

# Between rights and time limits: A critical study of expiration in grants exceeding one-third from the perspective of justice and legal certainty

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## Abstract

This study examines the incomplete norms in Article 210 of the Compilation of Islamic Law, which caps grants at one-third of total assets but lacks provisions on the legal consequences of exceeding this limit. This ambiguity creates a conflict between justice and legal certainty, particularly when grant annulment lawsuits arise after a long period and encounter expiration exceptions. In this case, there is a contradiction between the legal objective of providing certainty and justice, whether priority should be given to annulling grants that exceed the prescribed limit or to legal certainty regarding the time limit for filing lawsuits. The goal of this research is to delve into the idea of expiration in grants that surpass one-third, focusing on the principles of legal clarity and fairness. The study utilized a normative juridical research method, focusing on statutory and conceptual analysis. The results of the investigation indicate that Article 210 of the Compilation of Islamic Law does not fully address the outcomes of grants surpassing one-third. Furthermore, when an exception of expiration is raised in a grant lawsuit, the study argues that the case should not be immediately declared inadmissible (N.O.). Instead, the court must first examine whether the plaintiff was aware of the grant. If it is proven that the grant was only recently discovered, the claim should be accepted to achieve justice for the heirs. Likewise, Article 210's regulation on grants should be refined to explicitly define the legal consequences of exceeding the one-third limit, thereby ensuring legal certainty.

**Keywords:** *exception, expiration, grant exceeding one-third, justice, legal certainty*

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## 1. Introduction

The debate between legal certainty and substantive justice in the context of grant (hibah) disputes is not new in Indonesian legal studies. This issue emerges when the norm in Article 210 of the Compilation of Islamic Law or also referred as KHI, which states that a grant cannot be withdrawn except for grants from parents to their children, faces legal practices that often create uncertainty and injustice (Khumedi, 2021). This provision, which does not provide a specific time limit for filing grant lawsuits, potentially creates legal uncertainty, especially when disputes occur years after the grant is given. In contrast, the Indonesian civil law system through Article 1967 of the Civil Code establishes a 30-year time limit for filing lawsuits, as a form of protection for legal certainty. The absence of a time limit in Article 210 of KHI creates a normative gap that disturbs the principle of legal certainty as emphasized by Hans Kelsen in his pure theory of law, which considers law as a normative system that must be closed and consistent (Rohima, 2023). However, from the perspective of substantive justice as proposed by Ronald Dworkin, legal interpretation should not ignore the moral principles inherent in justice (Dharmaputra, 2023). This tension underscores the importance of reevaluating the grant norms in KHI.

The basic concept of law always involves tension between legal certainty and justice. Gustav Radbruch emphasizes three basic values of law: justice, legal certainty, and utility, placing justice as the highest priority in situations of value conflict (Permadi, 2023). In the context of grants, this conflict arises when the law formally limits the time for filing lawsuits through the principle of expiration (Article 1967 of the Civil Code), but its application may ignore substantive justice if heirs only discover the existence of a grant after that time has passed (Djawas et al., 2022). Legal certainty demands clear and predictable norms (Susanto et al., 2022), while justice is contextual and takes into account moral aspects and the interests of aggrieved parties (Mahmud, 2016). In judicial practice, this tension becomes real when judges must decide between accepting a statute of limitations defense or considering justice for the plaintiff.

In the context of Indonesian law, which embraces legal pluralism, the position of KHI as a product of a Presidential Instruction raises problems of legal hierarchy. Presidential Instructions are not included in the hierarchy of laws and regulations as regulated in Law No. 12 of 2011 jo. Law No. 13 of 2022, thus creating issues of validity and consistent application of law (Asshiddiqie, 2022). The discrepancy between the principles of justice and legal

certainty in Article 210 of KHI, particularly due to the absence of a time limit for filing lawsuits, becomes a major problem in this research. Therefore, this research aims to normatively examine the conflict between these two legal principles and develop alternative reformulations of grant norms that can guarantee a balance between justice and legal certainty.

## 2. Literature Review

Discourse about the tension between legal certainty and justice has been a major concern in legal philosophy. Kelsen (1967) emphasizes the importance of a stable and predictable legal system while Dworkin (1986) underlines that law must also consider morality and substantive justice (Sebastian, 2023). In Indonesia, studies by Mahfud (2010) and Hadjon (2007) show that in judicial practice, judges are often faced with a choice between rigidly enforcing legal texts or prioritizing a sense of social justice. Nevertheless, the existing literature has not specifically addressed the problems of Article 210 of KHI in the context of this dilemma, especially within the framework of legal reform that systematically considers foreign legal principles. Studies on grants in KHI and the Civil Code also show that the absence of a time limit in KHI is one of the normative weaknesses that potentially creates legal uncertainty (Rahardjo, 2019). This echoes broader concerns in Indonesian law where the lack of regulatory clarity can undermine the enforcement of rights and procedures. For example, in the context of criminal procedure, the accuracy and completeness of *Visum et Repertum* (VeR) are regarded as essential for maintaining legal certainty in judicial processes (Hasiholan et al., 2025). Meanwhile, the Civil Code has clearly regulated the statute of limitations as a limit on the right to file lawsuits, which aims to protect legal certainty and ownership stability (Rachmah et al., 2024). The gap between these two legal systems has not been systematically discussed within the framework of regulatory hierarchy and policy reformulation.

Qomariyah (2014) criticizes conservatism in the implementation of Islamic law in Indonesia but has not offered a concrete reformulative approach based on national and international legal principles. Meanwhile, in foreign legal systems, almost all jurisdictions apply time limits for filing lawsuits. In German law, the concept of *Verjährung* (German Civil Code, BGB §194–218) is known, which limits the right to file claims after a certain period. In France, there is prescription in the Civil Code, where legal rights are lost after a certain time if not used. In England and the United States, the principle of the limitation period is regulated in the Limitation Act 1980 and the Statute of Limitations, which regulate the deadline for civil

lawsuits. Although this concept is secular, its basic values regarding stability and protection of rights remain relevant in any legal system. In classical Islamic law, there is no rigid concept of expiration, but the values of *maslahah mursalah* (public interest) and the prohibition of *dharar* (harm) can be used as moral justifications to limit lawsuits filed after a long time without clear reasons.

Previous studies have highlighted the importance of legal certainty and justice in resolving grant disputes. Mamonto et al. (2024) examined the Tutuyan Religious Court's decision regarding grants with reciprocity and found inconsistencies in legal considerations that caused legal uncertainty for the parties involved. Fitriah et al. (2024) added that the implementation of grants based on name-borrowing agreements, although set forth in notarial deeds, still holds the potential for disputes because they stem from the principle of trust that is not supported by concrete evidence, thus obscuring the legal protection of grant recipients. Meanwhile, Fadillah et al. (2023) emphasize the importance of the existence of grant deeds as authentic evidence that can strengthen legal certainty, especially in cases where the grant giver has passed away and there are no more direct witnesses who can provide information. These three studies generally show that substantive justice often faces procedural barriers and formal evidence, which ultimately can reduce legal certainty in grant practice.

On the other hand, other studies focus on grant limitations in the KHI and the Civil Code, particularly regarding the provision that grants should not exceed one-third of the testator's assets without the approval of the heirs. Fadillah et al. (2023) show that grant deeds exceeding this limit can be canceled to protect the *legitime portie* (reserved portion) rights of heirs. In this context, Putri and Ruslie (2023) examine the right of heirs to reclaim grant assets that exceed one-third and find that the procedures and legal bases used are often not uniform across courts. Sari (2022) even shows differences in grant cancellation procedures between KHI and the Civil Code, causing confusion in the application of positive law in Indonesia. Although all these studies emphasize the importance of grant restrictions for the sake of justice for heirs, they have not explicitly examined how time periods or statutes of limitations can affect the effectiveness of such protection.

In terms of time and expiration, Adha et al. (2025) research the practice of grant withdrawal by heirs in West Sumatra. They conclude that without clear time limits, conflicts between grant recipients and heirs are more likely to occur, especially due to the lack of agreement on the legitimacy of the time of grant giving. These studies indicate that although

civil law has established time limits, in practice, disharmony with Islamic legal principles can cause confusion and uncertainty in law enforcement.

The issue of grants in Indonesian law highlights the conflict between the principles of justice and legal certainty, especially due to the absence of a time limit for filing lawsuits in Article 210 of the KHI. This provision differs from Article 1967 of the Civil Code, which explicitly regulates expiration as a form of legal protection. The absence of a time limit in KHI creates a normative gap in practice, especially for grants exceeding one-third of the testator's assets, as there is no clarity regarding the right of heirs to file objections. Previous research has not comprehensively discussed how the principle of limitation can bridge the tension between substantive justice and legal certainty in the context of the dualism of the Indonesian legal system. Therefore, this research aims to fill this gap by offering a reformulation of the norm in Article 210 of KHI that considers the principle of lawsuit time limits to create a legal system that is both more certain and fair.

Based on the review of previous research, it can be concluded that there is still a gap in studies that critically link expiration with grants (*hibah*) exceeding one-third of the testator's assets, especially in the context of legal dualism between the KHI and the Civil Code (KUH Perdata). No research has comprehensively examined how time limits for filing objections to excessive grants can simultaneously affect the principles of justice and legal certainty. This research aims to fill this gap by exploring the role of expiration as an instrument that can bridge substantive rights to justice and procedural demands for legal certainty in grant practices in Indonesia.

As an original contribution, this research not only identifies the gap between Article 210 of KHI and the principle of legal certainty in the Civil Code but also offers a reformulation of grant norms based on a comparative legal approach with foreign legal systems (BGB, Civil Code, Limitation Act), which is then synthesized within the framework of justice according to Radbruch's theory and Kelsen's norm validity. Thus, this research provides a new perspective in balancing substantive justice and legal certainty in Islamic family law in Indonesia.

The tension between legal certainty and substantive justice has been widely discussed in legal philosophy, particularly through the works of Hans Kelsen and Ronald Dworkin. Kelsen (1967), in his *Pure Theory of Law*, emphasizes the importance of a normative, hierarchical, and closed legal system that ensures predictability and consistency. In contrast, Dworkin (1986) argues that legal reasoning cannot be separated from moral principles and that

judges must interpret laws in a manner that ensures fairness and justice. This philosophical dichotomy underpins many legal systems, including Indonesia's pluralistic structure, yet its specific application to grant (*hibah*) disputes under Article 210 of the KHI remains underexplored.

While Indonesian scholars such as Mahfud (2010) and Hadjon (2007) have acknowledged the frequent judicial balancing between text and justice, few studies critically examine how this dilemma unfolds in the domain of Islamic family law, particularly grants. Qomariyah (2014) critiques the stagnation in Islamic legal interpretation but does not offer a normative reformulation that bridges national and international principles. Moreover, although Rahardjo (2019) and Rachmah et al. (2024) note the normative weakness of Article 210 KHI due to the absence of time limits, their discussions remain doctrinal and lack comparative or policy-oriented analysis.

Internationally, most civil law systems impose strict time limitations for legal claims, which are integral to the principle of *legal certainty*. German law recognizes *Verjährung* (BGB §194–218), while French civil law implements *prescription*, and the Limitation Act 1980 (UK) and Statute of Limitations (US) reflect a shared concern with stability and finality. These limitation doctrines are not merely procedural but serve to preserve the integrity of legal relationships and prevent abuse of delayed claims. However, existing Indonesian scholarship has yet to incorporate these foreign doctrines into a critical legal discourse on Islamic family law reform.

From an Islamic legal perspective, while classical jurisprudence (*fiqh*) does not specify a fixed statute of limitations, principles such as *maslahah mursalah* (public interest), *istihsan* (juristic preference), and the prohibition of *dharar* (harm) can justify the adoption of time limits, particularly to prevent prolonged uncertainty in property rights. However, these perspectives are often cited in isolation rather than developed into a coherent normative framework for legal reform. Recent works, such as those by Dharmaputra (2023), attempt to integrate moral philosophy into Islamic legal reasoning, but a systematic synthesis with civil law doctrines remains absent. Several empirical studies (e.g. Mamonto et al., 2024; Fitriah et al., 2024; Adha et al., 2025), highlight the procedural and evidentiary complexities in grant disputes, but their analyses fall short of engaging with broader theoretical debates. Similarly, cases of grant cancellation exceeding one-third of inheritance (Putri & Ruslie, 2023; Sari,

2022) are often discussed in isolation without addressing how time limitations could enhance legal protection and judicial consistency.

This review reveals a significant literature gap: while the problem of legal uncertainty under Article 210 KHI is acknowledged, there is minimal engagement with comparative legal theory, international best practices, or integrative Islamic jurisprudence. Thus, this study aims to critically evaluate the normative inconsistency between KHI and the Civil Code, and to offer a reformulative framework that aligns with both the principles of justice and certainty by synthesizing comparative private law, Islamic legal maxims, and legal philosophy.

### **3. Methodology**

This research employs a normative juridical method with a focus on analyzing written legal norms, legal concepts, and relevant court decisions related to grants that exceed one-third of the grantor's property. To strengthen methodological validity and avoid a purely descriptive approach, this research combines three main approaches: the statutory approach, conceptual approach, and comparative approach, complemented by legal hermeneutics techniques and doctrinal interpretation. Court decisions used as references are selected based on their authority level (especially Supreme Court decisions that have permanent legal force/*inkracht*), relevance to grant issues, and frequency of citation in legal literature. Academic literature is purposively selected from reputable scientific journals, books by legal experts, and official publications of legal institutions to ensure the depth and authority of the analysis.

Legal analysis in this research is conducted through grammatical, systematic, and teleological interpretation techniques, particularly to identify gaps and inconsistencies in the norms of Article 210 of the Compilation of Islamic Law (KHI) compared to provisions in the Civil Code (KUH Perdata). Legal hermeneutics is not only used as a theoretical foundation but also applied practically in interpreting ambiguous provisions—for example, in understanding the legal consequences of grants exceeding one-third portion that are not explicitly regulated in KHI. To ensure the validity of the legal interpretations presented, a triangulation process is conducted through several stages: (1) doctrinal consistency testing, by comparing interpretation results against legal theories from Hans Kelsen, Ronald Dworkin, and Gustav Radbruch; (2) expert consultation, by seeking informal input from academics and practitioners of Islamic law and civil law during manuscript preparation; and (3) jurisprudential verification,

by examining court decisions in Indonesia and jurisprudence from foreign legal systems that handle similar issues (Soeroso, 2020).

Court decisions reviewed are selected based on their binding strength (Supreme Court decisions that have become *inkracht* or final), their relevance to the issue of criminal liability in the medical profession, and their accessibility through official databases such as the Directory of Decisions of the Supreme Court of the Republic of Indonesia. Authoritative literature used as references includes legal doctrine from experts in criminal law and health law published by leading academic publishers and articles in reputable journals. Validation of legal interpretations is carried out through peer review from criminal law experts and discussions with health law academics in limited scientific forums. This aims to ensure that the legal interpretations used have strong theoretical and practical foundations.

Additionally, the comparative approach is used systematically to compare how legal systems in other countries such as France, Germany, England, and the United States regulate time limits for filing lawsuits and the legal consequences of grants exceeding limits. This approach is not intended merely as an illustration but as a critical instrument to provide context and input for Indonesian norms to be more adaptive to universal principles of justice and legal certainty. With this integrative methodological framework, this research not only describes existing legal conditions but also provides normative criticism and offers a reformulation of Article 210 of KHI to be more just and provide legal certainty for interested parties.

## 4. Findings and Discussion

### 4.1. Normative Gaps in the Regulation of Grants Exceeding One-Third

The regulation of grants in the Indonesian legal system reveals normative inconsistencies that potentially create legal uncertainty and substantive injustice. The provision in Article 210 paragraph (1) of the KHI states that a person is only allowed to grant a maximum of one-third of their total assets to parties outside the heirs, with the implication that grants exceeding this limit can be canceled. However, this norm does not explicitly explain the legal consequences of exceeding this limit: whether the grant becomes entirely cancelled, only partially cancelled, or requires the approval of the heirs.

The absence of clarification regarding these legal consequences creates an interpretive gap that impacts the diversity of judicial decisions. In practice, courts may decide differently depending on each judge's interpretation of the principles of justice, proportionality, or even



pragmatic juridical considerations. For instance, some judges declare grants partially null and void by law (limited to the two-thirds excess), while others require the validity of grants with explicit approval from the heirs. This normative weakness is exacerbated by the KHI's legally precarious hierarchical position. As is known, KHI is not a statutory product but was issued through Presidential Instruction No. 1 of 1991. Based on the hierarchy of legislation as established in Law No. 12 of 2011 in conjunction with Law No. 13 of 2022, Presidential Instructions are not included in the types and hierarchy of binding legislation. This raises juridical questions about the binding power of KHI, especially when compared to the Civil Code, which is a colonial wetboek that remains in effect and has higher formal legal legitimacy.

From a civil law perspective, the Civil Code does not explicitly limit the maximum amount of grants a person can give. However, the Civil Code recognizes the concept of "*legitime portie*" (mandatory portion of inheritance for heirs), which functionally limits a person's right to grant all their assets if such action harms the rights of heirs. Nevertheless, there is no specific article that establishes a maximum proportion like KHI, so in this system, control over grants is exercised through the mechanism of canceling grants that violate legitimate rights.

This fundamental difference between KHI and the Civil Code results in legal dualism in Indonesian judicial practice, especially in cases involving Muslim communities. In grant disputes, judges in religious courts refer to KHI, while in similar cases that appear in general courts or intersect with agrarian or general civil aspects, the Civil Code can become the main reference. As a result, there is potential for non-uniform decisions despite starting from identical legal issues, which ultimately undermines legal certainty as a fundamental principle in the rule of law.

Additionally, the absence of a time limit for filing lawsuits in KHI also strengthens this normative gap. Unlike the Civil Code, which explicitly establishes a 30-year statute of limitations (Article 1967 of the Civil Code), KHI does not contain a prescription mechanism or principle that regulates the time limit for filing grant lawsuits. This opens space for lawsuits filed long after the grant has taken place, which in turn disrupts legal stability and ownership relationships.

Thus, it can be concluded that the provisions of Article 210 of KHI experience normative gaps and inconsistencies that result in legal uncertainty and difficulties in implementing substantive justice at the judicial level. This gap requires normative

reformulation, either through revision of the substance of Article 210 or through strengthening the position of KHI in the national legislative structure.

#### ***4.2. Reconstruction of Legal Theory in Grant Disputes in the Perspectives of Radbruch, Dworkin, Hart, and Islamic Law***

In the context of conflict between justice and legal certainty, Gustav Radbruch's theory becomes the main reference for understanding the priority of legal values in concrete situations. Radbruch asserts that in extreme conditions, justice must take precedence over legal certainty, especially when applicable law produces obvious and striking injustice (Radbruch, 2006). The application of this theory is highly relevant in cases of grants unknown to the heirs, where the formal application of positive law can result in substantive injustice. In such cases, disregarding the moral and sociological aspects of substantive justice can ignore family values and the sense of justice in society.

As a comparison, Ronald Dworkin with his concept of law as integrity argues that legal interpretation must pay attention to the consistency of moral principles and justice in the entire legal system. According to Dworkin (1986), judges do not merely apply rules mechanically but interpret law as part of a complete moral project. In grant dispute cases, Dworkin's approach encourages judges to consider whether their decisions reflect principles of substantive justice, such as protection of family rights and the good faith of the heirs. Conversely, Hart (1961) represents the school of legal positivism that emphasizes the importance of the rule of recognition as a criterion for legal validity. Hart (1961) argues that law is a system of rules that can be socially identified, without always having to reflect certain moral values. From this perspective, as long as the grant meets the formal criteria recognized in the legal system (such as a notarial deed), then the grant is legally valid, even though it potentially creates injustice for heirs who are unaware of it.

In the context of Indonesian law, which is hybrid—combining elements of Western civil law and Islamic law—the theories of *maslahah* and *istihsan* in Islamic law also offer moral and contextual justification in resolving grant disputes. *Maslahah* refers to the consideration of general benefit in establishing law, while *istihsan* allows for exceptions to general legal provisions in order to achieve justice in special cases (Al-Ghazali, 1993). When grants create uncertainty regarding the rights of heirs, the *maslahah* approach can be used to balance legal

certainty (based on documents) and substantive justice (based on family needs and social reality).

Thus, in Indonesia's pluralistic legal system, an approach that integrates substantive justice (Dworkin), formal certainty (Hart), value balance (Radbruch), and benefit (Islamic law) becomes important to address the tension between positive legal norms and the sense of justice in society. The reformulation of grant norms in the Compilation of Islamic Law (KHI) needs to consider this inclusive theoretical framework to avoid being trapped in narrow legalism that denies the moral, religious, and social values that live in society.

#### ***4.3. Application of the Statute of Limitations in Gift Disputes: Between Norms and Reality***

Article 1967 of the Indonesian Civil Code stipulates that all legal claims, whether property-based or personal, will be extinguished after 30 years. This norm reflects the principle of legal certainty, which is a fundamental principle in the Dutch-inherited civil law system, aimed at providing stability and finality to civil rights (Mertokusumo, 2010). However, in judicial practice, particularly in gift disputes in Religious Courts, the application of this statute of limitations often experiences tension with the principle of substantive justice. One important issue that arises is whether the reason of “just discovering” the existence of a gift can be used as a basis to delay or reject the application of the 30-year statute of limitations.

Courts in several decisions have shown a tendency to prioritize justice over legal certainty. In Decision No. 96/Pdt.G/2012/PN.Mdn, for example, the panel of judges rejected the statute of limitations exception because the plaintiff could prove that they never knew about the gift deed performed by the testator to another party. Although the gift deed had been executed more than 30 years earlier, the judge determined that the statute of limitations could not yet be applied because the legal knowledge (*actio nata*) of the aggrieved party had not yet begun. This indicates that judges interpret Article 1967 of the Civil Code dynamically, taking into account the actual moment when the party discovers their rights have been violated (Medan District Court Decision No. 96/Pdt.G/2012).

Similarly, in Decision No. 0227/Pdt.G/2014/PA.Mtr, where the plaintiff claimed to have only discovered a gift from their biological parents to one child unilaterally when the gift document appeared during the inheritance distribution process. The Mataram Religious Court in this case stated that the statute of limitations does not automatically apply because the

plaintiff's legal awareness of the violation of rights had not yet occurred. The panel of judges explicitly stated that “the principle of legal certainty should not be used to close access to substantive justice, especially when legal actions are carried out in a closed and disproportionate manner” (Mataram Religious Court, 2014).

The tension between the principles of legal certainty and justice in these cases aligns with arguments in progressive legal literature that law must be placed within a living social framework, not merely as normative text. Rahardjo (2009) argues that judges must serve as bridges between law and justice, and when the two collide, justice should be prioritized. In the context of gift disputes, judges face a dilemma in choosing between rigid legal certainty and contextual justice, and often choose the latter approach. This approach also aligns with Dworkin (1977) jurisprudential view, which emphasizes that in “hard cases,” judges must interpret the law not only based on written rules but also based on moral principles inherent in the legal system.

Thus, it can be concluded that the application of Article 1967 of the Civil Code in gift litigation practice is not always rigid. Although the statute of limitations norm aims to ensure legal certainty, court practice shows that considerations of substantive justice often dominate, especially when there are elements of ignorance or non-involvement of the plaintiff in the gift deed. This indicates the need for reinterpretation of the principle of statute of limitations to align with the values of social justice and substantive protection of civil rights.

#### ***4.4. Normative Implications and Proposed Reformulation of Article 210 KHI***

The position of KHI in the Indonesian legal hierarchy reflects the complex dynamics between Islamic law and the pluralistic national legal system. Although issued through Presidential Instruction No. 1 of 1991, which does not have binding power equivalent to laws, in practice, KHI plays a central role as a source of material law in religious courts. Ghoni (2023) affirms that KHI serves as an important guideline in resolving religious cases within Islamic judicial environments. Despite not being positioned as hard law, its application tends to be binding, demonstrating a quasi-legislative character: filling substantive legal gaps while remaining flexible in its interpretation.

The ambivalent status of KHI as soft law significantly impacts its implementation, particularly in Article 210, which regulates substitute inheritance rights. This article aims to unify various inheritance practices in Islam and provide legal certainty, especially amid the

discontinuity between sharia principles, customary law, and positive law (Hariati, 2024). However, in practice, these provisions often clash with local norms or other legal systems, such as the Civil Code. This disharmony creates legal dualism that confuses society, especially when judicial interpretations are influenced by evolving social values (Jamil, 2024).

Article 210 of KHI reflects the spirit of distributive justice in Islam by recognizing the inheritance rights of grandchildren from deceased children rights previously accommodated only through custom or testamentary gifts. Budiono et al. (2023) view this provision as a form of Islamic legal reform to be responsive to modern family structures. However, the different approaches between KHI and customary law, such as in the case of adopted children who are only accommodated through mandatory wills (*wasiat wajibah*), create inconsistencies in law enforcement, especially in communities that still make custom their primary legal source (Astuti & Nofitasari, 2023).

A concrete example of the problematic implementation of Article 210 is evident in the Bandung Religious Court case (3124/Pdt.G/2018/Pa.Badg), which shows the conflict between Islamic legal principles and customary demands in inheritance distribution (Rachman & Syawali, 2022). The decision of the Jakarta Religious High Court also emphasizes the importance of recognizing substitute heirs while highlighting society's minimal understanding of KHI's existence and legal strength (Budiono et al., 2023). This condition indicates the need for legal reform and public education to strengthen KHI's position within the national legal framework.

Reform of Article 210 should ideally be carried out through a comparative and integrative approach, combining sharia principles with national legal standards and contemporary human rights values. Atqiya et al. (2024) emphasize that a comparative approach between Islamic law and positive law opens up space for protecting vulnerable groups without abandoning Islamic legal identity. Meanwhile, Karimullah (2023) concept of legal harmonization highlights the urgency of contextualizing sharia principles to align with social realities and state policies, to create Islamic law that is inclusive and adaptive.

Within this framework, *maqashid sharia* (the objectives of Islamic law) becomes a relevant normative foundation. Aji and Mukri (2022) affirm that *maqashid* emphasizes justice, welfare, and protection of individual rights, enabling Islamic legal reform to remain aligned with contemporary developments without losing the essence of its teachings. Thus, despite

challenges in balancing tradition and modernity, KHI has the potential to develop into a progressive, contextual national Islamic law that upholds the principles of substantive justice. The normative implications and proposed reformulation of Article 210 of the KHI regarding property division in divorce cases reveal the need for profound changes in the current legal system. The provision establishing equal distribution of joint property (50:50) is often not achieved in practice, as reflected in court decisions that deviate from this norm (Dananjaya et al., 2024). For example, a ruling in Payakumbuh that awarded a disproportionate distribution ( $\frac{1}{4}$  for the husband and  $\frac{3}{4}$  for the wife) illustrates inconsistencies in the application of Article 210 of KHI. This decision is based on considerations of each party's contributions, which often lead to subjective interpretations and potentially result in injustice. Therefore, reformulation of Article 210 is necessary to provide clearer guidelines regarding the definition of joint property and each spouse's contribution to mitigate court inconsistencies.

This reform also suggests the application of a more progressive legal approach to fairly recognize the contributions of both parties, as well as establishing standard methods for evaluating these contributions to produce more consistent and fair decisions. On the other hand, although reforming Article 210 of KHI would enhance justice, there is also an argument that the flexibility provided by the existing legal framework allows consideration of unique circumstances in each divorce case. However, inconsistencies resulting from this flexibility can undermine the integrity of the legal system. In this regard, while reform is important for just property division, there must remain a balance between flexibility and legal certainty.

Regarding the limitation period regulated in Article 210 of KHI, it is intended to provide legal certainty by ensuring that claims are filed within clear time limits. The limitation period aims to protect defendants from claims that are too old, but this often conflicts with the principle of justice, especially when the period is considered too short or rigid, potentially closing legitimate claim rights. The laches defense, which allows claims to be disregarded due to unfair delays, emphasizes the importance of balance between timeliness and justice in legal proceedings. Similar issues are found in other countries' legal systems, such as in Armenia and China, where the application of uniform limitation periods can harm justice. Therefore, debates about the duration and application of limitation periods indicate the need for reform to better match the principle of justice with the legal certainty required in the judicial system.

Furthermore, in the context of gifts that exceed the legal inheritance limit, courts often cancel gifts that violate the legal portion of heirs, in accordance with the provisions in Articles

913 and 914 of the Indonesian Civil Code, to maintain balance between inheritance rights (Dewi et al., 2025). This provision requires the consent of heirs for gifts that exceed their legal portion, and failure to obtain this consent can trigger legal disputes and cancellation of gifts. However, there are also arguments suggesting flexibility in giving property to allow individuals to exercise their rights over their assets, which could potentially be resolved through mediation rather than strict legal procedures. This approach suggests the need for balance between individual freedom in managing property and protection of inheritance rights. The steps to reformulate the Compilation of Islamic Law (KHI) to be more compatible with the principles of justice and legal certainty and to have higher legal strength can be outlined through several strategic proposals, including the reformulation of Article 210 of KHI can begin by drafting clearer provisions regarding the division of joint property and the principles that should serve as references in assessing each party's contribution to the marriage. Establishing objective criteria related to contributions, both material and non-material, will reduce subjective interpretations that have been a source of injustice and inconsistency in court decisions. For example, by setting firmer standards for calculating spousal contributions in the form of money, time, effort, or other sacrifices related to household maintenance. Additionally, further clarification is needed regarding proportional distribution, while still prioritizing the principles of justice and balance.

To enhance legal certainty, there needs to be clear standard procedures for courts in determining the portion of property that should be given to each spouse. This will create consistency in legal decisions throughout Indonesia and reduce dependence on judges' personal interpretations. For example, by setting appropriate time standards or waiting periods for the divorce process so that the rights of both parties can be fairly considered. This procedure can be integrated with technology and data to expedite case resolution, thus minimizing waiting times that may disadvantage the aggrieved party.

One important step in strengthening KHI is proposing a change in its status from a compilation to a law that has a higher position above other regulations, in accordance with the *lex superior* principle. This law can strengthen the applicability of KHI throughout Indonesia and uphold legal certainty in the divorce system. With the status of a law, any changes or improvements made to KHI can be more accepted and adhered to by society and legal institutions, providing a strong foundation for implementing principles of justice in the Islamic judicial system in Indonesia.

The reformulation of KHI needs to be oriented to accommodate the *lex specialis* principle, which is the principle that specific law takes precedence over general law. In this context, KHI, which is based on Islamic law, can become a *lex specialis* that regulates the division of inheritance and divorce, which is more relevant and in accordance with Islamic legal values. This reformulation must align with the values of justice contained in *fiqh*, which prioritizes the principles of fairness and balance, as reflected in Islamic inheritance law that takes into account the rights of each party, whether husband, wife, or children in assets division.

Although legal certainty is very important, the legal system must also be able to accommodate the unique circumstances of each case. Therefore, while there need to be firmer guidelines in property division, flexibility must also be provided for special cases that may require different approaches, such as situations where one party has significant contributions that cannot be measured by standard metrics. This flexibility can be introduced through mediation mechanisms or assessment by independent third parties, such as legal advisors or judges who are experts in family matters. To ensure consistency and fairness in implementing new provisions, stricter supervision by judicial bodies or authorized institutions is necessary. This can include periodic evaluations of KHI implementation in practice, as well as better training for judges regarding fair and contextually appropriate interpretations of Islamic law in the modern context.

The reformulation of KHI to be more compatible with principles of justice and legal certainty can be achieved by drafting clearer and more detailed provisions, improving procedural standards in joint property division, and changing KHI's status to a law with higher legal power. This must remain in line with the *lex specialis* principle and Islamic legal values, while providing room for flexibility in dealing with special cases. These steps will ensure that KHI can function fairly and consistently, providing protection for the rights of each party in divorce and assets division.

## 5. Conclusion

This research reveals legal uncertainty and normative gaps in the regulation of gifts exceeding the one-third limit as stipulated in Article 210 of Compilation of Islamic Law(KHI), and highlights the weakness of KHI's status as a Presidential Instruction that leads to inconsistent application and varying court decisions. The main contribution of this research



lies in the proposed legal reform that not only suggests elevating KHI's status to Law, but also introduces mechanisms for clear legal consequences, including written consent from heirs and a 30-year limitation period for filing lawsuits, thereby pragmatically and contextually bridging the principles of legal certainty and substantive justice in Indonesia. Additionally, this research emphasizes the need for harmonization between KHI and the Civil Code to eliminate regulatory overlaps that have complicated inheritance law enforcement, and encourages courts to use flexible guidelines and interpretive authority based on Gustav Radbruch's legal theory to prioritize substantive justice in judicial practice. The proposed policy implications include drafting detailed revisions to Article 210, developing technical guidelines for judges, and establishing monitoring mechanisms for gift rule implementation by relevant institutions to make court decisions more consistent and fair. This research also opens opportunities for further empirical and comparative studies to evaluate the effectiveness of the proposed reforms and enrich the discourse on inheritance law that integrates sharia principles within the national legal framework. Thus, the results of this research are expected to make a significant contribution to strengthening legal certainty while upholding substantive justice in Indonesia's pluralistic inheritance law system.

This research concludes that the applicability of Article 210 of the KHI, which limits grants (*hibah*) to a maximum of one-third of the testator's assets, still creates legal uncertainty due to the absence of further regulations regarding heirs' approval and time limits for filing lawsuits. Additionally, the legal status of KHI as merely a Presidential Instruction further weakens its normative power and causes disparities in court decisions. Based on these findings, this research recommends legal reforms involving various stakeholders. For legislators, it is advised to revise and elevate the status of KHI to statutory law to have stronger legitimacy and binding force nationally. For judicial institutions, technical guidelines need to be developed that provide interpretative space for judges to balance the principles of legal certainty and substantive justice, with reference to Gustav Radbruch's legal theory. Meanwhile, for academics and legal researchers, further empirical studies are needed regarding the practice of resolving grant disputes, both nationally and in cross-legal system comparisons, to enrich discourse and the basis for formulating Islamic inheritance law in Indonesia.

As a concrete normative contribution, this research proposes a new wording of Article 210 of KHI as follows: (1) A Muslim can give a grant of part of their assets to another person during their lifetime, provided that the grant does not exceed one-third of the total assets owned

at the time of death; (2) Grants exceeding one-third portion are only valid if approved in writing by all heirs after the testator's death; (3) Lawsuits concerning grants exceeding one-third portion may only be filed within a maximum period of 30 (thirty) years from the date of the grantor's death; and (4) In the event of a conflict between the principles of legal certainty and substantive justice, judges are given the authority to interpret progressively in accordance with Islamic legal principles, social justice values, and the principle of legal utility. This reformulation is expected to strengthen legal certainty, provide protection for heirs' rights, and create substantive justice in the practice of Islamic inheritance law in Indonesia.

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