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Implementation of the Principle of Legal Equality in Making Deeds of Gifts and Wills Originating from Joint Property Reviewed Based on Relevant Legislation

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ABSTRACT

Applying the principle of equality in law plays a vital role in protecting husbands and wives from the making of wills or deeds made without their consent. This can be examined through three main legal instruments: the Civil Code (KUH Perdata), the Compilation of Islamic Law (KHI), and Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. This study applies a normative legal approach, namely a method that analyzes written legal norms that officially apply to the national legal system. In the context of managing joint property in marriage, the existence of consent from both parties—husband and wife—is an essential requirement that cannot be ignored. This is based on the principle that all forms of wealth obtained during the marriage bond are joint property, so they cannot be transferred, sold, donated, or used as collateral unilaterally without the consent of the spouse. Every legal action concerning joint property must be based on the agreement of both parties as a form of recognition of each party's rights to ownership. This provision aims to create justice and balance in household relationships and prevent the possibility of abuse of authority by one party. Therefore, the active involvement of the spouse in giving consent is an essential aspect to ensure the validity of a legal action and the proportional protection of rights over joint assets.

Keywords: Testamentary Grants, Community Property, Legal Equality

I. Introduction

Inheritance law is a branch of the legal system directly related to the phases of human life because everyone will eventually face a legal event in the form of death. This death has legal consequences, especially in regulating the transfer of rights and responsibilities from the deceased individual to the heirs or parties legally entitled to receive them (Rohmanna et al., 2023). Death has legal implications that must be followed up through the process of managing rights and settling the obligations of the heir. In this case, inheritance law plays a role in systematically regulating inheritance procedures and procedures for handing over inherited assets to heirs or parties who legally receive them (Kamalia et al., 2020). Based on the Civil Code, inheritance can be carried out in two ways, namely inheritance according to the provisions of the law and inheritance based on the will of the testator, which is stated in the form of a will or testament. Making a will (testament) is



a legal act that regulates how a person's assets will be transferred after death. The contents of a will have two main characteristics: it can be revoked at any time, and only comes into effect after the person who made the will dies. Making a will has an important position in the legal system. For the will to be recognized as legally valid, its preparation must follow the procedures and formats determined in the provisions of applicable laws and regulations. The will can be revoked if the preparation process does not comply with applicable regulations. By Article 875 of the Civil Code, a will made before a notary can lose its legal force if it is proven not to meet the formal requirements stipulated in the provisions. In addition, the Civil Code also stipulates limitations on granting grants through wills, especially those concerning the validity of the portion of the inheritance that is the right of the heirs protected by law, namely the absolute portion or legitime portion. Assets that are used as objects in a gift must have a legal and clear ownership status according to the law in order to avoid potential disputes in the future. In the context of marriage, the wealth owned by a husband and wife is divided into two categories, namely joint assets and individual assets (personal). Based on applicable provisions, every form of wealth obtained during the marriage is legally categorized as joint assets. However, administratively, it may only be in the name of one of the spouses. Therefore, both husband and wife have an equal position in the ownership and management of the assets (Kusmayanti et al., 2020).

The law explicitly states that all forms of wealth acquired in a marriage are included in the scope of joint property, regardless of who is formally listed as the owner. Therefore, any legal action concerning joint property—including gifts—must obtain the consent of both parties. A gift is a legal act that transfers ownership rights to another party, so it cannot be done unilaterally without the spouse's involvement in providing consent. The unilateral creation of a deed of will for joint property is contrary to the principle of balance in law because it can create uncertainty in ownership status and open loopholes for one party to abuse their rights. This situation can not only give rise to legal conflicts but also result in losses in terms of material and legal costs for the injured party. Therefore, the agreement of both parties is an important requirement in the implementation of a gift of joint property, as an effort to ensure legal certainty. If one party feels that their rights have been violated or not respected, he has a legal basis to file a lawsuit to protect their rights to the property. In addition to causing legal issues, the act of making a will deed without the spouse's consent also has a social impact on the lives of the Indonesian society. One of the most obvious consequences is the disruption of household harmony, because this unilateral action is often seen as a form of violation of trust and denial of commitment in marriage. Conflict can also spread to the extended family, especially between the injured spouse and the heir or recipient of the gift, and in many cases, can develop into a legal dispute or feud in the social realm. On a broader scale, this kind of condition can reduce the level of public trust in the legal system and public officials, especially notaries, if they are deemed unable to provide fair protection for the rights of spouses. Therefore, it is important to instill legal awareness and uphold ethical values in every legal action, so that the act is not only legally valid but also reflects the social justice that exists in society.

Overall, the principle of legal equality in the management and transfer of joint assets through testamentary grants must be a primary concern in notary and PPAT practices, so that one party does not abuse rights. The role of legal institutions is important in preventing unilateral legal acts that can harm couples and cause injustice in the household. Meanwhile, for academics, this study provides a scientific contribution to enriching the discourse on the principle of equality in family law and its application in civil practice. This study also opens up space for further study of legal protection for couples in marriage, so that it can be a reference in developing theories and formulating legal policies more responsive to the principles of justice and equality in the family. Consistent law enforcement against this principle will strengthen legal protection for husbands and wives in a balanced manner and reflect the values of substantive justice in the Indonesian family law system.

II. Literature Review and Hypothesis Development

2.1. Testamentary Grant

Based on the provisions of Article 957 of the Civil Code, a testamentary gift or legacy is a form of specific will, in which the testator determines the granting of one or more parts of his assets of a specified type to a particular party (legatee). Such assets can be in the form of all movable or immovable assets or the right to benefit from some or all of his inherited wealth. In other words, a testamentary gift allows the testator to clearly and in detail state what assets he wishes to inherit. Although the deed of gift is drawn up while the testator is still alive, its implementation can only be carried out after the testator dies. In Articles 584 and 876 of the Civil Code, a testamentary gift is categorized as one way of acquiring property rights based on granting special rights or special wills from a legally authorized party. Article 584 of the Civil Code states that: "Ownership rights over an object cannot be obtained in any other way, except by attachment, by expiration, by inheritance either according to law or according to a will and by appointment or transfer based on a civil event to transfer ownership rights, carried out by a person who has the right to act freely concerning the object." Article 876 of the Civil Code states that: "All provisions in a will regarding inherited property are to be taken in general or based on general rights or also based on special rights; Every such provision, whether taken under the name of inheritance (erfstelling), legaat (testamentary grant) or under the name: testamentary grant, or under any other name whatsoever, must be subject to the regulations contained in this chapter." A testamentary grant is a combined form of a grant and a will, namely a gift from one person to another party made during life but only valid after the giver dies, as regulated in Article 957 of the Civil Code, which states that a testamentary grant is a gift that is only valid after the death of the giver, with terms and conditions as with a will, including a maximum limit of one-third of the assets and a prohibition on giving to heirs without the consent of the other party. Thus, although they all involve the transfer of ownership rights, grants, wills, and testamentary grants have fundamental differences in terms of the time of implementation, legal consequences, and limitations according to Islamic and civil law.

2.2. Rights and Obligations of Husband and Wife Regarding Joint Property

Based on Article 119 of the Civil Code, since the marriage is carried out, then according to the law, there is joint property between husband and wife, as long as there are no other provisions in the marriage agreement. During the marriage, the joint property may not be eliminated or changed by an agreement between husband and wife." If a husband and wife intend to deviate from the joint property provisions, they must make a marriage agreement as regulated in Articles 139 to 154 of the Civil Code. Legal action can only be taken in the management of joint property if both parties have agreed upon it. Meanwhile, for personal assets owned before the marriage, each party still has full rights to regulate and take legal action on the assets. If the marriage ends due to divorce, the joint assets will be divided based on the applicable legal system, each party's religious background, customs, or legal norms. On the other hand, Article 86 paragraph (2) of the Compilation of Islamic Law (KHI) emphasizes that the personal property of the husband and wife remains the property of each and is under the complete control of the owner. In addition, KHI also establishes the principle of joint responsibility in the management of joint property, as explained in Article 89 and Article 90. These articles state that the husband is responsible for maintaining joint property, his wife's property, and his personal property; conversely, the wife is also responsible for maintaining joint property and the husband's property under her management. Therefore, although legally all property acquired during the marriage is categorized as joint property, it is still possible for a wife to have individual rights to a particular portion of the property (Harahap, 2000).

2.3. Principle of Equality Before the Law

The idea of equality between husband and wife in the Indonesian marriage law system is based on the principle of equal rights as stated in Article 27 paragraph (1) of the 1945 Constitution, which emphasizes that every citizen has the same position before the law and government, and is obliged to obey both without exception. According to Mien Rukmini, this provision includes legal recognition and guarantees for individual rights, ensuring the equal position of each person in legal and governmental treatment. This is further strengthened by Article 28D paragraph (1) of the 1945 Constitution, which emphasizes that everyone has the right to receive recognition, guarantees, protection, and legal certainty fairly and to be treated equally before the law. Protecting individuals from all forms of inequality and discrimination is integral to fulfilling the state's obligations in guaranteeing Human Rights (HAM) (Alim, 2001). These protection efforts can be realized through forming laws and regulations, formulating public policies, and implementing anti-discrimination programs as fundamental steps in eliminating unjust practices. Furthermore, the state must ensure that all people have equal access to fundamental rights and are given fair opportunities to participate in the development process (Sulistyowati, 2019). In the context of marriage, this principle is further strengthened by Law Number 1 of 1974 concerning Marriage, especially Article 31, which states that husband and wife have equal status in household life and society. This is also in line with the principles of gender equality stipulated in Law Number 39 of 1999 concerning Human Rights and Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan (RPJMN) 2020–2024, which explicitly encourages gender mainstreaming in development policies. Therefore, equality between husband and wife is not only a moral principle, but has also become an integral part of national legal policy that every state institution and society must uphold.

The principle of equal rights between husband and wife is one of the main foundations of the family law system in Indonesia. This principle emphasizes that both husband and wife have an equal position in carrying out their roles and responsibilities in household life. From a legal perspective, this equality means that both are treated equally regarding rights, obligations, and responsibilities towards the family. No party has a higher or lower legal standing than the other. Although the division of responsibilities can be adjusted according to each role or the results of a mutual agreement, from a legal perspective, both remain in an equal position. When the provisions of the Marriage Law were enacted in Indonesia in 1974, the things that underlie the equal position of husband and wife in marriage became an excellent relief for Indonesian society in general. The firmness of the attitude of the law's drafters is reflected in the general explanation of the Marriage Law, which emphasizes that the wife's position is equal to that of the husband, both in the context of household life and social interaction. This shows that every matter in the family should ideally be discussed and decided jointly by both parties, creating a relationship based on the principle of equality and deliberation between husband and wife (Judiasih, 2019). The Marriage Law stipulates that husband and wife have equal standing in household life. Both bear joint responsibility in various matters relating to the family, as reflected in several articles in the law. This regulation emphasizes the importance of balancing rights and obligations between husband and wife in forming a harmonious family and functioning as a solid social foundation, as stated in Article 30 of the Marriage Law. Furthermore, Article 31 clarifies that the relationship between husband and wife must be based on the principle of equality in terms of rights and responsibilities in household life. Regarding the management of joint assets, the use of these assets must be based on the agreement of both parties. This is emphasized in Article 36, paragraph (1), which states that legal action on joint assets can only be carried out with the consent of the husband and wife. Meanwhile, each party still has full authority to manage its assets without requiring its partner's consent.

2.4. Implications of Making a Will and Gift Deed Without Spouse's Consent

Making a deed of gift of a will for joint property without the spouse's consent can have severe social impacts. This kind of thing often causes inner conflict and feuds in the family, because this action takes away

the right to justice, which is considered absolute by the heirs in the eyes of Islamic law (Rachmavianti & Abdullah, 2025). An invalid deed of gift due to a violation of the agreement can be legally canceled, and cause the family relationship that was once harmonious to change into one full of distrust. Thus, in addition to having legal impacts, making this kind of deed also damages social values, reduces mutual trust, and often leaves psychological wounds in the family structure, the effects of which can last a long time (Nabila, 2021).

The practical implications of applying the principle of legal equality in making a deed of gift of will without the spouse's consent are very significant, especially in the context of protecting the legal rights of husband and wife over joint property. The principle of legal equality (equality before the law) emphasizes that both husband and wife have equal rights and positions regarding ownership and management of joint property as regulated in Articles 31 and 36 of Law No. 1 of 1974 on Marriage. When one party makes a deed of gift of will over joint property without the consent of the spouse, then this action can be considered as a form of neglect of the legal rights of the other party, who also has legal ownership of the property. In practice, making such a deed opens up great potential for legal disputes because it violates the principles of justice and balance of rights. The notary's actions in continuing to make a deed without the spouse's consent can result in the deed being canceled by the court, and the notary can be subject to ethical sanctions and administrative responsibility. This shows that the principle of legal equality is theoretical and directly impacts the validity of the deed and legal protection for all interested parties, especially in the division and management of assets originating from marriage. Thus, respect for this principle is the main requirement in maintaining the integrity of family civil law in Indonesia (Enggawita, 2021). Another implication can also be seen that an authentic deed can be degraded into a private deed, if a notary makes a deed of gift of will without the consent of the spouse for the object of joint property, the deed can be formally canceled or its evidentiary force can be reduced, from an authentic deed to a private letter (La Ode, 2022).

III. Research Method

3.1. Approach Method

This study uses a normative legal approach in legal studies based on an analysis of applicable legal norms as stated in the positive legal system. Because it is included in the normative research category, the statutory regulatory approach is applied to study the main problem. This approach is carried out by tracing and reviewing various relevant legal provisions and regulations directly related to the legal issues that are the focus of the research. This study carries a normative legal approach focusing on the study of legal norms contained in the Civil Code, Law Number 1 of 1974 concerning Marriage (which has been updated by Law Number 16 of 2019, Compilation of Islamic Law and with other social rules.

3.2. Research Specifications

The research specification used is the analytical descriptive research specification, namely by collecting data and facts directly related to the research object, then connecting them with applicable legal provisions and relevant legal theories. The data obtained will be analyzed and reviewed based on the legal basis that regulates the main issues of the research, so that the final result is expected to provide conclusions that can be used as a basis for answering the formulation of the problems that have been set.

3.3. Data Collection Techniques

The data collection technique used in this study is a literature study, namely collecting secondary data through research on the legal basis and theories contained in official documents, books, research reports, and so on, as well as documents related to the research object. While obtaining primary data, direct interviews will be conducted with respondents, such as notaries, and with other respondents related to the case issues

in this study. Interviews play a role not only as supporting data but also as a means of obtaining direct information from interested parties, which can provide insight into the implementation and understanding of legal norms. Through direct interaction with sources, researchers can explore deeper perspectives and capture how legal provisions are implemented in community life.

3.4. Data Analysis Methods

This study uses a qualitative legal data analysis method, namely processing and interpreting legal data in the form of laws and regulations, doctrines, or court decisions, systematically and in depth, without using statistical calculations or numbers. In this approach, researchers focus on understanding legal norms and their application in concrete cases by considering the values of justice, certainty, and legal benefits.

IV. Results and Discussion

Mochtar Kusumaatmadja stated that the concept of law is limited to a collection of principles and norms that regulate interactions between individuals in society, and includes institutions and mechanisms that allow law to be realized in real life. He emphasized that making the law merely a tool to maintain social order is insufficient. Law must function as a tool for social engineering renewal, which can encourage social change in a directed and orderly manner in a society that continues to develop (Kusumaatmadja, 2002). The 1945 Constitution of the Republic of Indonesia protects every citizen as stated in Article 28G paragraph (1) as follows: "Everyone has the right to protection of themselves, their families, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right." Meanwhile, Gustav Radbruch formulated three fundamental values inherent in the law, which experts also consider to be the main objectives of the law itself. The three objectives are legal certainty, utility, and justice, all of which aim to protect citizens' rights and obligations. Legal certainty is related to applying clear, fixed, consistent, and unchanging laws to protect justice seekers from possible arbitrary actions (Halilah & Arif, 2021).

Satjipto Rahardjo stated that legal protection is a form of guarantee for human rights that are violated by the actions of other parties. This protection is intended to create legal certainty that allows each individual to exercise their rights under the protection provided by law. In the context of family law, marriage provides a strong legal basis for protecting the rights and obligations of husband and wife. Marriage is not only limited to a personal relationship, but also has legal consequences that affect various important aspects of life, including regulating the rights and responsibilities of couples, the rights of children, and the division of wealth in the household (Rahardjo, 2009). The validity of a marriage is an important basis for regulating the rights and responsibilities of couples after marriage, including asset management, responsibility for children, and inheritance rights. When a marriage is recorded in an official deed, a joint property relationship is legally formed, namely, assets obtained during the marriage that become the collective property of the husband and wife (Nugroho, 2023).

The creation of a will grant deed is one form of inheritance mechanism that arises as a legal consequence of marriage, especially when it involves property jointly acquired by husband and wife. In civil law, a will grant is recognized as part of an alternative inheritance system outside of basic inheritance, where the testator determines certain assets, which will be transferred to the recipient after the testator dies (Suyanto, 2018). A will grant becomes valid if it is standardized through a notarial deed, although if it exceeds the legitimate portion, then the heirs can cancel the deed after the testator's death (Ashar et al., 2021). In Indonesian civil inheritance law, the legitimate portion or absolute share is the minimum right certain heirs, especially descendants and spouses, must receive, which cannot be reduced through a will. This concept is detailed in Articles 913–914 of the Civil Code. Every legitimate heir has the right to reclaim their share if the will unilaterally reduces the portion, for example, through an incorporating mechanism or deduction from the will (Jalil & Hakim, 2023). The principle of legitimate portion in the Civil Code parallels the Compilation of

Islamic Law principle. Although the basic sources differ, Dutch law is more individualistic, while Islamic law is beneficial; both limit wills so as not to harm blood heirs who still receive their share of their rights (Firdausy, 2022).

The portion of the inheritance that is an absolute right can only be given if the rightful heir submits it. In other words, if a stipulation in the will ignores this right, it does not automatically cause the will to be null and void by law. This provision only applies if the heir concerned submits a claim for their rights. In this context, it is necessary to carry out a process of reduction or incorporation of the grant, or the testator will have determined that to ensure that the minimum rights of the legitimate heirs are still fulfilled. This reduction process is applied as a form of correction so that the absolute portion of the legitimate heirs remains protected according to legal provisions (Meutia, 2022). In the context of marriage, assets acquired during the life of a husband and wife are known as joint assets and are relevant objects in making a will grant. When a husband or wife includes these assets in a will grant deed, they indirectly carry out the inheritance function recognized by law. The purpose of this binding is to provide certainty that the assets that have been decided will be formally transferred after death, by the provisions of civil law and family law.

The granting of a will is one mechanism in the inheritance process that still exists in practice, especially in Indonesia. The granting of a will is one form of transfer of rights to the testator's inheritance to another party based on the will made during his/her lifetime. Although the granting of a will is not included in direct lineage inheritance, the granting of a will has the same legal consequences because the transfer of assets only applies after the testator dies. In the civil law system, granting a will is considered one form of implementing a person's last will and is regulated in the provisions regarding wills. Meanwhile, in Islamic law, as stated in the Compilation of Islamic Law, the granting of a will is also recognized as one of the legitimate ways to transfer part of the testator's inheritance, with a maximum limit of one-third of the entire inheritance, and it must not harm the rights of the legitimate heirs. Therefore, although granting a will is not included in the form of direct lineage inheritance, it is still seen as one of the legitimate ways to transfer inheritance assets according to applicable law.

The making of a will gift deed is a form of unilateral legal act because it only involves the will of the party making the gift, namely the testator, without requiring the consent of the recipient of the gift at the time the deed is made. In practice, a will gift is made based on a person's intention to hand over part of his/her assets to a particular party of his/her choice, and only comes into effect after the person dies. Because of its nature, which does not require an agreement between the two parties as is the case with agreements in general, a will gift is included in a unilateral legal act. However, even though it is unilateral, the making of a will gift must still pay attention to the applicable legal limitations, such as not violating the rights of legitimate heirs or exceeding the limits permitted by law, so that the deed is valid and does not become the object of a lawsuit in the future. A testamentary grant is a unilateral legal act involving only the party's will. If the object of the grant comes from joint property in marriage, then the spouse's consent remains an important requirement. This is because joint property is the result of acquisition during the marriage, which legally belongs to both parties, so it cannot be transferred or made the object of a testamentary grant without the spouse's consent. In other words, although the grantor can determine his will in a testamentary grant, the spouse's rights to the joint property must still be respected and protected. Therefore, in order for the deed of testamentary grant relating to joint property to be legally valid and not cause disputes in the future, the involvement of the spouse in the form of absolute consent is necessary as part of the application of the principles of justice and equality in husband and wife relations. As stated in the Civil Code, especially Article 1666 and Article 1675, a will grant is a transfer of ownership rights that only applies after the testator dies. If the grant concerns joint property (gemeenschap van goederen) in a marriage, then it must pay attention to Article 119 of the Civil Code which states that in a marriage without a marriage agreement, all property becomes joint property, so that legal acts that reduce or transfer such property must be carried out with the consent of the husband/wife. Suppose the husband or wife intends to transfer joint property through a will grant, but without involving or obtaining the consent of the husband/wife. In that case, such an act contradicts

the principle of joint property management. This is based on the principle that legal acts whose object uses joint property must be carried out with the consent of both parties.

Notaries play a crucial role in preparing will gift deeds, because only notaries are legally authorized to prepare authentic deeds that can provide legal certainty and guarantee the deed's validity. A will gift deed is a legal instrument that reflects a person's intention to hand over part of their assets to another party. However, its implementation is only effective after the grantor dies because the legal consequences of a will gift only apply after death; an official document is needed to prevent potential conflicts in the future. In this case, the notary acts as a public official who ensures that the grantor's will is recorded clearly and by applicable provisions in writing. The notary's responsibility in making a deed of will is limited to carrying out administrative functions and involves efforts to provide legal protection to all parties involved. The notary must ensure that the testator's will is stated legally, without coercion, and in accordance with applicable legal provisions. In practice, the notary must thoroughly examine the personal data of the party making the gift, trace the validity of the donated object, and ensure that the gift does not violate the absolute rights of the heirs or the legitimate portion guaranteed by law. If granting the gift is proven detrimental to the legal rights of the heirs, the deed can be canceled through the available legal mechanisms. In addition, the notary also has a role as a balance guard in the legal system, to prevent abuse of authority and protect the legal interests of the parties involved in the act (Siregar, 2022). A notary is responsible for ensuring that the deed of will gift has been prepared according to all formal and material requirements stipulated by law to avoid potential future legal disputes. One important aspect that must be considered is that the will gift must not conflict with the provisions of applicable laws and regulations, and must be explicitly stated in the deed that the gift is only valid after the testator dies, and is not a form of gift that is effective while the testator is still alive. Especially for gifts whose object is land, transferring the ownership name at the land office can only be carried out after the testator dies, concerning the legal force of the will gift deed. In addition, the notary is obliged to refuse to make a deed of will gift if it is known that the object of the gift is joint property that has not received approval from the donor spouse. This step is part of the principle of caution and legal protection for the parties. If the notary continues to prepare the deed without verifying the existence of the approval, then the deed could be at risk of being canceled through legal channels, and the notary can be held legally and ethically accountable (Soemardjono, 2020).

A notary who knows that the property that a husband will bequeath to his child is part of the joint property. However, the notary still makes the deed without obtaining the wife's consent, as the party with legal rights to the property has violated the applicable legal provisions. If the spouse cannot be present when the deed is signed, consent can still be proven through a written statement. The actions of the notary who ignored the provisions of Article 36 paragraph (1) of the Marriage Law and Article 16 paragraph (1) letter a of the Notary Position Law resulted in the deed being made null and void and deemed to have never existed. In carrying out his/her duties, a notary is not only obliged to exercise the authority as stipulated in the law, such as compiling authentic deeds, but must also bear responsibility for the contents of the deeds that have been made. This responsibility is closely related to professional ethics based on moral values and personal integrity. If a notary does not uphold integrity and morality, then he/she cannot be considered to have good professional responsibility. The scope of a notary's responsibility includes the accuracy and material truth of the contents of the deeds he/she has prepared (Ghofur, 2019). An act that violates the code of ethics of the notary profession and results in losses for another party, in this case, the wife, then the deed in question can be canceled because the elements of a valid agreement, as stated in Article 1320 of the Civil Code, have not been fulfilled. Given that joint property is collective ownership between husband and wife, all legal actions involving the property must be based on the agreement of both parties. If one party acts unilaterally without their spouse's consent, then the agreement element in the agreement is not fulfilled. In such conditions, a notary or PPAT who makes a deed without ensuring the validity of the status of the property and without verifying the existence of written consent from the granting spouse may be subject to administrative sanctions or a violation of the profession's code of ethics.

Making a deed of gift of a will over joint property without the spouse's consent has serious legal consequences in the Indonesian legal system. This kind of practice not only risks triggering disputes, but also opens up space for the deed to be cancelled based on applicable legal provisions. In the national legal system—as regulated in the Civil Code, the Marriage Law, and the Compilation of Islamic Law—it has been emphasized that actions over joint property must receive the consent of both parties.

Specifically, Articles 35 and 36 of the Marriage Law state that management and legal actions over joint assets must be carried out jointly between husband and wife, and may not be carried out unilaterally. This emphasizes the importance of the principle of justice and balance of roles in husband and wife relationships, especially regarding decision-making regarding family assets. Therefore, if a deed of will and gift is made without the spouse's consent, then this action contradicts the equality of rights and obligations regulated in Article 31 paragraphs (1) and (2) of the Marriage Law. Violating this principle can be a legal reason to declare the deed null and void, because it does not comply with the principles of justice and legal protection in marriage relations (Judiasih, 2019). In practice, all decision-making related to joint property must be based on mutual agreement between husband and wife. All assets acquired during the marriage—whether in the name of one party or jointly—are legally classified as joint property. This status does not change just because administrative registration is carried out in the name of one of the spouses. Therefore, based on the principle of legal equality, every action concerning joint property must be based on the voluntary agreement of both parties.

Applying the principle of equality in household life, especially in managing and utilizing joint assets, shows that husband and wife have an equal position in law. This is emphasized in Article 31, paragraphs (1) and (2) of the Marriage Law, which states that husband and wife have an equal position both in the eyes of the law and in family life, and are obliged to respect and support each other. This provision is further strengthened by Article 36, paragraph (1), which requires joint consent for every legal action related to joint assets. Thus, it is not permitted for either party to unilaterally make a gift, sell, encumber, or make other legal agreements regarding joint assets without the explicit consent of their partner. In this case, the principle of equality before the law is interpreted as an effort to ensure justice and balance in legal treatment for all parties with rights. The Supreme Court emphasized that every heir has an equal legal standing over the inheritance of their parents or family, and this right may not be unilaterally set aside through a gift or will that exceeds the limits of legal reasonableness. Therefore, the Court annulled part of the contents of the deed of gift and will that contradicted this principle, and determined that the remaining assets be distributed fairly to all heirs. This equality is not only valuable from a legal perspective, but also reflects ethical considerations: that the law not only functions to realize the will of a person (the heir), but also to protect the legitimate interests of other parties with the same rights. From the author's perspective as a law student, this decision shows that the principle of equality is not just a normative concept in theory, but is applied by judges as a basis for resolving civil disputes and strengthening the role of the Supreme Court in upholding equal justice in the national legal system.

The principle of equality between husband and wife is strongly related to the principle of balance in law, because both legally have equal rights regarding management and decision-making regarding joint property. The purpose of this principle is to guarantee the protection of each party's rights and prevent unilateral actions that could harm one of the partners. The principle of legal balance requires that husband and wife be treated fairly in a marital relationship, with an equal division of rights and obligations. This view must be understood within a legal framework that places the position of both parties on an equal footing in all aspects of the household (Setiawan et al., 2021). Any wealth acquired during the marriage is considered part of the joint property, unless the wealth is acquired through inheritance or personal gift. About a deed of will gift, if one party, either husband or wife, prepares a deed of will gift for assets included in the joint property without the consent of the spouse, then this action is contrary to the legal principle that guarantees the balance of rights and obligations in the management of assets in the household. In practice, this can be a legal reason to cancel the deed because there is a formal defect, namely the absence of consent from the spouse who legally also has rights to the assets that are the object of the gift.

The Supreme Court annulled the deed of gift made by the husband of joint property without the wife's consent. The judge considered that although the notary had made the deed of gift, the legal act was materially flawed because it ignored the wife's rights to half of the joint property. The husband's action in unilaterally transferring joint property violated the principle of joint consent as regulated in Articles 35 and 36 of the Marriage Law. This decision shows that the judge does not only look at the legal formality aspect, such as whose name is listed in the deed of ownership or the deed of gift, but also assesses the substance of joint ownership in the marriage. The wife is the legal owner of half of the property, and her rights cannot be ignored just because they are not listed in the formal document. Therefore, the judge provided legal protection in the form of cancellation of the deed of gift in order to restore the wife's violated rights. The judge also saw that the husband's unilateral action had harmed the wife, both economically and legally, so he provided corrective protection in the form of restoration of rights. In deciding, the judge does not merely refer to one source of law. As reflected in the Supreme Court decision in question, the basis for its considerations is not only based on the Civil Code and the Law on Marriage but also refers to the Compilation of Islamic Law (KHI), which is an important foundation in the application of Islamic family law in Indonesia. In cases related to making a deed of gift or will without the spouse's consent, the existence of the KHI becomes relevant because it contains the principle of equality in law. This is emphasized in Article 85 of the KHI, which states that all assets acquired during the marriage period are joint assets, without distinguishing between the husband or wife who produced them. In the context of marriage, management and ownership of joint property are based on the principle of equality between husband and wife. This principle is closely related to the concept of legal balance, which emphasizes that both parties have equal rights in determining policies and management of the property. Applying this principle aims to ensure fair legal protection for each partner and prevent unilateral decisions. Legal balance also underlines the need for a balanced distribution of rights and obligations in husband-and-wife relationships, which is based on a legal system that guarantees equality in each party's roles, positions, and responsibilities (Setiawan et al., 2021).

The legal implications of making a deed of will without the spouse's consent include the potential for legal disputes, both in the civil context and in religious courts, depending on the legal background of the husband and wife. In cases that have entered the realm of justice, the courts generally consider the principles of justice, equality, and protection of the rights of spouses in the household. Thus, applying the principle of legal equality does not only stop at the normative realm, but must be realized in practice through the guarantee that every legal action concerning joint property is carried out openly, voluntarily, and with the consent of both parties. In this case, the principle of equality provides legal protection in the form of the right to apply for cancellation of a deed of will that is considered to have legal defects. This protection reflects the recognition of the role of each spouse in the household—both contributions in material and immaterial forms—which are considered legally equal. The application of the principle of equality before the law in guaranteeing protection for husbands and wives against deeds of will made without the consent of their spouses, especially in the case of revocation carried out without going through a court process, needs to be studied in depth from the perspective of civil law and family law. In both legal domains, equality is interpreted as equal rights for husbands and wives in managing and deciding joint assets, including the right to approve or reject legal actions related to assets in a marriage bond. If the party making the gift is still alive and is aware that the object of the gift is part of the joint assets but was made without the spouse's consent, the deed can be revoked legally by referring to the principle of equality. The grantor can carry this out directly by making a deed of revocation before a notary without requiring a court process.

V. Conclusion

The making of a deed of gift of will over assets included in the category of joint assets is a form of transfer of ownership rights over part of the assets owned by the husband and wife during the marriage, the implementation of which only applies after one of the parties dies. Although a gift of will is a unilateral legal act by the testator, if it concerns joint assets, then the act cannot be carried out unilaterally without the

consent of the spouse, considering that the status of the assets is joint property that must be managed based on the principle of justice. In this case, provisions regarding joint assets and legal acts carried out by husband and wife are regulated in the Civil Code, Compilation of Islamic Law, and the Marriage Law, which have the same substance. That every legal action against joint assets, including the making of a deed of gift or will, must be based on the agreement of both parties. Suppose the deed is made without the consent of the husband or wife. In that case, the act violates normative provisions. It contradicts the principle of equality of rights and obligations between husband and wife as regulated in Article 31, paragraphs (1) and (2) of the Marriage Law. Therefore, a deed of gift of will made unilaterally for joint property can be cancelled or declared legally invalid, because it denies the principle of equality and protection of the rights of spouses in marriage.

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