



THE VALIDITY OF PARENTAL ORAL INTER VIVOS GIFTS TO CHILDREN IN SUPREME COURT DECISIONS: A COMPILATION OF SHARIA ECONOMIC LAW PERSPECTIVE

Nadea Nur Sofia Madani,¹ Rahmadi Indra Tektona,² Yusuf Adiwibowo³

^{1,2,3}Master of Notary Program, Universitas Jember, Indonesia

email: ¹nadea.madani@gmail.com, ²rahmadiindra@unej.ac.id, ³yusufadiwibowounej@gmail.com

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ABSTRACT

The legal validity of an oral inter vivos gift (*hibah*) from parents to their children remains a contentious legal issue, reflecting the tension between its substantive recognition under Islamic law and the evidentiary requirements of the judicial system, particularly when the subject matter of the gift involves land that subsequently becomes the object of inheritance disputes. This study aims to examine the legal validity of oral *hibah* in judicial evidentiary proceedings, analyse oral *hibah* from the perspectives of moderate Islam and *maṣlahah* (public interest), and evaluate the juridical construction adopted by the Supreme Court in assessing the validity of oral *hibah* under the Compilation of Sharia Economic Law (Kompilasi Hukum Ekonomi Syariah—KHES). This study employs normative legal research using statutory and conceptual approaches. The research is based on secondary data collected through library research and analysed qualitatively using a prescriptive analytical method. The findings demonstrate that the validity of an oral *hibah* is determined not by the form of the contract but by evidence establishing the donor's genuine intention, the effective transfer of possession (*qabḍ*), and the actual control of the gifted property by the recipient. From the perspective of moderate Islam, an oral *hibah* remains legally valid insofar as it reflects the principles of justice, public welfare (*maṣlahah*), and the protection of the parties' rights. Furthermore, the Supreme Court's decision establishes a juridical framework that integrates the principles of KHES, the law of evidence, and legal certainty in land administration through a balanced assessment of both Sharia validity and evidentiary validity. This study recommends the formulation of specific evidentiary guidelines for oral *hibah* within the Religious Courts and the harmonisation of KHES with land law regulations to strengthen legal certainty while preserving the fundamental values of justice and public welfare.

Keywords: Oral Hibah; Supreme Court; Compilation of Sharia Economic Law; Moderate Islamic Law; Judicial Decision.

ABSTRAK

Keabsahan hibah lisan orang tua kepada anak masih menjadi isu hukum yang menimbulkan perbedaan antara pengakuan substantif dalam hukum Islam dan pembuktian dalam sistem peradilan, khususnya ketika objek hibah berupa tanah menjadi sengketa di antara ahli waris. Penelitian ini bertujuan menganalisis keabsahan hibah lisan dalam proses pembuktian di peradilan, mengkaji hibah lisan dalam perspektif Islam moderat dan kemaslahatan, serta menganalisis konstruksi yuridis Putusan Mahkamah Agung dalam menilai hibah lisan berdasarkan Kompilasi Hukum Ekonomi Syariah (KHES). Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundangundangan dan pendekatan konseptual. Data yang digunakan berupa data sekunder yang dikumpulkan melalui studi kepustakaan, kemudian dianalisis secara kualitatif menggunakan teknik analisis preskriptif. Hasil penelitian menunjukkan bahwa keabsahan hibah lisan tidak ditentukan oleh bentuk akad, melainkan oleh pembuktian atas terpenuhinya kehendak pemberi hibah, penyerahan objek (*qabḍ*), dan penguasaan nyata oleh penerima hibah. Dalam perspektif Islam moderat, hibah lisan tetap sah sepanjang mencerminkan prinsip keadilan, kemaslahatan, dan perlindungan hak para pihak. Putusan Mahkamah Agung membangun konstruksi yuridis yang mengintegrasikan prinsip-prinsip KHES, hukum pembuktian, dan kepastian hukum pertanahan melalui penilaian terhadap validitas syariah dan validitas pembuktian secara proporsional. Penelitian ini merekomendasikan penyusunan pedoman pembuktian hibah lisan di lingkungan Peradilan Agama serta harmonisasi pengaturan antara KHES dan regulasi pertanahan untuk memperkuat kepastian hukum tanpa mengabaikan nilai-nilai keadilan dan kemaslahatan.



Introduction

Grants (*hibah*) serve as an essential instrument of property distribution within Islamic law, encompassing social, moral, and legal dimensions simultaneously.¹ In Islamic law, an inter vivos gift is not merely viewed as a private legal act; it also represents the manifestation of justice, public interest (*maṣlaḥah*), and mutual assistance—core tenets of Islamic doctrine. Furthermore, a gift carries distinct legal consequences, as it effectuates the immediate transfer of ownership rights from the donor (*wāhib*) to the recipient (*mawhūb lahu*) during the donor's lifetime.

In the practical context of Indonesian Muslim society, gifts are frequently executed orally, particularly between parents and biological children. This practice stems from a socio-cultural fabric that deeply embeds familial ties, mutual trust, and filial piety as the primary foundation for family property distribution. Normatively, Islamic law does not prescribe written formalities for a gift contract (*'aqd*). The majority of Islamic legal scholars (*fuqahā'*) agree that an oral gift is valid provided it satisfies the essential elements (*rukun*) and legal conditions (*syarat*), a doctrine accommodated in the Compilation of Islamic Law (KHI) and further reinforced in the Compilation of Sharia Economic Law (KHES). Notably, the KHI does not explicitly mandate written documentation for gifts, thereby leaving room for oral execution.² This provision demonstrates that the Islamic law incorporated into the KHI prioritizes the substantive validity of the contract over administrative formalities.

Nevertheless, this flexibility within Islamic law frequently conflicts with the national legal system, which emphasizes legal certainty and administrative order in land governance. Under Indonesian positive law specifically the Basic Agrarian Law (*Undang-Undang Pokok Agraria*) and Government Regulation No. 24 of 1997 on Land Registration any transfer of land rights, including gifts, must be evidenced by an authentic deed issued by a Land Title Registrar (PPAT). Moreover, Article 1682 of the Civil Code (*KUHPerdata*) explicitly dictates that a gift must be executed via a notarial deed unless otherwise provided by law.³ These statutory

¹ Erie Hariyanto et al., "Social Delegitimation of Religious Obligation: Zakat , Infaq, and Shodaqoh Traditions among Transnational Madurese Migrant Workers of Indonesia-Malaysia," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (2025): 488-514, <https://doi.org/10.18860/j.v16i2.36809>.

² M. Nur Kholis Al Amin, "Hibah Orang Tua Kepada Anak Sebagai Pengganti Waris (Telaah Hermeneutika Terhadap Pasal 211 Kompilasi Hukum Islam)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 1 (2013): 29-44, <https://doi.org/10.14421/ahwal.2013.06103>.

³ Ananda Surya Dharma and Mella Ismelina Farma Rahayu, "Legal Certainty of Reporting Granted Assets Without Authentic Deeds in the State Officials' Wealth Report System: Kepastian Hukum Pelaporan Harta



mandates illustrate that the state positions administrative formality as a critical instrument to guarantee legal protection and prevent land disputes. Consequently, land gifts executed orally occupy a vulnerable position when contested in court.

The issues surrounding oral land gifts become increasingly complex when inter-heir disputes arise following the donor's death. The absence of written documentation, coupled with inadequate witness testimony and ambiguous physical delivery (*taslīm*) of the gifted property, renders the evidentiary process highly problematic. Extant studies indicate that oral gifts are frequently subject to revocation lawsuits filed by other heirs, who allege non-compliance with the essential elements of *hibah* or violations of intra-familial equity.⁴ Within this context, a moderate Islamic legal approach (*wasatīyah*) offers a relevant analytical framework. Moderate Islamic jurisprudence posits that the application of Islamic law must proportionally integrate Sharia values with contemporary social realities and the national legal framework.

Notwithstanding these theoretical frameworks, Supreme Court judgments regarding oral gifts reveal significant dynamics and inconsistencies in judicial reasoning. For instance, Supreme Court Decision No. 193 K/AG/2009 and Decision No. 252 K/Ag/2024 demonstrate the Court's inclination to annul oral gifts that lack clear evidentiary support, particularly concerning the offer and acceptance (*ījāb wa qabūl*) and the transfer of property possession. In these rulings, the Supreme Court held that failure to fulfill the essential elements of *hibah* as stipulated in the KHES and KHI constitutes a procedural defect that voids the gift ab initio. This line of reasoning underscores a strict approach toward evidentiary standards and procedural compliance.

Conversely, in Supreme Court Decision No. 992 K/Pdt/2015, the Court upheld the validity of an oral land gift based on the doctrine of protecting good-faith parties. This decision reflects a more substantive and contextual judicial approach that prioritizes empirical social facts and equitable outcomes. Additionally, Takengon Sharia Court Decision No.

Hibah Tanpa Akta Otentik Dalam Sistem Laporan Harta Kekayaan Penyelenggara Negara,” *Academia Open* 10, no. 2 (2025): 1–21, <https://doi.org/10.21070/acopen.10.2025.12832>.

⁴ Andito Gema Bayhaqie, “Tinjauan Yuris Pembatalan Akta Hibah Kepada Ahli Waris Penghibah (Putusan Pengadilan Agama Kediri No: 324/Pdt. G/2010/PA. Kdr)” (Universitas Islam Sultan Agung, 2022); Takib Wilman Hakim, “Hibah Waris Tanpa Persetujuan Salah Satu Ahli Waris (Studi Kasus Putusan Pengadilan Negeri Cirebon Nomor. 18/Pdt. G/2017/PN. Cbn)” (Universitas Islam Sultan Agung, 2022), <http://repository.unissula.ac.id/id/eprint/26071>; Rio Budiarto, “Kepastian Hukum Atas Pelaksanaan Hibah Akta Tanah Terhadap Cucu (Studi Terhadap Putusan Nomor: 357/PDT/2023/PT BDG.). Diss. , 2024.” (Universitas Islam Sultan Agung Semarang, 2024), <http://repository.unissula.ac.id/id/eprint/37106>.



80/Pdt.G/2023/MS.Tkn recognized the oral distribution of family assets rooted in the customary law (*adat*) of the Gayo Muslim community. Such judicial variations highlight the absence of a standardized legal benchmark for assessing the validity of oral gifts.

Previous scholarship on *hibah* has largely focused on normative analyses within classical jurisprudence (*fiqh*) or comparative studies between Islamic law and the Civil Code.⁵ Other studies have examined oral gifts through sociological lenses or individual case studies at the court of first instance.⁶ However, comprehensive studies critically examining the validity of oral gifts under the construct of the Compilation of Sharia Economic Law (KHES) through an analysis of the Supreme Court's *ratio decidendi* remain scant. Therefore, this study aims to analyze the legal validity of oral land gifts from parents to biological children, the mechanisms of judicial proof, and the legal constructs employed in Supreme Court decisions, utilizing the KHES, the objectives of Islamic law (*maqāṣid asy-syarī'ah*), and the socio-cultural context of Indonesian Muslims as the primary analytical framework.

This study employed doctrinal legal research using a statute approach and a conceptual approach.⁷ The secondary data sources comprised legal materials including the Compilation of Sharia Economic Law (KHES), the Compilation of Islamic Law (KHI), the Civil Code (KUHPerdata), relevant land regulations, and selected Supreme Court judgments. Data were collected through comprehensive library research and subjected to qualitative legal analysis utilizing systematic, grammatical, teleological, and argumentative interpretative techniques applied to legal norms and judicial reasoning (*ratio decidendi*).⁸ The analysis was conducted prescriptively to establish a coherent legal construct regarding the validity parameters of

⁵ Muammar Fadillah, Adnan, and Muhammad Amin, "Kepastian Hukum Terhadap Tanah Hibah Tanpa Surat Hibah Dalam Perspektif KUHPerdata Dan Kompikasi Hukum Islam," *Nalar: Jurnal Of Law and Sharia* 1, no. 3 (2023): 200–215, <https://doi.org/10.61461/nlr.v1i3.48>; Moch Iqbal, Universitas Merdeka Pasuruan, and Universitas Merdeka, "Kajian Yuridis Peralihan Hak Atas Tanah Melalui Hibah Secara Lisan," *YURIJAYA: Jurnal Ilmiah Hukum* 5, no. 2 (2023): 55–64, <https://doi.org/10.51213/yurijaya.v5i2.105>; Asriadi Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata Dan Hukum Islam," *Jurnal Al-Himayah* 1, no. 1 (2017): 92–105, <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/288>.

⁶ M. Khodadan Ryan Keano, Ruslan Abdul Ghani, and Rahmi Hidayati, "Kekuatan Hukum Hibah Tanah Secara Lisan Menurut Fiqh Dan Hukum Perdata Terhadap Objek Tanah Sdn 212 Kelurahan Kenali Asam Bawah Kecamatan Kota Baru Kota Jambi," *Pendas: Jurnal Ilmiah Pendidikan Dasar* 10, no. 2 (2025): 334–61, <https://doi.org/10.23969/jp.v10i02.27078>; Albert Tanjung, "Hibah Lisan Tanah Kaum Koto Lansano Menurut Hukum Minangkabau," *Jurnal Ilmu Dan Budaya* 41, no. 63 (2019): 7449–64, <https://doi.org/10.47313/jib.v41i63.686>.

⁷ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Prenada Media Group, 2018); Muhammad Chairul Huda, *Metode Penelitian Hukum (Pendekatan Yuridis Sosiologis)* (Salatiga: IAIN Salatiga Pers, 2022).

⁸ Mathew B. Miles, A. Michael Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook Third Edition* (California: SAGE Publication, 2014).



parental oral gifts to children under the perspective of the Compilation of Sharia Economic Law.

Results

A gift (*hibah*) in Islamic law constitutes a form of gratuitous contract (*'aqd tabarru'*), which aims to confer benefits upon another party without compensation or commercial motives.⁹ In classical jurisprudence literature, a gift is defined as the voluntary, final transfer of property ownership during the donor's lifetime without pecuniary return.¹⁰ This definition underscores two primary characteristics of *hibah*: its voluntary nature and its irrevocable transfer of ownership. In other words, a gift originates from altruistic values and social solidarity, rendering it not merely a narrowly defined legal transaction, but also a social worship infused with spiritual significance.

The essential elements (*rukun*) of a gift in Islamic law encompass five components: the donor (*wāhib*), the recipient (*mawḥūb lahu*), the subject matter (*mawḥūb bih*), the offer/declaration (*iqrār*), and the transfer of possession (*qabḍ*).¹¹ From the perspective of commercial jurisprudence (*fiqh mu'āmalāt*), the offer and acceptance (*ṣīghah*) are not required to be executed in written form or through specific formal phrasing. The majority of scholars across the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī schools agree that offer (*ījāb*) and acceptance (*qabūl*) may be communicated orally, in writing, through gestures, or via conduct that unequivocally demonstrates the intent to transfer ownership.¹² Thus, oral gifts are fundamentally valid and recognized under Islamic law, provided the intentions of both parties are clear, uncoerced, and free from fraudulent intent. Nevertheless, legal disputes regarding oral land gifts extend beyond the mere aspect of *ṣīghah*.

The normative foundation of *hibah* in Islam also possesses a robust ethical framework grounded in the Quran, notably Surah Al-Baqarah verse 177:

"Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and

⁹ Fajar Alamsyah and Nasrullah Bin Sapa Darmawati H, "Hibah Dan Wasiat Dalam Transaksi Syariah," *Kultura: Jurnal Ilmu Hukum, Sosial Dan Humaniora* 4, no. 1 (2026): 16–22, <https://jurnal.kolibi.id/index.php/kultura/article/view/161>.

¹⁰ Ibn Qudamah, *Al-Mughni*, Juz VI (Beirut: Dar al-Fikr, 1997), 9.

¹¹ Miqdarul Khoir Syarofit and Anisatun Nur Laili, "Hukum Hibah Tanah Untuk Gereja Persepektif Empat Mazhab," *JOSH: Journal of Sharia* 1, no. 1 (2022): 1–11, <https://doi.org/10.55352/josh.v1i1.148>.

¹² Al-Nawawi, *Al-Majmu' Sharh Al-Muhadhdhab*, Juz XV (Bairut: Dar al-Fikr, 1995), 380.



the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask [for help], and for freeing slaves..." (QS. Al-Baqarah [2]:177).

Surah Al-Baqarah verse 177 emphasizes that a key manifestation of righteousness (*al-birr*) is donating cherished wealth to relatives and others in need. Classical exegetes such as al-Ṭabarī, al-Qurṭubī, and Ibn Kathīr interpret the phrase *ātā al-māl ‘alā ḥubbiḥ* as giving wealth sincerely, driven either by fondness for the property or devotion to Allah SWT.¹³ While this verse does not outline technical rules for gifts, it provides moral legitimacy by affirming that voluntary property transfers are highly commendable acts in Islam.

To facilitate a structured understanding, the research findings are mapped into three primary thematic focus areas, as detailed in Table 1.

Table 1. Mapping of Research Findings

Research Focus	Analyzed Data	Research Findings	Legal Implications
Validity of oral gifts under KHEs	Articles 685–690 KHEs	KHEs recognize oral gifts provided <i>ijāb</i> , <i>qabūl</i> , and <i>qabḍ</i> are established through speech, writing, gestures, or constructive conduct (<i>mu’āṭāh</i>).	Oral gifts possess substantive legal validity under Sharia economic law.
Supreme Court reasoning	Supreme Court judgments on <i>hibah</i> disputes	Judges prioritize evidence of the donor's consent, actual control over the property, and evidentiary consistency over formal contractual forms.	Supreme Court judgments uphold substantive justice.
Harmonization of KHEs with land laws	KHEs, UUPA, Gov. Reg. No. 24 of 1997	Sharia legal validity does not automatically guarantee administrative recognition within the national land system.	Harmonization is necessary between Sharia validity and administrative land certainty.

These findings indicate that oral land gift issues do not merely concern the validity of a contract; they also involve how the Indonesian legal framework reconciles Islamic values with the demand for administrative land certainty. In this regard, the KHEs adopt the concept of *mu’āṭāh*, a long-standing doctrine in *fiqh mu’āmalāt*. This doctrine recognizes contracts as valid when the parties' intentions are manifested through concrete actions, even without formal written declarations. In practice, regarding parental land gifts to children, *mu’āṭāh* is typically demonstrated by parents permitting a child to occupy, build upon, cultivate, or utilize the land

¹³ Ibn Kathir, *Tafsir Al-Qur’an Al-‘Azim, Juz I* (Beirut: Dar al-Ma’rifah, 2000), 209.



over an extended period without objection. Under the KHES, such conduct carries equivalent legal weight to oral *ijāb-qabūl*, as it factually proves the donor's consent (*riḍā*).

Furthermore, an analysis of judicial reasoning reveals five key indicators consistently applied by the Supreme Court to evaluate parental oral gifts. These interrelated indicators form a comprehensive evidentiary construct, as outlined in Table 2.

Table 2. Key Indicators in the Supreme Court's Ratio Decidendi

Indicator	Form of Proof	Legal Significance
Donor's intent (animus donandi)	Oral declarations, witness testimonies, donor behavior	Demonstrates voluntary intent to transfer ownership.
Transfer of possession (qabḍ)	Physical control by the recipient	Perfects the gift contract under KHES.
Continuous control	Uncontested occupancy, management, or construction by recipient	Serves as concrete proof of gift execution.
Consistency of evidence	Alignment among witnesses, documents, and factual conditions	Strengthens judicial conviction regarding the gift.
Absence of lifetime objection	No revocation or contestation by donor during their lifetime	Confirms genuine consent (<i>riḍā</i>) and definitive intent.

As illustrated above, the Supreme Court's reasoning aligns closely with the legal framework of the KHES. The Court does not dismiss a gift simply because it was executed orally; instead, it evaluates whether all substantive elements were satisfied. Consequently, the benchmark for validity is not the existence of an authentic deed, but the parties' ability to prove donor intent, physical transfer (*qabḍ*), continuous control, and the absence of duress or fraud.

As a *lex specialis* in commercial Sharia matters, the KHES bridges classical jurisprudence and modern requirements for legal certainty. Article 686 of the KHES stipulates that a gift contract is established upon *ijāb*, and ownership becomes perfected once the gifted item is received by the beneficiary. Subsequent provisions specify that *ijāb* may be expressed verbally, in writing, or through gestures indicating gratuitous ownership transfer. This norm explicitly accommodates oral gifts, including land, provided the intention to transfer rights is clear.

Furthermore, Articles 687 through 690 of the KHES reinforce the recognition of gifts executed through conduct. These provisions affirm that gifts can be established by action, that physical delivery and receipt hold legal parity with oral *ijāb* and *qabūl*, and that receiving a gift must be based on explicit or tacit permission from the donor. This aligns with *mu'atāh*, widely accepted by Islamic jurists as a valid contractual form when conduct unambiguously conveys intention.



In parental land gifts to biological children, tacit permission (*izin samar*) is often the dominant pattern. Parents allow children to erect houses, cultivate farmland, or reside on the property over prolonged periods without objection. Under the KHES, such long-standing allowance sufficiently indicates donor consent and satisfies the element of *qabḍ*. Thus, the KHES normatively recognizes oral land gifts as valid when accompanied by physical delivery and real control.

However, this normative recognition cannot be detached from the broader national statutory framework. In land administration, Law No. 5 of 1960 (Basic Agrarian Law / UUPA) mandates land registration to guarantee legal certainty. Government Regulation No. 24 of 1997 elaborates on this requirement, dictating that all land right transfers, including gifts, must be proved by authentic deeds drawn up by Land Title Registrars (PPAT).

From a positive law standpoint, oral land gifts fail to meet the formal prerequisites for land registration.¹⁴ Consequently, even if a gift is substantively valid under Sharia and recognized by the KHES, the administrative title remains registered under the donor's name. This creates normative tension between substantive Sharia validity and statutory formal compliance a friction that frequently triggers inheritance disputes following the donor's death. In Religious Court practice, oral land gifts can still be adjudicated using witness testimony, factual occupancy, and indicators of consent. Judges assess whether *ijāb* and *qabḍ* occurred based on court facts, yet the evidentiary strength of oral gifts remains case-specific and dependent on evidence quality. Without PPAT deeds or administrative documentation, oral gift claims remain vulnerable to challenge.

Thus, the legal status of oral land gifts under Islamic law and Indonesian statutory law operates within a recognized yet conditional legal space. While Islamic law via the KHES validates oral gifts by prioritizing contract substance and physical control, national land law mandates administrative formalities to ensure certainty and protect rights. Therefore, harmonizing Sharia principles with positive law is imperative. Oral land gifts may be valid under Sharia, but satisfying land administration formalities remains necessary to guarantee long-term legal certainty and mitigate future disputes. In a modern constitutional state, this

¹⁴ Marlin and Marwan, "Tinjauan Yuridis Penyelesaian Sengketa Terhadap Peralihan Hak Milik Atas Tanah Tanpa Akta Hibah Di Desa Lelekaa, Kecamatan Wolasi, Kabupaten Konawe Selatan," *Al-Mizan* 21, no. 1 (2025): 201–18, <https://doi.org/10.30603/am.v21i1.6626>.



integration does not restrict Islamic teachings; rather, it secures public interest (*maṣlaḥah*), equity, and legal order within society.

Discussion

Evidentiary Assessment of Parental Oral Gifts to Children in Judicial Proceedings

The legal validity of oral gifts in judicial proceedings is not determined by whether the contract was made orally or in writing, but by the parties' capacity to prove that the essential elements of *hibah* were satisfied using recognized civil evidentiary instruments. This is reinforced by Supreme Court reasoning, which consistently refuses to treat the absence of a gift deed as sole grounds for rejection. Instead, the Court evaluates whether evidence establishes donor intent (*animus donandi*), physical transfer (*qabḍ*), actual beneficiary control, and evidentiary consistency. Consequently, this study demonstrates that evidentiary proof is the pivotal factor determining the success or failure of oral gift claims.

This indicates a shift in evidentiary orientation from a strictly formalistic approach toward a substantive one. In Indonesian civil procedure, the burden of proof rests on the party asserting a right, pursuant to Article 163 HIR / Article 283 RBg.¹⁵ However, in oral gift litigation, this principle is not applied mechanically. Judges do not rely solely on written instruments; they synthesize all facts presented in court to form a judicial conviction regarding the transaction. Thus, proving oral gifts has evolved from mere document verification into a comprehensive evaluation of the underlying legal relationship.

Supreme Court decisions show that witness testimony remains the primary evidence in oral gift disputes, though its probative value is not self-standing. Judges test witness statements against corroborative facts, such as land control history, house construction by the beneficiary, property tax payments, and the donor's lifetime conduct. Unsubstantiated narrative testimonies carry limited probative weight. Conversely, when testimony is corroborated by continuous physical possession unchallenged by the donor, judges regularly conclude that a valid gift was executed.

¹⁵ Eka Susylawati, "Kewenangan Hakim Untuk Menilai Alat Bukti Dalam Hukum Acara Perdata," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 1, no. 2 (2006): 212–25, <https://doi.org/10.19105/al-lhkam.v1i2.2564>.



The Supreme Court employs an integrative evidentiary model, combining direct evidence with circumstantial evidence (*qarīnah*).¹⁶ This approach is vital because oral gifts within families fundamentally differ from formal legal acts recorded in authentic deeds. Interfamilial transfers are typically founded on trust and domestic relationships, often lacking formal documentation. If courts were to enforce strict documentary requirements, prevalent socio-legal practices would be deprived of legal protection.

Judicial presumption (*rechterlijk vermoeden*) plays a strategic role in establishing oral gifts.¹⁷ Presumptions are built upon interconnected facts, including long-term occupancy, authorized home construction, independent property management, and the lack of lifetime objections from co-heirs. While these facts do not directly prove the moment of *ījāb* and *qabūl*, cumulatively they generate judicial conviction that a voluntary ownership transfer occurred. Far from deviating from evidentiary law, judicial presumptions serve as an interpretive bridge over written proof limitations.

Indonesian civil procedure under HIR/R.Bg maintains a closed evidentiary system recognizing specific evidence, written documents, witness testimony, presumptions, admissions, and oaths.¹⁸ In oral land gift cases, judges may utilize judicial presumptions conclusions drawn from established facts to prove disputed matters. Because statutory law does not explicitly outline presumptions for oral gifts, judges exercise discretionary evaluation based on court facts.

Beyond witnesses and presumptions, judicial admissions and oaths such as supplementary oaths (*suppletoir*) or decisory oaths (*decisoir*) theoretically apply to oral gift cases.¹⁹ Supplementary oaths bolster incomplete initial evidence, whereas decisory oaths resolve cases lacking other evidence. In modern judicial practice, oaths are rarely utilized due to

¹⁶ Bagas Alkautsar, Nani Mulyati, and Elwi Danil, "Pertanggung Jawaban Pidana Dengan Menggunakan Bukti Tidak Langsung (Circumstantial Evidence)," *Jurnal Ius Civile* 8, no. 2 (2024): 1–16, <https://doi.org/10.35308/jic.v8i2.10182>.

¹⁷ Iva Yuli Hanifah, Khoirotunnisa, and Lucky Dafira Nugroho, "Analisis Yuridis Kekuatan Pembuktian Perjanjian Lisan Dalam Penyelesaian Sengketa Wanprestasi Berdasarkan Putusan Pengadilan No: 44/Pdt.G/2025/PN.YYK," *JUSTNESS: Jurnal Hukum Politik Dan Agama* 5, no. 2 (2025): 1–17, <https://doi.org/10.61974/justness.v5i2.91>.

¹⁸ Susylawati, "Kewenangan Hakim Untuk Menilai Alat Bukti Dalam Hukum Acara Perdata"; Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2009).

¹⁹ Fauziah Lubis et al., "Alat Bukti Dalam Hukum Acara Perdata," *INNOVATIVE: Journal Of Social Science Research* 5, no. 3 (2025): 6008–16, <https://doi.org/10.31004/innovative.v5i3.19878>.



perceived inefficiency and potential misuse, exacerbated by shifting societal values that diminish the moral weight of courtroom oaths.²⁰

From a Sharia economic law perspective, this judicial approach aligns with the doctrine of *qabḍ* as the perfecting element of *hibah*. The KHES does not mandate written contracts for validity, emphasizing instead physical transfer and actual possession.²¹ Thus, when judges treat physical control as a primary indicator, their reasoning reflects both civil procedural standards and KHES contractual principles. This reveals a convergence between national procedural law and Islamic law, as both recognize physical possession as a key indicator of right transfers.

Accordingly, the most reliable proof of *qabḍ* is a combination of witness statements, uninterrupted physical possession, and judicial presumptions drawn from court facts. Testimonies from family members are not discarded automatically, but are rigorously assessed for objectivity and consistency with external facts. Similarly, a child's physical occupancy alone does not automatically prove a gift, as domestic co-residence can occur without ownership transfer. Thus, physical possession gains evidentiary weight only when accompanied by proof of the donor's consent and permanent relinquishment of rights.

Furthermore, the Supreme Court maintains strict evidentiary standards to prevent fraudulent oral gift claims that could disinherit co-heirs.²² Not every instance of land use by a child constitutes a gift; judges must establish a direct causal link between occupancy and the donor's intent. Occupancy stemming solely from familial affection remains insufficient unless supported by corroborating evidence.

Indonesian civil procedure focuses on formal truth (*formeel waarheid*) derived from legally valid evidence. Under Article 163 HIR / Article 282 RBg, claimants bear the burden of proof.²³ If an oral gift claimant fails to discharge this burden, the claim will be dismissed, and the disputed asset will revert to the estate for distribution among statutory heirs.

In summary, the distinction between a child merely residing on parental land and one receiving a valid gift depends on proving donor intent and possession arising directly from the

²⁰ Efa Laela Fakhriah, *Bukti Elektronik Dalam Sistem Pembuktian Perdata* (Bandung: Alumni, 2009), 22.

²¹ Iqbal, Pasuruan, and Merdeka, "Kajian Yuridis Peralihan Hak Atas Tanah Melalui Hibah Secara Lisan."

²² Ainun Najib, "Kepastian Hukum Eksekusi Dan Pembatalan Putusan Arbitrase Syariah Pasca Putusan Mahkamah Konstitusi Nomor 93/PUU-X/2012," *Jurnal Konstitusi* 16, no. 4 (2020): 861, <https://doi.org/10.31078/jk1649>; Efa Laela Fakhriah, *Bukti Elektronik Dalam Sistem Pembuktian Perdata* (Bandung: Alumni, 2009).

²³ Retnowulan Sutanto and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktik* (Bandung: Mandar Maju, 1995).

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gift contract. The Supreme Court does not reject gifts simply for being oral; rather, it evaluates whether *ijāb*, *qabūl*, and *qabḍ* are convincingly established through the totality of evidence. Adjudication relies on substantive proof rather than administrative formality, remaining fully aligned with fairness and legal certainty under Sharia economic law.

Oral Gifts from the Perspectives of Moderate Islam and Public Interest (*Maṣlaḥah*)

Under moderate Islamic legal theory, the validity of oral gifts depends not only on satisfying essential contractual elements, but also on achieving a balance between donor intent, legal certainty, and familial welfare. While oral gifts remain normatively legitimate within Indonesian Muslim culture, judicial enforcement requires adequate proof to prevent inequity among heirs. Thus, moderate Islam provides an effective framework reconciling classical jurisprudence, empirical social practices, and modern legal standards.

Parental oral gifts represent an established legal culture (legal culture) within Indonesian society. In rural and traditional communities, land transfers to children are routinely executed verbally alongside physical handover. This practice relies on mutual trust, filial piety, and internal family deliberation. Here, *hibah* functions not only as a property transfer instrument, but also as a wealth distribution mechanism designed to maintain family harmony and avoid post-mortem disputes.

However, modern legal systems demand legal certainty and administrative land order. Immovable real estate holds high socio-economic value, requiring formal legal protection against future claims. Many oral gift disputes arise after the donor's death when documentation or reliable witnesses are lacking. Unconditional legal recognition of undocumented gifts without rigorous proof risks generating uncertainty and family conflict.

In this context, moderate Islamic jurisprudence (*wasatīyah*) offers a balanced analytical lens. Rather than applying rigid textual interpretations, moderate Islam views Sharia as an instrument to secure public interest (*jalb al-maṣlaḥah*) and prevent harm (*dar' al-mafṣadah*).²⁴ This framework balances normative Sharia values, empirical social facts, and modern statutory needs, positioning oral gift validation proportionally between cultural traditions and formal legal certainty.

²⁴ Achmad Muhibin Zuhri, *Islam Moderat: Konsep Dan Aktualisasinya Dalam Dinamika Gerakan Islam Di Indonesia* (Jakarta: Academia Publication, 2022); Habib Ismail, "Relevansi Konsep Hukum Islam Dalam Menyikapi Isu-Isu Sosial Kontemporer: Sebuah Tantangan Moderasi Beragama," *Moderasi : Journal of Islamic Studies* 5, no. 1 (2025): 259–78, <https://doi.org/10.54471/moderasi.v5i1.100>.



This moderate orientation is embodied in the KHES. The KHES refrains from mandating strict written formalities while requiring *qabḍ* as proof of actual property handover. This reflects an effort to integrate substantive Sharia values with national evidentiary requirements, demonstrating that Islamic law in Indonesia develops adaptively alongside statutory frameworks.

From a *maqāṣid al-syarī'ah* perspective, the Supreme Court's rigorous evidentiary demands protect private property (*ḥifẓ al-māl*) and family lineage interests (*ḥifẓ al-nasl*).²⁵ Validating oral gifts without adequate proof threatens co-heirs' rights and risks prolonged litigation. Thus, demanding strict proof does not oppose Islamic principles; it fulfills Sharia objectives by preventing injustice. Administrative land formalities serve as legal protection tools supporting Sharia goals.

Conversely, an overly formalistic approach risks ignoring living law rooted in local customs (*adat*).²⁶ Under Article 5 paragraph (1) of Law No. 48 of 2009 on Judicial Power, judges must explore, follow, and understand living societal legal values and justice. Thus, judicial recognition of oral gifts remains viable whenever objective proof demonstrates donor intent and real transfer. This integrative approach illustrates that Indonesian Islamic jurisprudence is evolving toward a responsive, moderate paradigm. Beyond formal legalism, this paradigm prioritizes substantive justice, family protection, and social stability. Regarding oral land gifts, moderate Islamic law seeks common ground among *fiqh* doctrines, Muslim cultural practices, and national statutory systems to achieve equitable legal protection.

Ultimately, oral gifts under moderate Islamic law are evaluated contextually within a broader framework of public interest. Recognition honors Muslim legal culture, provided it is supported by adequate evidentiary mechanisms that ensure legal certainty and prevent conflict. This reflects an adaptive, contextual Islamic jurisprudence oriented toward justice and public welfare.

²⁵ Izza Rayyan and Zebada Frijatuluah, "Maqāṣid Al-Syarī'ah (Tujuan Disyariatkannya Hukum Islam) Dan Aplikasinya Dalam Pemikiran Fiqh Para Ahli Fiqh," *Dirosah Islamiyah: Jurnal Studi Islam* 1, no. 1 (2026): 41–53, <https://galaxy.nurasaglobal.com/index.php/DISI/article/view/4>; Lukman Hakim Syahbudin, Muhammad Rasydan Junuh, and Muhammad Safwan Harun, "Analysis of the Maqāṣid Al-Sharī'ah Approach in Islamic Legal Discourse According to Liberal," *Journal of Muwafaqat* 5, no. 2 (2022): 135–52, <https://doi.org/10.53840/muwafaqat.v5i2.111>.

²⁶ Maskur Rosyid and Dhani Dwi Afrizal, "Integrasi Hukum Adat Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1798–1812, <https://doi.org/10.62976/ijijel.v3i2.1170>.



Juridical Construction of Supreme Court Decisions on Oral Gifts Under the KHES Perspective

An analysis of Supreme Court Decisions No. 193 K/AG/2009, No. 252 K/AG/2024, and No. 992 K/Pdt/2015 reveals a consistent judicial reasoning pattern. The Court does not reject gifts simply for being oral; instead, it focuses on whether donor intent, physical transfer, and real control are proven. The Court does not debate the theoretical Sharia validity of oral gifts, but evaluates whether the claimed legal relationship was established through valid courtroom evidence.

This perspective highlights a transition from normative abstraction to judicial application. Under classical *fiqh*, a gift is perfected upon fulfilling the donor, beneficiary, object, *ijāb-qabūl*, and *qabḍ*. In litigation, however, the judicial focus shifts to whether these elements can be proven objectively. Sharia validity does not automatically equate to judicial validity; the Supreme Court translates substantive Sharia norms into enforceable evidentiary standards.

Supreme Court Decision No. 193 K/AG/2009 illustrates a cautious judicial approach. The Court rejected an oral gift claim because the plaintiff failed to prove *ijāb*, *qabūl*, or physical transfer (*qabḍ*). The Court affirmed that familial ties between donor and recipient do not waive statutory burdens of proof. Lacking evidence, the oral gift could not be legally sustained, and the property reverted to the estate.

This ruling demonstrates that while the Court accepts oral gifts conceptually, it enforces high evidentiary standards. Under the KHES, *qabḍ* is the central benchmark for judicial evaluation. Although KHES specifies that gift ownership is perfected upon receipt, in court, receipt must be proven through witnesses, physical control, or clear presumptions. A similar pattern appears in Decision No. 252 K/AG/2024, where the Supreme Court overturned a lower court ruling because the oral gift claim was vague (*obscur libel*). The lawsuit failed to detail the donor's identity, the transaction date, or handover procedures. The Court ruled that such ambiguity violated Article 685 KHES regarding essential gift elements, rendering the claim inadmissible and returning the land to the estate.

These rulings show consistent integration of the KHES and civil procedure rules. The Court applies the KHES as a substantive normative framework while enforcing strict civil proof requirements to safeguard legal certainty and co-heirs' rights against fraudulent post-mortem claims. However, the Supreme Court is not rigidly restrictive. In Decision No. 992

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K/Pdt/2015, the Court validated an oral land gift supported by strong corroborative evidence namely, a written consent document signed by all children of the donor and witnessed by third parties. The Court held that *ijāb*, *qabūl*, and *qabḍ* were substantively satisfied despite the absence of a PPAT deed. This confirms that the Court recognizes oral gifts when supported by convincing evidence.

From a KHES standpoint, this judicial construction protects *maqāṣid al-syarī'ah*, specifically *ḥifẓ al-māl* (protection of wealth) and *ḥifẓ al-nasl* (protection of lineage).²⁷ Validating unverified oral gifts risks harming co-heirs and prolonging disputes. Thus, the Court uses strict proof to verify genuine donor intent. Conversely, rejecting oral gifts on purely formal grounds can trigger criticism regarding substantive justice, as many parents lacking legal literacy rely on oral gifts. Unconditional non-recognition may make formal statutory rules appear to override social and religious justice.

Nevertheless, the Court balances these interests. Pursuant to Article 5 paragraph (1) of Law No. 48 of 2009, judges consider living social values by accepting non-formal evidence like witnesses and presumptions, provided they satisfy rational, objective standards. Thus, the validity of parental oral land gifts under Supreme Court decisions and the KHES represents a conditional validity. Oral gifts are not invalid per se, but their legal effect depends on proving essential elements, particularly *qabḍ*. Without concrete proof of transfer and receipt, oral gifts lack judicial recognition and the asset reverts to the estate.

From a legal certainty perspective, this aligns with Gustav Radbruch's theory positioning legal certainty as a fundamental value when legal ambiguity threatens greater injustice.²⁸ In oral gift litigation, recognizing unverified claims threatens land administration systems and infringes upon lawful rights. Therefore, the Supreme Court adopts a cautious stance by enforcing rigorous evidentiary benchmarks.

Conclusion

²⁷ Moh. Hamzah, "Pencapaian Maqashid Syariah Dalam Kemajuan Ekonomi Masyarakat Madura Melalui Kearifan Lokal (Rokat Tase)," *Al-Iqtishadiyah: Ekonomi Syariah Dan Hukum Ekonomi Syariah* 8, no. 1 (2022): 1, <https://doi.org/10.31602/iqt.v8i1.6808>; Moh. Toriquddin, "Teori Maqashid Syari'ah Perspektif Ibnu Ashur," *ULUL ALBAB Jurnal Studi Islam* 14, no. 2 (2013): 184, <https://doi.org/10.18860/ua.v14i2.2657>; Asafri Jaya Bakri, *Konsep Maqashid Syariah Menurut Imam Al-Shatibi* (Jakarta: Raja Grafindo Persada, 2012).

²⁸ Gustav Radbruch, "Vanderbilt Law Review Gustav Radbruch" 14, no. 1 (1960); Torben Spaak, "Meta-Ethics and Legal Theory: The Case of Gustav Radbruch," *Law and Philosophy* 28, no. 3 (2009): 261–90, <https://doi.org/10.1007/s10982-008-9036-8>; Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Pengelolaan Lingkungan," *Mazahib* 15, no. 1 (2016): 20–41, <https://doi.org/http://dx.doi.org/10.21093/mj.v15i1.590>.



The legal validity of parental oral gifts to children in judicial proceedings depends on proving all essential contractual elements through convincing courtroom evidence specifically donor intent, physical transfer (*qabḍ*), and actual beneficiary control rather than the oral or written form of the contract. From a moderate Islamic perspective, oral gifts maintain legitimacy as long as they satisfy *maqāṣid al-syarī'ah* by balancing equity, public interest (*maṣlaḥah*), and legal certainty. Furthermore, Supreme Court decisions establish a juridical framework integrating KHES principles, civil evidentiary law, and land administration certainty, assessing oral gifts based on both Sharia validity and judicial evidentiary validity. Accordingly, this study recommends formulating uniform evidentiary guidelines for oral gifts within Religious Courts, harmonizing the KHES with land registration regulations, and raising public awareness regarding executing land gifts via authentic deeds to secure legal certainty and prevent future disputes.

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