

Management of Disputed Inheritance Assets from the Perspective of Islamic Law and Positive Law

^{*1}Makhtubub Hidayatur Rohman, ²Eko Sariyekti, ³Zaenal Arifin

^{*1} Institut Islam Nahdlatul Ulama (INISNU) Temanggung, Indonesia;

² Institut Islam Nahdlatul Ulama (INISNU) Temanggung, Indonesia;

³, STAIA Syubbanul Wathon Magelang, Indonesia.

¹ makhtubub15@gmail.com; ² ekosariyekti1986@gmail.com; ³ zainalarifin@staia-sw.or.id;

*Correspondent Author

Received: 17 January 2025

Revised: 21 February 2025

Accepted: 20 June 2025

KEYWORDS

*Management;
Disputie Inheritance Assets,
Islamic Law,
Positive Law*

ABSTRACT

The cancellation of the grant in Kaloran through deliberation occurred, causing several plots of land to become disputed. The people involved chose to avoid settlement in court which they considered complicated and required more energy, so they chose to remain silent and ignore it, making the land dispute last for a long time. This creates a special incident where the land continues to be managed even though there has been no definite decision on the owner without causing conflict and remaining harmonious because the local community is known for its tolerance. So this study aims to determine the views of Islamic law and positive law on the management of disputed land in Kaloran District, Temanggung Regency. The research conducted applies a qualitative research method, with a sociological approach with primary data obtained through observation, and interviews, directly to related informants, while secondary data is obtained from books, journals, articles and laws. Dispute Land Management is permitted for several reasons, namely that there is no party who feels disadvantaged, there are no claims or lawsuits, and there are no articles violated by the land manager. Management does not cause conflict and disputes because the local community is a harmonious and tolerant area so that the incident is allowed with understanding because disputes over property are still considered embarrassing.

This is an open-access article under the [CC-BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



Introduction

The distribution of inheritance assets in the Islamic context is generally regulated within the discipline of farā'id, which discusses the inheritance system, eligible heirs, the portion of the deceased's estate to be received by lawful heirs, types of inheritable property, heirs who are excluded from inheritance, and parties who are not entitled to receive inheritance shares (Maimun, 2017). The property to be inherited fundamentally belongs to the deceased, who has the authority to determine its allocation during their lifetime. In this regard, hibah (inter vivos

grants) is often used as a means to ensure fairness among family members so that assets can be distributed equitably.

However, the granting of land as hibah may give rise to conflict, particularly when it leads to the revocation of the grant and subsequently results in land disputes. Such disputes render the land subject to contested ownership. A dispute refers to a conflict between parties arising from differences in interests and intentions that may cause losses to one or more parties. Agricultural land, plantations, or other types of land under dispute may become unproductive if left unmanaged. Nevertheless, utilizing disputed land is also problematic, as stipulated in Government Regulation in Lieu of Law (Perpu) No. 51 of 1960, which prohibits the use of land without permission from the rightful owner (Government Regulation in Lieu of Law No. 51 of 1960). This provision emphasizes that disputed land lacks legal certainty of ownership between two or more parties and, therefore, should not be utilized to avoid potential conflict prior to a definitive legal determination.

In Kaloran District, Temanggung Regency, a case of hibah revocation occurred that generated controversy because the recipient of the grant was not a lawful heir. Although the dispute was addressed through deliberation (*musyawarah*) without reaching a final resolution, an unusual phenomenon emerged regarding the management of the disputed land. Despite its contested status, the land has been managed by the lawful heirs for four years without giving rise to conflict or dispute. This condition represents a unique situation in the research location, as land disputes typically result in prolonged conflict. In this case, the disputed land has been managed by the heirs, while the hibah recipient chose not to contest the matter, considering kinship ties and prevailing social values that prioritize harmony and conflict avoidance. Although the management of disputed land by the heirs cannot be fully justified from a legal standpoint, it also cannot be entirely condemned. Given that the land is agricultural in nature and requires cultivation and harvesting, its utilization to meet daily needs is considered more pragmatic than leaving it idle. This case presents diverse legal perspectives, both from Islamic law and positive law. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state governed by law, encompassing both written and unwritten legal systems (Widodo, 2022). This principle provides the basis for examining the dispute from multiple legal perspectives, as well as from social norms that serve as benchmarks for dispute resolution. The complexity of the dispute motivates this study to analyze the case comprehensively. This research aims to explore legal perspectives on the dispute, examine legal aspects from both procedural and implementation viewpoints, and identify challenges in managing disputed land. The findings are expected to

provide legal education to the wider community and offer recommendations for individuals facing similar disputes.

Method

This study employs a qualitative research method with a sociological approach. This approach is chosen because the phenomenon under study requires an in-depth understanding based on social perspectives, where the data collected are analyzed descriptively in the form of narratives derived from oral statements of the research subjects (Syafri, 2021). The research focuses on social phenomena, social structures, social transformation, and patterns of interaction among individuals as social beings (Abidah, 2017). Data were obtained through interviews with key informants to capture the realities of the dispute and the social conditions of the community.

Results and Discussion

Management of Disputed Land in Kaloran District

The land dispute that occurred in Kaloran District in 2021 gave rise to a phenomenon concerning the management of disputed inherited property in the form of land. The dispute originated from land that had been granted as a gift (hibah) but was subsequently revoked by the legal heirs. To examine this issue, the researcher collected data through interviews conducted with both the recipients of the hibah and the heirs. In order to understand the legal perspective, additional interviews were carried out with key informants, namely the legal counsel of the heirs and a religious figure (the Head of the Office of Religious Affairs/KUA).

The disputed inheritance consists of coffee plantation land left by the late Mr. J, comprising a total of eight land parcels. One parcel was endowed (waqf) for religious facilities, $1\frac{1}{2}$ parcels were allocated as inheritance to the heirs, and $6\frac{1}{2}$ parcels were granted as hibah to six distant relatives. This distribution does not comply with Article 210 of the Compilation of Islamic Law (KHI), which stipulates that a hibah may not exceed one-third of a person's total property when given to non-heirs. Based on this provision, the researcher calculated that only $2\frac{1}{3}$ parcels could lawfully be granted as hibah, while the remainder constituted the rightful share of the heirs. This discrepancy became the basis for the

revocation of the hibah, which was ultimately addressed through deliberation (musyawarah) at the local village office. However, interview data indicate that the deliberation did not result in a final agreement, leading to the continuation of the dispute. Both parties were reluctant to pursue litigation, considering it complicated and time-consuming.

Following the unsuccessful deliberation, the legal counsel of the heirs suggested that the disputed land be managed by the heirs. This recommendation was based on the view that land under dispute does not have a legally recognized owner prior to a binding legal decision. During this period, no resistance was shown by the hibah recipients, who chose to avoid conflict. Based on the Basic Agrarian Law (UUPA) concerning hereditary land rights and the position of the heirs as the sole legal successors, the legal counsel advised the heirs to exercise control over the land by managing it until a lawful decision was issued. For approximately four years, the land has been managed without generating open conflict, as the former hibah recipients chose not to prolong the dispute. This silence was deliberately adopted to avoid further conflict that could damage family relations. This account is supported by testimony from one of the hibah recipients, who stated that, to their knowledge, the land is currently managed by the heirs, and that rumors have even circulated that the land has been formally certified. The decision to remain silent was influenced by prevailing social norms that consider disputes over property to be taboo, prompting individuals to avoid confrontation and discord. Personally, the informant did not object to the situation, emphasizing that social harmony was more important, while acknowledging that each individual may hold different perspectives (S, interview, Kaloran, 12 June 2025).

In principle, land may be managed by its owner for purposes such as utilization, cultivation, or other needs. This is affirmed in the Indonesian Civil Code, which states that ownership rights over land include rights to everything on and beneath its surface. A landowner is entitled to plant and harvest crops, construct buildings, and carry out excavation activities, as well as to enjoy all benefits derived from such activities (Civil Code, Article 571). This provision illustrates that landowners possess full authority to control and

manage their land. Ownership rights over land may be acquired through several legal means as regulated in the Civil Code, including contractual agreements, inheritance, or legal determination and transfer resulting from civil legal acts conducted by authorized parties (Civil Code, Article 584). For instance, ownership of land through inheritance is further reinforced by Law No. 50 of 1960 concerning the Prohibition of Unauthorized Use of Land, which recognizes hereditary ownership as the strongest form of land ownership (Law No. 50 of 1960, Article 20). As one of the strongest land rights, inherited land presupposes that inheritance occurs only after the death of the property owner.

Land resulting from the revocation of a hibah may also be classified as disputed land, meaning land whose ownership status lacks legal certainty. This condition gives rise to the concept of land possession when disputed land is managed by a particular party. Under the Civil Code, possession or control grants the possessor authority to protect and enjoy the property as if they were the owner (Civil Code, Article 529). Accordingly, when the true owner of an object is not clearly identified, a possessor may be regarded as the owner of that object (Suwitra, 2014). Possession requires certain elements, namely a demonstrable act indicating control over the object and an internal intention to genuinely possess or utilize it. Consequently, an individual exercising possession is entitled to protect, enjoy, utilize, and optimize the use of the property under their control, while remaining responsible for it (Suwitra, 2014). In cases of land disputes arising from the revocation of a hibah, the land may revert to the heirs as the parties responsible for the inherited estate. This is consistent with the Basic Agrarian Law, which affirms that hereditary ownership constitutes the strongest form of land rights (UUPA, Article 20). This further reinforces the principle that inherited land ultimately becomes the rightful property of the heirs following the death of the owner, particularly when the hibah recipients do not contest the revocation.

Islamic Law Perspective on the Management of Disputed Land

In Islamic law, the use of land for agricultural activities or other purposes is only permissible on privately owned land or unclaimed land (*ardh al-mawāt*) that has been lawfully reclaimed. This is because Islam strictly prohibits the use of land that belongs to another person without their consent. Land reclamation is permitted in Islam as long as the land does not fall under another party's ownership rights. Therefore, managing land

without permission from its rightful owner is categorized as unlawful appropriation or seizure (*ghasb*) (Muhaimin, 2025). Property that is controlled or utilized by someone without the consent of its owner constitutes *ghasb*, which in Islamic law is considered an act of injustice and is strictly prohibited due to the harm it causes to others and the grave sin it entails (Rifai, 2024).

Islam emphasizes the preservation of peace to foster harmony in religious and social life. Based on field data collected by the researcher, it is evident that the land originally granted as *hibah* by the late Mr. J—later revoked by the heirs—has continued to be fully managed by the heirs without any overt resistance from the former *hibah* recipients. From an Islamic legal perspective, this situation involves several relevant considerations. First, the management of the disputed land cannot be classified as unlawful seizure because the land has not yet acquired legal certainty of ownership. While the heirs manage the land based on hereditary entitlement, the *hibah* recipients no longer hold valid ownership authority following the revocation of the *hibah*. Consequently, such management cannot be regarded as an infringement upon the rights of others.

Furthermore, leaving the land unmanaged would result in the waste of productive agricultural resources, whereas active management yields greater benefit. Thus, the management of the land may be categorized as legitimate utilization. This principle is supported by Qur'anic guidance in Surah Hūd (11:61), which states that Allah created human beings from the earth and endowed them with intellect and reason to cultivate and prosper it for the benefit of humankind. Land utilization in Islamic jurisprudence is also supported by a hadith narrated by Imam Ahmad and al-Tirmidhi, in which the Prophet Muhammad (peace be upon him) stated: "Whoever revives dead land has the right to it, and a wrongdoer has no right over it." However, this principle applies insofar as no party is harmed and no *mafsadah* (harm) arises. In such circumstances, no violation of Islamic legal principles occurs.

Disputed land lacks legally established ownership, resulting in uncertainty regarding rights over the land. While both disputing parties may possess legitimate claims, one party may hold a more dominant right, though this alone does not automatically confer

authority to exercise control. Therefore, the determination of land ownership or utilization in dispute cases may be guided by established Islamic legal maxims applicable to such situations. One relevant legal maxim states: “The original ruling of a matter remains as it was before.” This maxim was formulated to simplify the resolution of numerous and complex subsidiary (*furū’ fihiyyah*) issues (Sumarjoko, 2019). It signifies that a legal condition remains unchanged until evidence proves otherwise (Zaidan, 2008). In the case of disputed land where no valid proof of ownership has been established, the land may remain under the responsibility of the heirs as custodians of the inherited estate until an authoritative legal decision is rendered.

Conditions at the research site indicate no signs of legal action, claims, or objections submitted by the hibah recipients concerning the ownership or management of the land. This passive stance reflects respect for prevailing local social norms that prioritize unity, peace, and social harmony over the pursuit of personal interests that could trigger prolonged conflict. The hibah recipients’ choice to remain indifferent and yield—despite potentially holding a claim—represents a conscious effort to maintain social stability within the community. From a socio-religious perspective, such an attitude aligns with Islamic values that strongly emphasize peace and the avoidance of discord. Consequently, the management of the land by the heirs may be considered socially legitimate, as it does not provoke disputes or conflict and instead reinforces social cohesion within the community. The Qur’an explicitly commands the preservation of peace, as stated in Surah Āl ‘Imrān (3:103), Surah al-Anfāl (8:61), and Surah an-Nisā’ (4:114).

Positive Law Perspective on the Management of Disputed Land

The heirs manage the disputed land based on the advice of their legal counsel, who recommended exercising control over the land on the grounds that it constitutes their lawful right. Although the land has not yet been formally certified through a Land Deed Official (Pejabat Pembuat Akta Tanah / PPAT), this management nonetheless has a legal basis that permits such action. A land dispute arising from the revocation of a hibah may revert to the heirs as custodians of the inherited estate, particularly when the hibah recipients choose not to file claims or lawsuits and instead opt for peaceful resolution. This position is grounded in the Basic Agrarian Law (Undang-Undang Pokok Agraria), which

stipulates that hereditary ownership rights constitute the strongest form of land rights that may be held by an individual (UUPA, Article 20). This provision reinforces the principle that inherited land becomes the lawful right of the heirs following the death of the decedent.

Land ownership acquired through inheritance may be managed and utilized by the heirs, even if administratively the land remains recorded as Letter C land and has not yet been certified by a PPAT or registered with the National Land Agency (Badan Pertanahan Nasional / BPN) under the heirs' names. Although there is no specific regulation that explicitly governs the management of land under dispute, several related legal provisions provide contextual guidance. In principle, the management of land that remains under dispute is neither expressly recommended nor explicitly prohibited by law, so long as no final and binding court decision (*inkracht van gewijsde*) has been issued by a competent judicial authority. In the absence of such a binding legal determination, land ownership remains legally indeterminate. Consequently, while legal ownership has not been definitively established, land management may still be carried out by a party that claims a legitimate right—in this case, the heirs—provided that such management does not cause harm or infringe upon the rights of other parties.

The researcher identifies several factors that strengthen the permissibility of managing the disputed land. First, there has been no claim or lawsuit filed by the relevant parties, as the dispute was addressed through deliberation (*musyawarah*) aimed at achieving fairness for all parties involved. Second, the land management does not violate existing regulations, particularly those concerning the prohibition of land use without authorization under the UUPA. As the heirs are legally responsible for the inherited estate, the utilization of the land's produce cannot be classified as an unlawful act. Nevertheless, it is important to emphasize that within the framework of Indonesian land law, certain juridical consequences may arise if the management of disputed land continues over a prolonged period without legal challenge or formal dispute resolution. Under Government Regulation No. 24 of 1997 on Land Registration, an individual who physically controls and continuously manages a parcel of land for a period of 20 years in good faith and without interruption or active dispute from other parties may apply for certification of ownership rights over the land in their own name (Government Regulation No. 24 of 1997, Article 24).

In this context, if the heirs continue to manage the land without facing legal opposition, there exists a substantial possibility that the land may legally transition into their ownership through the certification process, despite its initial disputed status.

The creation of a land deed as valid evidence of land ownership is regulated under Government Regulation No. 24 of 1997. Any transfer of land rights through sale and purchase, hibah, inheritance, or other legal acts must be evidenced by an authentic deed executed by a duly authorized PPAT (Government Regulation No. 24 of 1997, Article 37). Authentic deeds are essential in cases of hibah or inheritance to serve as legally valid proof. In this regard, inheritance and hibah involving land rights are not governed by Book III of the Indonesian Civil Code (KUHPerdota), but rather fall under the National Land Law regime, particularly Government Regulation No. 24 of 1997 concerning Land Registration procedures (Santoso, 2015). An additional important note is that continuous physical control and management of land for a period of 20 years, carried out uninterruptedly and in good faith, may provide a legal basis for registering the land under one's own name, as stipulated in Article 24 of Government Regulation No. 24 of 1997.

Conclusion

The management of disputed land arising from the revocation of a hibah is neither explicitly prohibited nor expressly mandated under existing legal norms. In the case examined, the management of the disputed land by the heirs is considered permissible, as it does not give rise to open conflict, cause harm to any party, or result in legal disputes. The heirs' management of the land is further justified by the absence of objections, claims, or lawsuits from the former hibah recipients, who have chosen to prioritize social harmony, peace, and kinship values. This attitude aligns with the principles of Islamic law, which emphasize reconciliation (*ṣulḥ*), the prevention of harm (*dar' al-mafāsid*), and the preservation of social order, as well as with local customary practices that uphold communal harmony. Furthermore, the resolution of the dispute through deliberation (*musyawarah*) reflects a collective effort to seek a peaceful settlement rather than adversarial legal confrontation. From the perspective of positive law, the management of the disputed land does not violate prevailing regulations, particularly those concerning the prohibition of land use without authorization. As the heirs are legally responsible for the inherited estate, their utilization of the land's benefits cannot be categorized as unlawful possession. However, it is important to note the potential legal consequences arising from prolonged land management without formal dispute resolution.

Under Article 24 of Government Regulation No. 24 of 1997 on Land Registration, continuous physical control and management of land for a period of 20 years, carried out in good faith and without legal challenge, may provide a legal basis for registering the land in the name of the managing party. Therefore, while the current land management is legally and socially acceptable, the absence of formal resolution over an extended period may eventually result in the transfer of ownership rights to the party exercising continuous control over the land.

References

- Abdul Karim Zaidan, (2008) *Al-Wajiz: 100 kaidah fikih dalam kehidupan sehari-hari*, Pustaka Al-Kautsar, Jakarta Timur.
- I Made Suwitra, (2014), *Penguasaan Hak Atas Tanah Dan Masalahnya Land Possession Rights And Its Affair*, Jurnal Kajian Hukum Dan Keadilan , vol. 2, no. 6, Desember 2014.
- Ida Zahara Adibah, (2017) *Pendekatan Sosiologis Dalam Studi Islam*, Jurnal Inspirasi , Vol. 1, No. 1, 2017.
- Kitab Undang-undang Hukum Perdata(KUHPer)
- Maimun, dkk., (2017) *Pembagian Hak Waris Terhadap Ahli Waris Beda Agama Melalui Wasiat Wajibah Dalam Perspektif Hukum Kewarisan Islam*, Jurnal Asas, no. 1 2017.
- Muhaimin, Rizal. (2025) "Hak Kepemilikan Tanah: Studi Komparatif antara Hukum Positif Indonesia dan Hukum Islam menurut Perspektif Syafi'iyah tentang Wewenang Pemerintah pada Tanah Terlantar." *Jurnal Al-Nadhair* , Vol. 4, No. 01, 2025.
- Peraturan Pemerintah Nomor 24 Tahun 1997.
- Peraturan Pemerintah Pengganti Undang-undang(Perpu) Nomor 51 Tahun 1960.
- Rifai A., Yunus I. M., & Zulfikar, F. (2024), *MKaidah Laisa Li 'Irqin Zālimin Ḥaqqun dan Implementasinya pada Pemanfaatan Tanah Gasab*. AL-QIBLAH: Jurnal Studi Islam dan Bahasa Arab, Vol .3, No. 3, 2024.
- Sumarjoko, (2019). *Kaidah Fiqh Bidang Mu'amalah*. Jurnal Iqtisad: Reconstruction of Justice and Welfare for Indonesia, Vol. 6, No 1 (2019), p-ISSN: 2303-3223; e-ISSN: 2621-640X.
- Syafrida Hafni Sahir, (2021)*Metodologi Penelitian* (Jogjakarta: KBM Indonesia, 2021.
- Undang-Undang Nomor 50 Tahun 1960 .
- Undang-Undang Pokok Agraria (UUPA).

Urip Santoso, (2015), Hibah Tanah Pemerintahan Kabupaten/Kota Kepada Warga Negara Indonesia, Jurnal Perspektif , vol. 20, no. 3 2015.

Widodo Ramadhana and Sahala S O R Lumbantoruan, (2022) Harta Waris Pada Pasangan Yang Tidak Memiliki Keturunan Menurut Hukum Adat Batak Toba, Jurnal Ilmu Hukum, vol. 11, no. 1, June, 2022.