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GIFT OF MINANGKABAU CUSTOMARY LAND FROM PERSPECTIVE OF THE COMPILATION OF ISLAMIC LAW (KHI) AND THE COMPILATION OF ISLAMIC ECONOMIC LAW (KHES)

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Abstract

Ulayat land is communal land located within the customary law area that still exists according to reality. Essentially, Ulayat land, as a highly prized ancestral property, is a communal right. In Minangkabau customary law, transferring ownership of land permanently is typically done through a grant (hibah). A hibah of Ulayat land involves transferring land permanently without receiving material compensation. In Minangkabau, hibah often occurs between "bako" (grantor) and "anak pisang" (recipient) through the intermediary of a father. There are three types of hibah in Minangkabau adat, namely hibah laleh, hibah bakeh, and hibah pampeh. From the perspective of the Compilation of Islamic Law (KHI) and the Compilation of Sharia Economic Law (KHES), hibah of Ulayat land in Minangkabau, especially hibah laleh, complies with the rules in KHI and KHES where hibah is voluntary, without compensation, and intended to be owned by another person. Moreover, the requirements for hibah of Ulayat land in Minangkabau customary law also align with the conditions or elements of hibah as regulated in KHI and KHES. The difference lies mainly in the revocation or withdrawal of hibah land. Minangkabau customary law prohibits the revocation or withdrawal of hibah land once it has been granted, whereas KHI and KHES provide for the possibility of revocation under certain conditions.

Abstrak

Tanah Ulayat adalah tanah persekutuan yang berada di wilayah masyarakat hukum adat yang menurut kenyataannya masih ada. Pada dasarnya, tanah ulayat sebagai harta pusaka tinggi adalah hak bersama. Untuk memindahkan penguasan atas tanah untuk waktu selama-lamanya di dalam hukum adat Minangkabau antara lain melalui hibah. Hibah tanah ulayat merupakan penyerahan tanah untuk selamanya tanpa menerima imbalan berupa materi. Di Minangkabau hibah sering terjadi antara bako dan anak pisang melalui perantaraan ayah. Hibah dalam adat Minangkabau ada tiga macam, diantaranya adalah hibah laleh, hibah bakeh, dan hibah pampeh. Dilihat dari perspektif Kompilasi Hukum Islam (KHI) dan Kompilasi Hukum Ekonomi Syariah (KHES), hibah tanah ulayat Minangkabau terutama hibah laleh sudah sesuai dengan aturan dalam KHI dan KHES dimana hibah dilakukan secara sukarela, tanpa imbalan, dan untuk dimiliki oleh orang lain. Selain itu persyaratan hibah tanah ulayat dalam hukum adat Minangkabau juga memiliki kesesuaian dengan syarat ataupun rukun hibah sebagaimana yang diatur dalam KHI dan KHES. Perbedaannya hanya terletak pada hal pencabutan atau penarikan kembali tanah hibah. Hukum adat Minangkabau melarang pencabutan hibah atau penarikan kembali tanah yang sudah dihibahkan. Sementara KHI dan KHES membuka peluang pencabutan hibah dalam kondisi tertentu.

INTRODUCTION

The Minangkabau people are part of the customary law community (Masyarakat Hukum Adat, or KMHA) that is recognized and respected by the Government of the Republic of Indonesia based on Article 18B, paragraph (2) of the 1945 Constitution, which states: “The State recognizes and respects the units of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated by law.” KMHA is closely linked to the presence of laws, authority, environment, and the right to control land.[1] For the Minangkabau KMHA, land holds special significance because it is a binding factor that maintains unity among community members. The legal relationship between members of the community and the communal land results in customary rights over the land, known as hak ulayat.[2]

Hak Ulayat (customary land rights) is a traditional right as outlined in Article 28I, paragraph (3) of the 1945 Constitution, which states: “Cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization.” Meanwhile, according to the Regional Regulation of West Sumatra Province No. 7 of 2023 on Tanah Ulayat (Customary Land), Hak Ulayat is a communal right of the Customary Law Community to control, manage, utilize, and preserve its customary territory in accordance with the applicable customary laws and values. The customary rights over the land grant special authority to customary leaders to regulate and oversee the use of land within the KMHA. Moreover, hak ulayat is considered a form of communal ownership of land, inherited from ancestors to the group or customary community.[3]

The laws governing ownership and control of customary land are based on the adat salingka nagari (the traditional law of each nagari, a legal community) and the principle of adat basandi syarak, syarak basandi kitabullah (customs based on Islamic law, which is based on the Quran).[4] Nagari refers to a legal territorial unit that differs from a village; within its environment, there are differences between one nagari and another, as seen in the concept of adat salingka nagari (each nagari’s customs are specific to that nagari). The people of Minangkabau live under two systems of tradition: Bodi Chaniago and Koto Piliang, and they are united by the original customary law (adat nan sabana adat) as a binding system that applies to all nagari in Minangkabau.[5]

Customary land has an economic function in addition to its social and cultural roles.[6] The needs of a clan can be met through the tanah ulayat of the clan, which is a collective (communal) right of the members of the clan, not an individual right.[7] Customary land cannot be sold. If absolutely necessary, customary land may only be mortgaged, and that too in urgent and pressing circumstances. As the Minangkabau people say: "Gadih gadang alun balaki; rumah gadang katirisan; mambangkik batang tarandam; and mayik tabujua di tangah rumah."[8]

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[1] Wendra Yunaldi, *Nagari Dan Negara; Perspektif Otentik Kesatuan Masyarakat Hukum Adat Dalam Ketatanegaraan Indonesia* (Yogyakarta: Penerbit Jual Buku Sastra, 2021), 20.

[2] Mahkamah Agung, *Proyek Penelitian Hukum Adat: Penelitian Hukum Adat Tentang Warisan Di Wilayah Hukum Pengadilan Tinggi Padang* (Jakarta: Mahkamah Agung, 1980), 5.

[3] Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: PT. Djambatan, 2003).

[4] Pemerintah Provinsi Sumbar, “Peraturan Daerah Provinsi Sumatera Barat Nomor 7 Tahun 2023 Tentang Tanah Ulayat” (2023).

[5] Yunaldi, *Nagari Dan Negara; Perspektif Otentik Kesatuan Masyarakat Hukum Adat Dalam Ketatanegaraan Indonesia*.

[6] Sumbar, Peraturan Daerah Provinsi Sumatera Barat Nomor 7 Tahun 2023 tentang Tanah Ulayat.

[7] Ratih Agustin Wulandari, Muhammad Sukron, and Raimon Efendi, “Analisa Hukum Peralihan Hak Tanah Ulayat Kaum Yang Belum Didaftarkan Di Kabupaten Dharmasraya,” *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 61, https://doi.org/10.33760/jch.v6i1.274.

[8] Rahmi Murniwati, “Mengenal Tanah Ulayat Dalam Adat Minangkabau,” 2023, https://fhuk.unand.ac.id/index.php?option=com_k2&view=item&id=3748:mengenal-tanah-ulayat-dalam-adat-minangkabau&Itemid=1539&lang=id.

Essentially, tanah ulayat as an ancestral heritage is a collective right. If customary land has been transferred based solely on a sale and purchase agreement, it may be contested as it is considered not to have full ownership rights. This is different from a person who receives a gift (hibah) from the holder of hak ulayat. A gift deed for customary land given by the customary land authority cannot be contested. Once customary land has been gifted, it cannot be disputed if the recipient holds the gift deed.[9]

This fact draws the author's attention. Although customary land cannot be sold, it can undergo a transfer of rights through a gift. This means that the gifting of customary land is recognized and valid under Minangkabau customary law. Therefore, the author intends to discuss the concept of gifting (hibah) further from the perspective of positive law, specifically the Compilation of Islamic Law (KHI) and the Compilation of Islamic Economic Law (KHES), which serve as references for judges in religious courts when disputes over gifts occur.

METHODS

This article is written using a qualitative research method through literature review and study of laws and regulations. The purpose of this article is to examine, from a normative legal perspective, the gift of Minangkabau customary land (hibah tanah ulayat Minangkabau). Therefore, the author is interested in raising the research titled “Hibah Tanah Ulayat Minangkabau: A Perspective of KHI and KHES.

RESULT AND DISCUSSION

RESULT

There are three types of hibah in Minangkabau customs, namely hibah laleh, hibah bakeh, and hibah pampeh. The hibah tanah ulayat Minangkabau, especially hibah laleh, is in accordance with the rules in the Compilation of Islamic Law (KHI) and the Compilation of Islamic Economic Law (KHES), where the gift is made voluntarily, without compensation, and intended for someone else to own. Additionally, the requirements for gifting tanah ulayat under Minangkabau customary law are also in line with the conditions and pillars of hibah as regulated in the KHI and KHES. The only difference lies in the issue of revocation or withdrawal of the gifted land. Minangkabau customary law prohibits the revocation of a gift or the retrieval of land that has already been gifted. In contrast, KHI and KHES allow for the possibility of revoking a gift under certain conditions.

DISCUSSION

Definition of Hibah Tanah Ulayat

Tanah Ulayat refers to communal land located within the territory of a customary law community, which, in practice, still exists.[10] The law governing the ownership and control of tanah ulayat is adat salingka nagari, based on the principle of adat basandi syarak, syarak basandi kitabullah, which means that the customary law is in line with Islamic law, both being intertwined as a continuous tradition.[11]

In essence, tanah ulayat as ancestral property is a collective right.[12] To transfer control over the land permanently under Minangkabau customary law, one of the means is through hibah (gift). The term hibah comes from the Arabic word "habbah," meaning to show affection.[13] Previously, in

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[9] Wulandari, Sukron, and Efendi, “Analisa Hukum Peralihan Hak Tanah Ulayat Kaum Yang Belum Didaftarkan Di Kabupaten Dharmasraya.”

[10] Sumbar, Peraturan Daerah Provinsi Sumatera Barat Nomor 7 Tahun 2023 tentang Tanah Ulayat.

[11] Sumbar.

[12] Wulandari, Sukron, and Efendi, “Analisa Hukum Peralihan Hak Tanah Ulayat Kaum Yang Belum Didaftarkan Di Kabupaten Dharmasraya.”

[13] Yonariza, “Hukum Adat Minangkabau,” 2013, https://yonariza.com/wp-content/uploads/2013/08/hukum-adat-minangkabau.pdf.

Minangkabau, the term used was agia (or paragiah), but after the arrival of Islam, the society began to understand the concept of hibah.[14]

In customary law, hibah is known as "beri-memberi" (giving and receiving), which signifies giving property to another person to express compassion, respect, appreciation, gratitude, closeness, sympathy, and other similar sentiments.

Hibah tanah ulayat refers to the permanent transfer of land without receiving any material compensation. In Minangkabau, hibah often occurs between a bako (paternal uncle) and an anak pisang (nephew), with the father acting as an intermediary. [15] Since in Minangkabau much of the land is in the form of ulayat, governed by customary laws, clans, and communities, hibah is carried out by the legal community that holds the rights to the land. If the ownership of tanah ulayat has been transferred through hibah, the hibah deed given by the customary land authority cannot be contested. The land that has been gifted cannot be challenged if the recipient holds the hibah deed.[16]

Rules for Hibah Tanah Ulayat According to Customary Law

In the economic system of Minangkabau, the concept of hibah (gift) or giving is recognized. The institution of hibah developed in Minangkabau after the arrival of Islam. There are three types of hibah in Minangkabau tradition: Hibah Laleh, Hibah Bakeh, and Hibah Pampeh. Hibah Laleh is a gift given by one person to another for eternity. Its nature is permanent, and it is owned by the recipient forever without being contested by anyone. Hibah Bakeh is a gift from a father to a child, but with the consent of the nephew (or niece). The gift is only for the lifetime of the child, and upon the child's death, the property reverts to the nephew without any conditions. Hibah Pampeh is a gift given by a mamak (paternal uncle) to a child or someone, with the condition that the recipient must provide a pampeh (compensation or ransom) to the mamak, and at some point, the recipient may reclaim the property by returning the ransom. [17]

In Minangkabau customary law, the legal basis for hibah is reflected in the following customary proverbs: "Dihanyuik ka aie dareh, dibuang ka tanah lakang, salamo dunia takambang, salamo gagak hitam, salamo aia ilia, nan harato indak babaliak lai." This proverb means that once property has been given, it is permanently intended for the recipient (this refers to hibah laleh). "Kabau mati kubangan tingga, baju tasaruang nan punyo, karih baliak ka saruangnyo, harato pulang ka pangkanyo, siriah pulang ka gagangnyo, pinang pulang ka tampuaknyo." This proverb means that any gift made regarding property will return to the giver (this refers to hibah bakeh). "Manjua indak saharagonyo, mambali indak jo sapatuiknyo." This proverb means that property that has been gifted can be reclaimed by the giver, but only on the condition that a pampeh (ransom) is paid for the return of the gift, with the ransom value being higher than the property given (this refers to hibah pampeh).[18]

The conditions for hibah tanah ulayat (gift of customary land) in the Minangkabau customary law community are as follows:

1. There must be a giver and a recipient of the gift.
2. The object of the gift must be clearly defined.
3. The gift must be made with ijab kabul (offer and acceptance).

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[14] Sandrio Lahdisa Fatha, "Penyelesaian Sangketa Tanah Ulayat Masyarakat Adat Piliang Dengan Pemda Kabupaten Sijunjung, Sumbar," *Jurnal Kemahasiswaan Hukum & Kenotariatan*, 2022.

[15] Yonariza, "Hukum Adat Minangkabau."

[16] Wulandari, Sukron, and Efendi, "Analisa Hukum Peralihan Hak Tanah Ulayat Kaum Yang Belum Didaftarkan Di Kabupaten Dharmasraya."

[17] Adeb Davega Prasna et al., "Pewarisan Harta Di Minagkabau Dalam Perspektif Kompilasi Hukum Islam," *Kordinat* XVII, no. 1 (2018): 30–64.

[18] A Tanjung, "Hibah Lisan Tanah Kaum Koto Lansano Menurut Hukum Adat Minangkabau," *Jurnal Ilmu Dan Budaya* 41, no. 63 (2019): 7449–64, http://journal.unas.ac.id/ilmu-budaya/article/view/686%0Ahttp://journal.unas.ac.id/ilmu-budaya/article/download/686/565.

4. The consent of all members of the kaum (clan) is required.[19]

Consent from all members of the kaum is necessary because the object of the gift is tanah ulayat (customary land) owned by the kaum. Since the land belongs to the entire community and is controlled by all its members, any gift made without the consent of all the members of the kaum is considered invalid. Additionally, there are other conditions for the gift to be known by all members of the kaum and the surrounding community, as follows:

1. It must be approved by all heirs according to custom.
2. It must take place during the day with a meal provided.
3. It must be carried out in front of the penghulu (chief), mamak kepala waris (paternal uncle of the heir), and the neighbors of the land being gifted.[20]

The Process of Hibah Tanah Ulayat

The process of hibah involves the giver (penghibah) gifting their kaum's land to the person they wish to gift it to. The giver designates the land that will be gifted. Regarding this gift, the giver seeks approval from the kaum and the mamak kepala waris (chief of the heirs) who leads the kaum of the giver. After this designation, the ijab (offer) and kabul (acceptance) are carried out by the giver and the recipient of the gift. This gifting must be approved by all members of the kaum or heirs according to custom, which is carried out with a meal gathering during the day. The event is witnessed by the mamak kepala waris (chief of the giver's heirs) and neighbors who live close to the land being gifted.[21]

Approval can be given either verbally or in writing because hibah is an act of relinquishing the authority of the kaum to cultivate the land it owns. If approval is given verbally, there must be a tangible act or clear agreement between the giver and the recipient of the gift, at a minimum, a firm declaration from both the giver and the recipient. Only then can verbal approval be given, because the approval comes from all members of the kaum or heirs according to custom, who can also be considered as the givers, since the object of the gift in this case is the kaum's land. [22]

Legal Consequences of Hibah Tanah Ulayat According to Customary Law

In general, hibah (gift) under Minangkabau customary law has legal consequences, whether it is hibah laleh, hibah bakeh, or hibah pampeh. If the hibah is hibah laleh, the harta pusaka tinggi (ancestral property) that has been gifted is considered a permanent gift, as expressed in the customary proverb: "selama air hilir dan selama gagak hitam" (as long as the river flows and as long as the black crow exists). This means that the gift is made for eternity.[23]

In the case of hibah bakeh, the ancestral property that has been gifted will return to the giver or the giver's kaum (clan) because the duration of the gift has ended, for example, after the recipient's lifetime. The nature of hibah bakeh is temporary. This means that the harta pusaka gifted by the giver to the recipient is only valid for the recipient's lifetime. Once the recipient dies, the property automatically reverts to the giver's kaum.[24]

If the hibah is hibah pampeh, the ancestral property that has been gifted can be reclaimed by the giver's kaum. The condition for this is that the giver has received a pampeh (ransom or compensation) from the recipient of the gift for the land that was gifted. The pampeh must be of greater value than the

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[19] Tanjung.
[20] Tanjung.
[21] Yaswirman, *Hukum Keluarga Adat Dan Islam : Analisis Sejarah, Karakteristik, Dan Prospeknya Dalam Masyarakat Matrilineal Minangkabau* (Padang: Andalas University Press, 2006).
[22] Tanjung, "Hibah Lisan Tanah Kaum Koto Lansano Menurut Hukum Adat Minangkabau."
[23] Damhoeri, *Tambo Alam Minangkabau* (Jakarta: Pustaka Indonesia, 1989).
[24] Damhoeri.

harta pusaka tinggi that was initially gifted. Once the pampeh has been provided, the property that was originally gifted to the recipient will return to the giver's kaum.[25]

Hibah tanah kaum (gift of communal land) can be carried out either verbally or in writing. If the gift is made verbally, the proof of the transaction is weak, but it is still valid according to Minangkabau customary law. A written hibah is made through a hand-written hibah agreement.[26]

Rules of Hibah in KHI and KHES

In the KHI (Compilation of Islamic Law), there are six articles that regulate hibah (gift), namely Articles 171(g), 210, 211, 212, 213, and 214. In Article 171, point (g) of Chapter I, General Provisions of the KHI, hibah is defined as the voluntary and gratuitous transfer of ownership of an item from one person to another who is still alive, for the recipient to own. Then, in Articles 210, 211, 212, 213, and 214, the implementation of hibah is regulated with the following provisions:

1. The giver (penghibah) must be at least 21 years old, of sound mind, and act without coercion.[27]
2. The property to be gifted must belong to the giver.[28]
3. The maximum value of the property that can be gifted is 1/3 of the giver's wealth, whether gifted to an individual or an institution.[29]
4. The gift must be made in the presence of two witnesses.[30]
5. Gifts from parents to children can be considered as inheritance.[31]
6. Hibah cannot be revoked, except for gifts from parents to their children.[32]
7. Gifts given when the giver is near death must be approved by the heirs.[33]
8. Indonesian citizens abroad may make a gift deed before a local Indonesian Consulate or Embassy, as long as its content does not conflict with regulations.[34]

Meanwhile, the KHES (Compilation of Sharia Economic Law) regulates hibah in more detail than the KHI, with over 30 articles. In Article 668, point 9, Chapter I, General Provisions of the KHES, hibah is defined as the transfer of ownership of an item to another person without any compensation.[35] The conditions and requirements for hibah in the KHES are as follows:

1. Wahib/penghibah (giver or person gifting the item):[36]
   A giver must be of sound mind, of legal age (at least 18 years old), and act voluntarily, without coercion. A person is considered legally capable of performing legal acts if they are at least 18 years old or have been married. Those who are incapable of performing legal acts are entitled to guardianship.[37] A guardian may gift property to the ward, either directly or by entrusting it to a third party.[38]
2. Mauhub lah/penerima hibah (recipient of the gift):[39]

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[25] Idrus Hakimy, *Pegangan Penghulu, Bundo Kanduang, Dan Pidato Alau Pasambahan Adat Di Minangkabau* (Bandung: PT. Remaja Rosdakarya, 2004).
[26] Tanjung, "Hibah Lisan Tanah Kaum Koto Lansano Menurut Hukum Adat Minangkabau."
[27] Pasal 210 ayat 1, Kompilasi Hukum Islam.
[28] Pasal 210 ayat 2, Kompilasi Hukum Islam
[29] Pasal 210 ayat 1, Kompilasi Hukum Islam.
[30] Pasal 210 ayat 1, Kompilasi Hukum Islam.
[31] Pasal 211, Kompilasi Hukum Islam.
[32] Pasal 212, Kompilasi Hukum Islam.
[33] Pasal 213, Kompilasi Hukum Islam.
[34] Pasal 214, Kompilasi Hukum Islam.
[35] Pasal 668 point 9 Kompilasi Hukum Ekonomi Syariah.
[36] Pasal 685 dan pasal 668 point 10 Kompilasi Hukum Ekonomi Syariah.
[37] Pasal 2 ayat (1) dan pasal 4 Kompilasi Hukum Ekonomi Syariah.
[38] Pasal 669 Kompilasi Hukum Ekonomi Syariah.
[39] Pasal 685 dan pasal 668 point 11 Kompilasi Hukum Ekonomi Syariah.

A gift to a child is considered complete when the guardian or person authorized to care for and educate the child takes possession of the property. However, if the recipient is an adult child who is legally capable of acting (mumayiz), the gift is considered complete when the child themselves takes possession of the gift, even if they have a guardian.[40]

3. Mauhub bih (the property being gifted):[41]

   The property being gifted must meet the following conditions:

a. It must be present at the time of the gift transaction.
b. It must belong to the giver or, if it belongs to another, the giver must have permission from the owner, even if that permission is granted after the property is transferred.
c. The property must be definite and identifiable.[42]

4. Iqrar (statement of intent):

   A hibah transaction can take place through an ijab (offer) or statement, which may be in the form of words, writing, or gestures, indicating the transfer of ownership without compensation. The hibah can also be enacted through action, such as when the giver hands over an item and the recipient accepts it. The delivery and acceptance of the gift are considered equivalent to a verbal statement of intent in the ijab and kabul (acceptance).

5. Qabd (possession or handover):

   The acceptance of property in a hibah transaction is like the acceptance in a sale transaction. The ownership is considered complete once the gift is received by the recipient. However, if the property is already in the possession of the recipient, the handover is considered complete, meaning no second handover is required. In the case of gifts from parents to adult children, the property must be handed over and accepted by the child.

   In receiving the gift, the recipient must have permission to accept the property from the giver, whether explicitly or implicitly. If the permission is clearly stated, the recipient has the right to take the gift, either at the meeting point or after they have parted ways. If the permission is only implied or ambiguous, the recipient may only take possession while they are still at the meeting place.[43]

Hibah Can Occur in Several Ways as Follows:

1. A buyer who gives a gift to a third party, even though they have not yet received the transfer of the item from the seller, by asking the recipient of the gift to take it.
2. The cancellation of a debt by a creditor to a debtor, provided that the debtor does not reject the cancellation of the debt.
3. A person gives property to another person, even though the property has not yet been received as a gift, provided that the final recipient has accepted the gift.[44]

A hibah that is intended to take effect in the future is not valid. However, it is valid with certain conditions, and these conditions bind the recipient of the gift.[45] A hibah transaction becomes void if either the giver or the recipient dies before the gift has been delivered.[46] A hibah is also void if it occurs due to coercion.[47]

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[40] Pasal 700-701 Kompilasi Hukum Ekonomi Syariah.
[41] Pasal 668 point 12 Kompilasi Hukum Ekonomi Syariah.
[42] Pasal 704-706 Kompilasi Hukum Ekonomi Syariah.
[43] Pasal 685-692 Kompilasi Hukum Ekonomi Syariah.
[44] Pasal 694-696 Kompilasi Hukum Ekonomi Syariah.
[45] Pasal 702-703 Kompilasi Hukum Ekonomi Syariah.
[46] Pasal 697 Kompilasi Hukum Ekonomi Syariah.
[47] Pasal 708 Kompilasi Hukum Ekonomi Syariah.

If someone has allowed another person to eat a certain food, that person is not allowed to act as if the food belongs to them—for example, by selling it or gifting it to a third party. In this case, the person is only entitled to eat the food, and the owner cannot claim the price of the food that has already been consumed. Gifts given at a circumcision celebration or a wedding reception belong to the person whom the giver intended to gift it to. If they are unable to determine the intended recipient, the matter is resolved according to local customs.[48]

As previously explained, the transfer of ownership (mauhub bih) to the recipient (mauhub lah) occurs when the recipient receives the gifted property. Unlike shadaqah (charity), which cannot be retracted under any circumstances once delivered, a giver can retract their hibah under the following conditions:

1. The withdrawal is done at the giver's own request before the gift has been delivered.
2. The giver prohibits the recipient from accepting the gift after the hibah agreement.
3. The withdrawal occurs after delivery, but only if the recipient agrees. If the withdrawal occurs without the recipient's consent or without a court decision, the giver is considered to have unlawfully taken back the property, and they are obligated to compensate for any damage or loss to the property while it was under their control.
4. The withdrawal by parents of a gift already given to their child.
5. A parent's gift to a child may be counted as inheritance if it is not agreed upon by the other heirs.
6. Withdrawal of any additional items that are not part of the original gift.[49]

The following conditions prevent a hibah from being retracted:

1. Hibah given to parents, siblings (either brothers or sisters), children of siblings, or uncles/aunts.
2. Hibah given by a husband or wife during the marriage after acquiring property.
3. The existence of a substitute gift or compensation for the gifted property that has been accepted by the giver.
4. An addition to the gifted property that becomes an inseparable part of the original gift.
5. When the recipient of the gift utilizes it by selling it or making another gift from the gifted property and giving it to someone else.
6. If the gifted property is damaged once it has been in the hands of the recipient.
7. If the giver or recipient dies.[50]

In cases where the hibah is given by someone who is seriously ill, the following provisions apply:

1. If someone with no heirs gifts their entire wealth to another person while suffering from a serious illness and hands it over, the gift is valid, and the bait al-mal (treasury) has no right to intervene with the estate after the person's death.
2. If a husband or wife who is seriously ill, with no children or other heirs, gifts their entire wealth to their spouse and hands it over, the gift is valid, and bait al-mal has no right to intervene in the estate after the death of one spouse.
3. If someone who is seriously ill gives a gift to one of their heirs and then dies, the gift is not valid unless it is approved by the other heirs. However, if the gift is given to someone who is not an heir and does not exceed 1/3 of the total estate, it is valid. If the gift exceeds 1/3 and the heirs do not agree, the gift is only valid for 1/3 of the estate, and the excess must be returned.
4. If someone's estate is depleted by paying off debts and they give a hibah while seriously ill, either to their heirs or others, and then die, the creditors have the right to disregard the gift and include the gifted property in the payment of the debt.[51]

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[48] Pasal 722-723 Kompilasi Hukum Ekonomi Syariah.
[49] Pasal 709-714 ayat (2) dan (3) Kompilasi Hukum Ekonomi Syariah.
[50] Pasal 714 ayat (1)-720 Kompilasi Hukum Ekonomi Syariah.

Hibah Tanah Ulayat According to KHI and KHES

Ulayat Land Hibah According to KHI and KHESAfter reviewing the rules set forth in the articles of the KHI (Compilation of Islamic Law) and KHES (Compilation of Islamic Economic Law) above, we can now discuss the hibah of ulayat land in Minangkabau from the perspective of these two legal compilations. The discussion includes the following points: first, in terms of definitions and meanings. According to both KHI and KHES, a hibah is a voluntary gift, given without compensation, and intended for someone else to own. The classification of ulayat land hibah that fits this definition is only hibah laleh. This is because hibah laleh is a gift from one person to another without any material compensation, and it is permanent, meaning the recipient owns it forever.[52] This definition of hibah laleh is consistent with the understanding of hibah as described in both KHI and KHES.

Meanwhile, hibah pampeh does not meet this definition because it involves a compensation in the form of a pampeh (ransom or repayment) that can be redeemed later. Hibah pampeh is more similar and identical to the practice of pawning (pagang gadai) commonly performed in Minangkabau. Furthermore, hibah bakeh also does not meet the criteria of hibah according to KHI and KHES. Although hibah bakeh is performed without compensation, the object of the hibah cannot be owned by the recipient. Hibah bakeh is not permanent and does not result in a transfer of ownership. This practice is more akin to a borrowing or usage agreement.

Second, in terms of the conditions and elements of hibah. Ulayat land hibah has specific conditions, including: the giver and the recipient of the hibah, the object of the hibah must be clearly defined, the hibah must be performed with ijab kabul (offer and acceptance), the approval of all members of the clan (or all heirs according to custom), the hibah must be conducted during the day with a meal reception, and it must be performed in the presence of the penghulu (customary leader), mamak (uncle), the head of the giver's heirs, and neighbors of the land being gifted.[53]

While KHI does not explicitly mention the elements of hibah, it only outlines the conditions. However, from these conditions, it can be concluded that the elements of hibah are: the giver (wahib), the recipient (mauhub lah), the property being gifted (mauhub bih), and witnesses. On the other hand, KHES explicitly lists the elements of hibah, which are: wahib (the giver), mauhub lah (the recipient), mauhub bih (the gifted property), iqrar (declaration), and qabd (delivery).[54] From this comparison, it can be said that the conditions and elements of ulayat land hibah are consistent with those defined in KHI and KHES.

Regarding the approval of the clan, in the case of ulayat land hibah, approval is required because the hibah is a release of rights by all members of the clan or heirs according to customary law, who are also considered as the givers. This aligns with the condition in KHI that the property being gifted must belong to the giver.[55] KHES also stipulates that the property being gifted must come from the giver's own wealth, and when receiving the hibah, there must be permission from the giver, either explicitly or implicitly.[56]

Third, in terms of the retraction or withdrawal of the gifted land. Minangkabau customary law prohibits the retraction of a hibah or the withdrawal of land that has already been gifted. In contrast, KHI and KHES allow for such a possibility. KHI states that a hibah cannot be retracted, except for a hibah from parents to their children. KHES accommodates several conditions under which a hibah can be retracted, including: hibah from parents to their children, hibah made at the giver's own desire

[51] Pasal 724-727 Kompilasi Hukum Ekonomi Syariah.
[52] Prasna et al., "Pewarisan Harta Di Minagkabau Dalam Perspektif Kompilasi Hukum Islam."
[53] Tanjung, "Hibah Lisan Tanah Kaum Koto Lansano Menurut Hukum Adat Minangkabau."
[54] Zakiyatul Ulya, "Hibah Perspektif Fikih, KHI Dan KHES," *Maliyah: Jurnal Hukum Bisnis Islam* 7, no. 2 (2017): 1–23.
[55] Pasal 210 ayat 2, Kompilasi Hukum Islam.
[56] Pasal 690, Kompilasi Hukum Ekonomi Syariah.

before the gift has been delivered, the prohibition by the giver to the recipient from taking the gift after the hibah agreement, and the retraction of a gift after delivery, but only if the recipient agrees.

Here, there is a difference between Minangkabau customary law and KHI/KHES. In Minangkabau customary law, the possibility of retracting a hibah is closed because hibah laleh lasts forever, as stated in the adat proverb "selama air hilir dan selama gagak hitam" (as long as the water flows and as long as the black crow flies). In contrast, KHI and KHES allow the retraction of hibah under certain conditions.

CONCLUSION

Since the arrival of Islam, the practice of hibah has evolved into a part of Minangkabau customary law. Hibah has also been applied to ulayat land, which is the ancestral land of a clan. Ulayat land hibah involves the permanent transfer of land without receiving any material compensation. In Minangkabau, hibah often takes place between bako (the maternal uncle) and anak pisang (the nephew), typically through the intermediary of the father. There are three types of hibah in Minangkabau customs, namely hibah laleh, hibah bakeh, and hibah pampeh.

The hibah of ulayat land in Minangkabau, especially hibah laleh, aligns with the rules in KHI and KHES, where hibah is done voluntarily, without compensation, and for the recipient to own. Additionally, the requirements for ulayat land hibah in Minangkabau customary law are consistent with the conditions and elements of hibah as outlined in KHI and KHES. The only difference lies in the issue of retraction or withdrawal of the gifted land. Minangkabau customary law prohibits the retraction of a hibah or the withdrawal of land that has already been gifted. Meanwhile, KHI and KHES allow for the retraction of a hibah under certain conditions.The conclusion provides the answers for the formulation of the problem or the research questions that are explicitly stated in the introduction and described in the content section. The conclusion must be clear, concrete and explicit. In the conclusion, it is suggested to include the relevance and the development of new ideas which are the essence of the research findings.

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