is the practice of managing assets before the opening of inheritance. This is usually done by some parents who begin to manage their assets while they are still alive through various mechanisms,[5] such as conducting family deliberations,[6] wills, determining assets to be given to certain family members, or providing grants.[7] These steps are usually taken to maintain good relationships in the family and reduce the possibility of disputes in the future.[8] However, the arrangement of assets while the owner is still alive needs to be distinguished from the distribution of inheritance. In Islamic inheritance law, inheritance only opens after a person dies. Therefore, each form of property arrangement needs to be studied based on the type of action taken and the legal consequences.

To understand this problem, the calculation of the share of the heirs before the distribution of property is one of the important aspects in the study of Islamic inheritance law. In this case, the concept of *Penentuan Sebelum Pembagian* (PSP) developed by the Center for Mawarith Studies (CMS) Universitas Darussalam Gontor can be used as one of

[1] Mohd Ali Mohd Yusuf, Khiral Anuar Daud, dan Noorsafuan Che Noh, "Inheritance Distribution in Islam Between Legal Provisions and Dynamics of its Implementation," *International Journal Of Research And Innovation In Social Science (IJRISS)* 8, no. 12 (2025): 3719–26, https://doi.org/10.47772/IJRISS.

[2] Dwi Dasa Suryantoro, "Implementasi Hukum Waris Islam di Indonesia Prespektif Kajian Normatif dan Realitas Sosial," *SAMAWA: Jurnal Hukum Keluarga Islam* 5, no. 1 (2025): 15–28.

[3] Abdul Aziz, "Dinamika Pemberian Harta Waris Lebih Kepada Anak Bungsu Di Jakarta Timur," *An-Nawawi: Jurnal Hukum dan Ekonomi Islam* 4, no. 1 (2024): 29–40, https://doi.org/10.55252/annawawi.v4i1.42.

[4] Wido Zuwika et al., "Dinamika Hukum Kewarisan Di Era Modern: Tantangan Dan Relevansi Hukum Waris Islam," *Jurnal Syariah dan Hukum Islam* 3, no. 2 (2024): 31–45.

[5] Mhd Kurnia Rahman dan Amal Hayati, "Distributing Inheritance Before Death: Juridical Insights from Shafi'i Madhhab in Bangun Village," *Jurnal Legalitas* 18, no. 1 (2025): 126–37, https://doi.org/10.33756/jelta.v17i1.30989.

[6] Dita Septiyani, Najih Abqor, dan Arifuat Marzuki, "Dinamika Pembagian Harta Warisan Berbasis Konsensus Keluarga: Studi Empiris Hukum Waris Islam," *Al-'Adalah: Jurnal Syariah dan Hukum Islam* 10, no. 1 (2025): 196–207.

[7] M Alwi Romadani dan Mariani, "Tinjauan Hukum Islam Terhadap Praktik Hibah Kepada Anak Dalam Masyarakat Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 4, no. 2 (2026): 1238–51.

[8] Nurul Fathanah, "Hibah Sebagai Instrumen Preventif Dalam meminimalisir Potensi Sengketa Waris Di Lingkungan Keluarga: Analisis Hukum Islamdan Persfektif Yuridis," *Fafahhamna : Jurnal Hukum Keluarga Islam* 5, no. 1 (2026): 50–67.

the conceptual foundations.[9] The concept of PSP emphasizes the importance of determining who is entitled to be the heir and the share of each in accordance with Islamic inheritance law before the property is distributed. Furthermore, the distribution of property can be carried out based on the agreement of the heirs while still paying attention to the rights that have been determined according to the sharia.[10] However, the arrangement of property carried out while the owner is still alive cannot be immediately considered as an inheritance distribution. The legal status needs to be seen based on the form of arrangement carried out and the applicable legal provisions.

Previous research has discussed the implementation of Islamic inheritance law, the practice of giving property to certain children, the division of inheritance based on family agreements, and the use of grants in the arrangement of family property. These studies help to explain the relationship between the provisions of Islamic inheritance law and the practices that develop in society. However, studies are still needed that discuss various forms of family property management before inheritance is fully opened. This is important because people not only use grants, but also conduct family deliberations and develop a plan for the distribution of property while the parents are still alive. Each form of arrangement has different legal characteristics and consequences. Therefore, the PSP concept can be used to strengthen the analysis, especially in distinguishing the determination of inheritance rights and the implementation of asset distribution.

This study aims to analyze the practice of family property management before open inheritance in the Indonesian Muslim community and examine the position and legal consequences based on Islamic inheritance law. This research does not aim to contradict the practice of the community with Islamic provisions, but explains how various forms of property management can be assessed based on the applicable law. The results of the research are expected to add to the study of Islamic inheritance law, especially regarding the relationship between the practice of property management during life and the implementation of Islamic inheritance law in Indonesia.

B. Research Methods

This research is normative legal research that aims to analyze the practice of distributing family property before the opening of inheritance based on the provisions of Islamic inheritance law. This research uses a statutory approach, and a conceptual approach.[11] The statute approach is used to examine the provisions of the Compilation of Islamic Law (KHI). The conceptual approach is used to examine the concept of family deliberation, the appointment of certain assets, wills, grants, and the concept of *Penentuan Sebelum Pembagian* (PSP). The primary material used in this study is the Compilation of Islamic Law.

[9] Saiful Anwar dan Samsirin, "CMS (Centre for Mawarith Studies): A New Pattern of Islamic Mawarith Education in Indonesia," *At-Ta'dib* 15, no. 2 (2020): 323–40.

[10] Fazari Zul Hasmi Kanggas et al., "Concept of Penentuan Sebelum Pembagian (PSP) in the Distribution of Inheritance from Islamic Inheritance Perspective," *Jurnal Transformatif (Islamic Studies)* 10, no. 1 (2026): 1–15.

[11] Muhaimin, *Metode Penelitian hukum* (Mataram: Mataram University Press, 2020). Hal. 55.

Secondary legal materials consist of Islamic inheritance law books, journal articles and the Kediri Religious Court Decision Number 324/Pdt.G/2010/PA. Kdr, as a judicial illustration for the grant model.

The data collection technique is carried out through library research by inventorying, identifying, and classifying legal materials based on their relevance to the focus of the research. The analysis of legal materials is carried out qualitatively by an analytical descriptive method. The collected legal materials are analyzed to explain the form of the practice of distributing family property before the opening of inheritance, identify the legal issues, and assess its suitability with the provisions of Islamic inheritance law. As an analytical knife, this study uses the concept of *Penentuan Sebelum Pembagian* (PSP) or *al-Taqsim qabla al-Tauzi'* developed by the Center for Mawarith Studies (CMS) of Darussalam University Gontor. This framework is used to distinguish between the Phase of Determination (*al-Taqsim*) which is *fardu kifayah* and the Phase of Distribution (*al-Tauzi'*) which is flexible through *fara'id* and deliberation.[12]

C. Results and Discussion

Problems and Typologies of Estate Arrangement before the Opening of Inheritance

The distribution of inheritance in Indonesia takes place under diverse social and legal conditions. For Muslim families, Islamic inheritance law is one of the main references. However, the practice of managing family property is also influenced by local customs,[13] economic conditions, and parents' desire to maintain the harmony of their children. Problems arise when the arrangement of property carried out before the parents died is considered a final distribution of inheritance, even though the legal status is not necessarily the same as inheritance.

In general, there are three main problems in the practice. First, related to the determination of the object of property, namely when the family has not distinguished between the parents' personal property, joint property in marriage, property that has been transferred, and property that still belongs to the prospective heir. Second, related to the determination of rights, namely when the parents' will to give assets to a certain child is considered a final decision, even though the legal action has not met the requirements or has not been proven. Third, related to the implementation of the arrangement, namely when the family has reached an agreement on the division of assets, but does not have clear documentation or mechanisms to implement it without ignoring the rights of the other party.

This problem is related to the difference between the arrangement of assets during life and the distribution of inheritance property after death. As long as the owner is still alive, the transfer of property must be assessed based on the form of his legal act, such as a grant or will, not directly considered as inheritance, because inheritance is only opened after someone

[12] Anwar dan Samsirin, "CMS (Centre for Mawarith Studies): A New Pattern of Islamic Mawarith Education in Indonesia."

[13] Sarpika Datumula, "Islamic and Customary Inheritance Law: Addressing Differences and Similarities in the Distribution of Property," *Nafaqah: Islamic Family Law* 2, no. 1 (2025): 10–16.

dies. Inheritance rights are related to the fulfillment of the principles and conditions of inheritance, including the existence of a deceased heir.[14] As long as the owner is still alive, the inheritance relationship has not been opened so that the property in principle remains in his possession. The owner can utilize, develop, sell, grant, endow, or take other legal actions against his property as long as it complies with the applicable sharia provisions.

After the heir dies, the property he owns changes to a *tirkah* status that must first be settled by the rights attached to him, such as funeral expenses, debt repayment, and the execution of a valid will. The remaining property is then distributed to the heirs according to the provisions of Islamic inheritance law.[15] Therefore, the arrangement of property before death cannot necessarily be called an inheritance division because the inheritance has not been legally opened.

This principle shows the difference between the transfer of assets during life and the transfer of assets due to death. The transfer of assets during life is subject to the provisions of legal acts, such as buying and selling, grants, and waqf. On the other hand, the transfer of assets due to death is subject to the Islamic inheritance system which is *ijbari*, which is the transfer of rights to the heirs based on the provisions of the sharia, not solely based on the personal will of the heir.[16] Thus, the owner still has room to manage his property during his lifetime, but after the inheritance is open, the distribution must follow the provisions of the applicable inheritance law.

Based on these differences, the practice of arranging family property before the opening of inheritance needs to be differentiated according to the form of legal action used. Family deliberation, asset designation, submission of wills, and grants have different legal bases and consequences. Not all forms of arrangement result in the transfer of ownership rights. Therefore, the practice of what in society is referred to as inheritance distribution before the heir dies needs to be analyzed based on the form of action, the time of validity, and the legal consequences. The arrangement of property before the opening of inheritance can be grouped into the following four models.

Family Deliberations

Family deliberation is carried out to discuss the condition of the parents' property and convey the distribution plan to the children. Through deliberation, parents can explain the reasons behind the plan to give certain assets and build understanding among family members.[17] If there is a difference of opinion, the involvement of scholars or legal experts can be one way to help solve the problem.[18] From the perspective of Islamic inheritance law,

[14] Akhmad Haries, *Hukum Kewarisan Islam (Edisi Revisi)* (Samarinda: Ar-Ruzz Media, 2020). Hal. 35-36.

[15] Moh Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam: Sebagai Pembaruan Hukum Positif di Indonesia*, ed. oleh Dessy Marliani Listianingsih (Jakarta: Sinar Grafika, 2022). Hal. 50-55.

[16] Mardani, *Hukum Kewarisan Islam di Indonesia* (Depok: Rajawali Pers, 2017). Hal. 5.

[17] Septiyani, Abqor, dan Marzuki, "Dinamika Pembagian Harta Warisan Berbasis Konsensus Keluarga: Studi Empiris Hukum Waris Islam."

[18] Muhammad Ridwan, "Konflik Keluarga Dalam Pembagian Warisan: Perspektif Hukum Islam Dan Solusinya," *Al-Istinbath: Jurnal Ilmu Hukum dan Hukum Keluarga Islam* 1, no. 4 (2024): 168–76.

deliberation is basically a means of communication and transparency, not an action that directly transfers ownership rights.[19] As long as it is not accompanied by a legal act, the property in question remains the property of the parents, and it will only become *tirkah* if the property is still owned by the parents when they die.[20] Therefore, the existence of deliberation can help reduce the potential for disputes, but does not automatically change the legal status of property.

Designation of Certain Properties to Prospective Heirs

Property designation is done when the parents determine certain assets, such as houses, land, or gardens, that each child is expected to share in the future. In some families, the plan is mutually agreed upon so that each family member understands the parents' wishes regarding property management. Similar practices are also found in indigenous peoples. In Javanese tradition, if the eldest son marries, he can be given a house and furniture, while if the daughter is married, he can be provided with household equipment. This practice can be influenced by the habits of the community that adheres to the bilateral inheritance system and takes into account the economic conditions, needs, and responsibilities of each child.[21] However, the designation of assets needs to be distinguished from the transfer of ownership rights. If the appointment is only a statement of intent and has not been realized through a legal action, the appointment has not automatically transferred the rights to the assets. Therefore, the designation of property cannot be directly equated with a grant or distribution of inheritance. The legal consequences must be assessed based on the form of action taken and the applicable legal requirements.

Wills

A will is used to convey a will regarding the property that will be given after the testator dies.[22] Article 171 letter f of the KHI defines a will as the gift of an object from the heir to another person or institution that takes effect after the heir dies.[23] Through a will, a person can determine the recipient or the purpose of giving his or her property in accordance with the provisions of applicable law. The presentation of the will in front of family or witnesses can help clarify the will of the giver and reduce differences of interpretation in the future.[24] A will does not directly transfer ownership rights when it is stated.[25] Its

[19] Aulia Nur Faradila dan Wahyu Sukma Dewi, "Implementasi Asas Musyawarah dan Mufakat dalam Penyelesaian Sengketa Hukum Waris Adat di Indonesia," *Indonesian Journal of Social Sciences and Humanities* 3, no. 2 (2023): 39–46.

[20] Haries, *Hukum Kewarisan Islam (Edisi Revisi)*. Hal. 112.

[21] Achmad Muzammil Alfan Nasrullah, *Hukum Kewarisan Islam: Teori dan Praktik* (Metro: Nafal Publishing, 2024). Hal. 163.

[22] Aulia Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga* (Yogyakarta: Pustaka Baru Press, 2023). Hal. 200.

[23] Sayyidah Aslamah, *Kompilasi Hukum Islam Indonesia Antara Ayat dan Pasal* (Yogyakarta: Anak Hebat Indonesia, 2024). Hal. 186.

[24] Aulia Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga*. Hal. 219-220.

[25] Nasrullah, *Hukum Kewarisan Islam: Teori dan Praktik*. Hal. 164

implementation is related to the death of the testator and must meet the applicable legal requirements, one of which is that the limit of the assets to be bequeathed must not be more than one-third of the inheritance and requires the consent of the heirs if given to the heirs, as mentioned in article 195 of the KHI.[26] Therefore, a will needs to be distinguished from a plan for the distribution of ordinary property or grants that have been legally carried out during life.

Grants During Life

A grant during life is a form of asset management that is used to provide certainty to children, reduce the potential for disputes, facilitate the management of family assets, or adjust the gift to the needs of family members.[27] Article 171 letter g of the KHI defines a grant as the voluntary and unremunerated gift of an object from one person to another person who is still alive to own.[28] In contrast to deliberation and the appointment of assets that do not necessarily change ownership, grants can transfer property rights to the recipient if the harmony and conditions have been met.[29]

Sayyid Sābiq defines a grant as a contract that aims to give ownership of a property to another person while the giver is still alive without any compensation.[30] This definition emphasizes that a grant is not just an intention to give property, but is a legal action that can cause a transfer of property rights. Therefore, a grant that has been legally made can affect the amount of property that the giver owns at the time of death.

Although the owner has the right to donate his property, this freedom is inseparable from the principles of sharia, especially when the grant is given to a child or potential heir.[31] One of the bases for the discussion is the hadith of Nu'mān bin Basyīr r.a. in *Ṣaḥīḥ al-Bukhārī* Number 2587. The hadith tells the story of a father's giving of a special grant to one of his children. When asked to be a witness, the Prophet (peace and blessings of Allaah be upon him) refused and ordered that children be treated fairly in the granting of grants.[32] This hadith is one of the basis for scholars' discussion of justice in giving property to children so as not to cause disputes between them.

Scholars differ on the form of justice in question. Some argue that justice is realized through equal giving to all children. Others allow differences of share if there are justifiable reasons, such as differences in economic needs, health conditions, family dependents, or

[26] Tim Literasi Nusantara, *Kompilasi Hukum Islam* (Malang: Litnus, 2021). Hal. 48-49.

[27] Lukman Hakim, "Hibah Pra-Waris Dalam Keluarga Muslim: Kajian Sosiologi Islam Distributif," *At-Tasyrih: Jurnal Pendidikan dan Hukum Islam* 11, no. 2 (2025): 493–502.

[28] Sayyidah Aslamah, *Kompilasi Hukum Islam Indonesia: Antara Ayat dan Pasal* (Yogyakarta: Anak Hebat Indonesia, 2024). Hal. 186.

[29] M Yusuf et al., *Gerbang Fikih: Fikih Sistematis-Kasuistik* (Kediri: Lirboyo Press, 2019). Hal. 157-158.

[30] Al-Sayyid Sābiq, *Fiqh al-Sunnah* (al-Qāhirah: Dār al-Ḥadīth, 2004). p. 1076.

[31] Andi Alif Afwan, "Batasan Hibah dalam Perspektif Perlindungan Hak Ahli Waris Menurut Hukum Islam dan KHI," *Al Fuadiy: Jurnal Hukum Keluarga Islam* 8, no. 1 (2026): 1–13.

[32] Abū 'Abdullāh Muḥammad bin Ismā'īl bin Ibrāhīm bin al-Mughīrah. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār Ibn Kathīr, 2002). Hal. 628.

welfare considerations.[33] Even though there are differences of opinion, the gift of property still needs to pay attention to the principle of justice and is not intended to harm other heirs or avoid *farāʾiḍ* provisions.

This principle is important when the grant is given to someone who also has the potential to become an heir. The status of the recipient as a prospective heir does not in itself prevent the granting of the grant. However, the grant must be based on objective reasons and not intended to eliminate the rights of other heirs after the heir dies.[34] Therefore, the assessment of the grant is not enough only to look at the fulfillment of the principles and conditions of the contract, but also needs to pay attention to the context of the grant and its possible impact on the rights of other parties.

In addition to the principle of justice, an important issue in hibah is the handover of property (*qabḍ*). Imam Abū Ḥanīfah, Imam al-Syāfi'ī, and Imam Aḥmad bin Ḥanbal argued that the grant is not complete before the property being donated is actually handed over (*qabḍ*) to the recipient.[35] According to this view, the handover (*qabḍ*) is an important element in determining the perfection of the grant. This is relevant when the parents only state that an asset will be given to a certain child, but have not yet handed over control of it. In such a situation, there are still differences of opinion as to whether the grant has been perfect or is still part of the grantor's property. This issue shows that not every statement of intent to give property can be directly qualified as a grant that has caused legal consequences.

The development of the practice of estate management before the opening of inheritance is also related to changes in social conditions and people's views on justice in the family. Some families manage assets during life to anticipate problems that may arise after the heir's death. Considerations can include the economic contribution of the child, the responsibility of caring for the parents, the cost of education, and the needs of each family member. In this context, grants are seen as one of the instruments that can be used to adapt property management to family conditions, without necessarily replacing the Islamic inheritance system.[36]

This phenomenon received attention from Munawir Sjadzali when he served as the Minister of Religious Affairs. He stated that there is a dual attitude of some Muslims in implementing religious provisions, especially in the distribution of inheritance.[37] Based on the reports he received from the judges of the Religious Court, there are people who apply for the settlement of inheritance disputes in the hope of obtaining a decision based on Islamic inheritance law. However, after the verdict is handed down, some parties choose to take the

[33] Putri Rahma, Amar Adly, dan Heri Firmansyah, "Rekonstruksi Problematika Kewarisan Islam Kontemporer : Kajian Normatif Atas Penundaan Warisan, Pemerataan Hak Waris, dan Hibah Pra-Wafat," *An-naba: Jurnal Pendidikan dan Pengabdian Masyarakat* 1, no. 3 (2026): 2026.

[34] Afwan, "Batasan Hibah dalam Perspektif Perlindungan Hak Ahli Waris Menurut Hukum Islam dan KHI."

[35] Abdullah Zaki Alkaf, *Fiqih Empat Mazhab*, ed. oleh Irwan Kurniawan (Hasyimi Press, 2001). Hal. 312.

[36] Ahmad Baihaki dan Rabiah Al Adawiah, "Praktik Hibah Dan Wasiat Sebagai Pembagian Waris Pada Masyarakat Betawi Ditinjau dari Teori Maslahah," *Jurnal Hukum Sasana* 11, no. 2 (2025): 136–52.

[37] Arief Rahman Riyanda, "Reactualizing Islamic Inheritance Law: Munawir Sjadzali's Perspective on Gender Equality in Indonesia," *Jurnal El-Thawalib* 7, no. 2 (2026): 142–56.

path of the District Court with a civil law mechanism that is considered more in accordance with their wishes. This tendency is not only found in the general public, but also occurs among some Islamic organization leaders who have an adequate understanding of religion.[38]

To explain why this tendency is developing, Munawir then presents his personal experience. He said that he has six children consisting of three boys and three girls. All the education costs of his three sons until they complete higher education, including education abroad, are fully borne by him. On the other hand, two of his three daughters do not continue their education to college, so the costs incurred are much smaller. The difference in economic benefits received by each child raises questions in Munawir regarding the application of inheritance distribution based on the provisions of Islamic law. If these provisions are applied textually, boys who have received greater economic benefits during their lives will still receive twice as much inheritance as girls. This condition prompted Munawir to seek views on how the problem should be addressed in the perspective of Islamic law.[39]

Munawir then asked a scholar for advice. However, the scholar did not give any answers or advice on how the property should be distributed. Instead, he told his personal experience, namely dividing part of his property to children through grants while he was still alive so that each child received a share that was seen as in accordance with his family's conditions, while the remaining property would be distributed to the heirs after he died according to the provisions of Islamic law.[40] The story shows that the practice of distributing property through grants before the opening of inheritance is not something completely new, but has been practiced by some circles as a way to accommodate certain family conditions without eliminating the applicability of Islamic inheritance law to property that still belongs to the heir.

Based on this experience and his observations during his tenure as Minister of Religious Affairs, Munawir concluded that the practice of property management before the opening of inheritance has in fact developed among the Indonesian Muslim community. He called this tendency a pre-emptive policy, which is a step taken by a person by taking advantage of his right to property while still alive to manage part of his property before the opening of the inheritance.[41] According to Munawir, the practice was born as a response to the need to bring a sense of justice in certain family conditions, not solely as a form of rejection of the Islamic inheritance system.[42]

Based on this discussion, the four models of property management before the opening of the inheritance have different legal positions. Family deliberation and asset designation

[38] Sulastomo et al., *Kontekstualisasi Ajaran Islam: 70 Tahun Prof. Dr. H. Munawir Sjadzali, MA* (Jakarta: Paramadina, 1995). Hal. 88.

[39] Masruri dan Munifah, "Persamaan Hak Antara Laki-Laki Dan Perempuan Dalam Pembagian Harta Waris: Studi Pemikiran Munawir Sjadzali," *Wahana Akademika: Jurnal Studi Islam dan Sosial* 9, no. 1 (2022): 41–53.

[40] Sulastomo et al., *Kontekstualisasi Ajaran Islam: 70 Tahun Prof. Dr. H. Munawir Sjadzali, MA*. Hal. 89.

[41] Sulastomo et al. p. 90.

[42] Iis Rezki Rahmaniar, Zakiyah Azzahrah, dan Haerul Muhammad, "Hukum Waris Kontemporer Pemikiran Munawir Sjadzali Tentang Kewarisan Di Indonesia," *Indonesian Journal of Innovation Multidisipliner Research* 4, no. 3 (2026): 2675–81.

can be in the form of a plan that has not changed ownership. A will is a will whose execution is related to the death of the testator. Meanwhile, a grant can transfer ownership rights during life if the legal requirements are met. Therefore, the practice of what society calls the distribution of inheritance before the heir dies needs to be assessed based on the form of legal action, asset status, applicable requirements, and consequently the rights of other family members.

Analysis of the Legal Position of Deliberation, Appointment of Assets, Wills, and Grants

First, family deliberation has social value because it opens communication, provides opportunities for family members to express their views, and can reduce misunderstandings. Research on resolving inheritance disputes through deliberation also places agreement as one way to maintain family relationships.[43] However, informal agreements do not automatically change the ownership of assets. As long as the owner is alive, talk about the future division of property is essentially a family plan and does not automatically transfer ownership rights. The legal consequences depend on whether the agreement is then realized through legal action. After the heir dies, Article 183 of the KHI provides space for the heirs to achieve peace in the division of the inheritance after each knows the share to which he or she is entitled.[44] Therefore, deliberation should be a means of reaching an agreement after the rights are known, not a substitute for the determination of the right.

Second, the designation of a particular asset to a child can give an idea of the parents' will and help the family plan the management of the assets. However, designations such as "this house is for the first child" or "the land is for the youngest child" are not always sufficient to prove that the title has been transferred. The legal consequences depend on the intent of the action, the legal form used, the status of the object, and whether the requirements for the transfer have been met. Risks arise when the family considers the verbal designation to be the final decision, while other family members consider the assets to still belong to the parents. Thus, this model requires clarity on whether the act merely states a plan, is a grant that has been executed, or is a will to be executed after death.

Third, a will provides space for the owner of the property to convey his will regarding the gift of property that will be carried out after he dies.[45] Unlike a grant during life, a will does not directly transfer ownership rights when it is declared. Its implementation must pay attention to the provisions of Islamic inheritance law and the Compilation of Islamic Law (KHI), including provisions regarding the recipient, the limit of the grant, and the consent required in certain circumstances.

Fourth, grants during life have more direct consequences on ownership status than deliberation or appointments that have not been realized. Article 210 of the KHI stipulates, among other things, that the grantor must be at least 21 years old, of good sense, not under

[43] Faradila dan Dewi, "Implementasi Asas Musyawarah dan Mufakat dalam Penyelesaian Sengketa Hukum Waris Adat di Indonesia."

[44] Tim Literasi Nusantara, *Kompilasi Hukum Islam*. Hal.46.

[45] Agus Hermanto, *Problematika Hukum Keluarga Islam di Indonesia* (Malang: Literasi Nusantara, 2021). Hal. 330-331.

duress, and can donate at most one-third of his property in the presence of two witnesses.[46] The object of the grant must also be the right of the grantor. In practice, it is not enough to examine whether there is a statement that an asset has been granted. It is necessary to examine whether the asset is really the right of the grantor, whether there are other parties' rights to the asset, including the rights of the spouse in the common property, whether the handover and proof of transfer can be shown, and whether the legal requirements of the grant have been met.

Overall, the main weakness of the four models does not lie in the existence of deliberation or the will of parents to manage property, but in the unclear status of the action. This can affect the determination of the object of inheritance, the protection of the rights of heirs, and the proof when disputes are brought to court. Therefore, each model needs to be evaluated based on its legal functions and consequences, not just based on the social goals to be achieved.

Judicial Illustration: Grant Disputes in Religious Court Decisions

The relevance of the issue of arranging family property before the opening of the inheritance can be seen through the Kediri Religious Court Decision Number 324/Pdt.G/2010/PA.Kdr. This case is related to a grant in the form of a permanent house that stands on a land area of 964 m² on Jalan KH Agus Salim Number 83, Bandar Kidul, Mojoroto, Kediri. The object was donated by Anas Rauf to Atik Winarti, his adopted son. Djuminah, the wife of the late Anas Rauf, filed a lawsuit for the cancellation of the grant by postulating that the object of dispute was joint property. The court granted the lawsuit and declared the grant null and void.[47] This case shows the importance of checking the status of property ownership and the authority of the giver before the grant is made. However, the basis for the cancellation and the legal consequences of the decision need to be understood based on the judge's consideration and the judgment concerned.

The decision is relevant as a judicial illustration because it shows that a lifetime grant does not necessarily eliminate potential disputes after the giver dies. The validity of the grant needs to be assessed by taking into account the status of the object, the authority of the giver, and the rights of other parties related to the property. However, this decision cannot be generalized to state that any grant to an adopted child or any gift that benefits one family member can be canceled. Moreover, because the case focuses on grant disputes, its use in this study is limited to explaining the importance of the certainty of the status of the property and the validity of the transfer of rights.

Based on this description, the arrangement of family property before the opening of inheritance must be assessed based on the validity of the legal action, the ownership status of the assets, compliance with applicable legal requirements, and the protection of the rights of interested parties. As illustrated by Kediri Religious Court Decision Number 324/Pdt.G/2010/PA.Kdr, resolving property disputes requires careful examination of the

[46] Aslamah, *Kompilasi Hukum Islam Indonesia: Antara Ayat dan Pasal*. Hal. 199.

[47] Pengadilan Agama Kediri, "Putusan Pengadilan Agama Kediri Nomor 324/Pdt.G/2010/PA.Kdr." (2010).

relevant facts, evidence, and legal considerations. However, this decision should not be generalized to all grant disputes, as each case must be assessed according to its specific circumstances and judicial findings.

The Concept of *Penentuan Sebelum Pembagian* (PSP) as a Model for Asset Management

Based on the typology and analysis above, this study offers a framework for *Penentuan Sebelum Pembagian* (PSP), which departs from the idea of *al-taqsim qabla al-tauzi'* or *Penentuan Sebelum Pembagian*. PSP is not intended to replace *farāʾiḍ* provisions or create a new type of legal act. The novelty offered lies in the application of the framework to distinguish the legal status of four models of property regulation and to compile a sequence of checks that can be used before property is distributed. With this framework, the family does not directly equate the will of the parents with the legal division of inheritance, but first ensures the status of assets and the rights of the parties.

The PSP consists of two stages. The first stage is the determination of status and rights. At this stage, the family or the party assisting in the settlement process needs to: (1) identify the assets and determine their ownership, including separating personal property from the joint property if relevant; (2) check whether there has been a legal transfer during life, such as a grant, or whether there is a new one in the form of deliberations, appointments, or wills; (3) when the inheritance has been opened, identify the *tirkah* and settle the obligations that must take precedence according to the law; and (4) determine the heirs and their respective shares based on the provisions of the applicable inheritance law.[48] The results of this stage should be clearly recorded so that the family has a common understanding of the object and rights being discussed.

The second stage is the execution or distribution.[49] If the owner is still alive, the execution follows the chosen legal form and the applicable requirements: the plan can remain a plan, the grant must meet the conditions of the transfer, and the will follows the rules that govern it. If the inheritance has been opened, the property is distributed based on the predetermined rights. The heirs can deliberate on the agreed method of execution or division after knowing their respective shares, in line with Article 183 of the KHI. The agreement must be given consciously and voluntarily and should not be assumed to be valid just because it was made in a family atmosphere.

Thus, the PSP distinguishes two often mixed questions: who is entitled to the property and how the property is then executed or distributed. The determination of rights provides the basis for legal certainty, while deliberation provides room to accommodate the family's conditions in execution.[50] When applied to the four models, deliberation is placed as a means

[48] Ria Rahmawati dan Mohamed Shafei Moftah Bosheya, "Islamic Strategy Offers In The Implementation Of The Science Of Mawarist In Society: Study Centre Of Mawarits Studies Unida Gontor," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 17, no. 1 (2020): 93–108, https://doi.org/10.21154/justicia.

[49] Kanggas et al., "Concept of Penentuan Sebelum Pembagian (PSP) in the Distribution of Inheritance from Islamic Inheritance Perspective."

[50] Rahmawati dan Bosheya, "Islamic Strategy Offers In The Implementation Of The Science Of Mawarist In Society: Study Centre Of Mawarits Studies Unida Gontor."

of communication and agreement; the designation of assets must be clarified whether it is just a plan or has been embodied in a legal act; a will is examined as a will that applies according to the provisions after death; and a grant is tested on the validity of the transfer and the status of its object.

The PSP framework also has its limits. The PSP is not a substitute for legal advice, it is not a formula for ratifying every family agreement, and it does not remove the need to examine evidence or resolve disputes through the courts when an agreement is not reached. Its application needs to take into account concrete circumstances, including the status of the common property, the competence and will of the parties, the transfer documents, and the rights of the other party. The Kediri PA decision discussed above reinforces the relevance of examining the status of the object and the validity of the grant, but cannot be considered as a direct test of the PSP. The PSP in this article is an analytical offer that still needs to be tested through empirical research and the review of more decisions.

Overall, the PSP model offers an analytical framework that places the determination of the status of property and the rights attached to it as the initial stage before the distribution of inheritance is carried out. This model is not intended to change the Islamic inheritance system or replace *farāʾiḍ* provisions, but to clarify the relationship between the arrangement of assets during life and the distribution of inheritance after the inheritance is open. Thus, the arrangement of property prior to the opening of inheritance can only affect the status of ownership or distribution of inheritance if it has a recognized legal basis and meets the applicable requirements. A family agreement or the designation of assets that do not meet these requirements does not automatically change the status of the estate or the provisions of the inheritance.

D. Conclusion

This study concludes that the arrangement of family property before the opening of inheritance cannot be equated with inheritance distribution, as its legal consequences depend on the form of the legal act and the fulfillment of applicable requirements. Four models were identified: family deliberation, designation of assets to prospective heirs, wills, and grants, each with distinct legal implications. The application of the PSP framework provides a two-stage approach, namely determining asset ownership and the rights of the parties, followed by the implementation or distribution of property in accordance with Islamic inheritance law. Therefore, families and legal practitioners should verify asset ownership, ensure compliance with legal requirements, protect the rights of other parties, and maintain clear evidence of property transfers to minimize potential disputes. Further research should empirically examine the application of the PSP framework and analyze additional court decisions to assess its practical effectiveness in resolving family property and inheritance issues.

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