



اَوْنُوْزِ سَيِّدِيْ تَيْكُوْلُوْ كِيْ مَبَارَا  
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***GIVING CONDITIONAL HIBAH***

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## **STUDENT DECLARATION**

بسم الله الرحمن الرحيم

**We hereby acknowledge that in fact all of the work in the preparation of this academic work is the result of our own efforts and works except as expressly stated.**

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## 1.0 DEFINITION OF HIBAH AND CONDITIONAL HIBAH

In terms of definition, the term *hibah* refers to the giving of advantages and benefits in the form of something that can benefit the recipient, whether the given is property or non-property. However, if it refers to the understanding from a linguistic standpoint, the grant will be referred to solely as property. In legal terms, *hibah* can be defined as a contract of voluntary ownership of the property to someone during the owner's lifetime with no expectation of return. According to jurisprudence's concept of *hibah*, the granting of *hibah* must be done in accordance with absolute, unconditional, and reciprocated rules. When the principles and conditions of *hibah* absolute, also known as *al-hibah munjizah*, are met, it will have three effects which are the *mawhub* will transfer ownership to the grantee with immediate effect, the grantee's ownership rights are permanent and unlimited in duration, and the granter's ownership rights to *'ayn* and *mawhub*'s benefits are lost.

*Hibah* is defined as a contract involving the transfer of ownership from one person to another. Except for testamentary contracts, contracts involving the transfer of ownership (*'uqud al-tamlik*) are included in the category of invalid contracts, as are *ta'liq*, *tawqit*, and *ifadah*. However, the Malik school of thought holds that the method is generally prohibited in voluntary contracts (*tabarru*), including grants. Even so, if the grantee (*mawhub lahu*) wishes to return the gift, this is an act of circumcision. In the original concept of the grant, the term "without return" explicitly describes the grant with the condition of return (*hibah bi sharti 'iwad*), which is not included in the meaning of the word *hibah*. According to or subject to the opinion of scholars of various sects, grants made in this manner are also recognized as valid grants. Based on this, Muhammad Qadri Basha (1338H) defines *hibah* as giving property belonging to *'ayn* without recompense and sometimes with recompense in *Murshid al-Hayran*.

As a result, the definition of the *hibah*, which includes grant *bi shart 'iwad*, is a contract of voluntarily giving property rights during life to people other than oneself while living for free or with a return that does not deny the fact of *tabarru*' the gift. According to jurisprudence, a *hibah* is a gift that is made formally, voluntarily, and without any conditions to enforce it. Thus, *hibah* in the form of conditional *hibah* categories are invalid according to this original concept because they contradict the givers of *hibah* will and the nature of the *hibah* contract, which is the *sighah* in the form of *idafah* is contrary to the nature of the *hibah* contract giving possession immediately after *'aqad* and *qabd*, *sighah tawqit* illustrates that the giver limits the