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The Cancellation of Grants in the Perspective of Civil Law and Islamic Law

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ABSTRACT. From birth, there is no human being in this world who can live alone without another human being. This is because humans are social beings. In life with human beings must be mutual helping. Forms help please this is diverse that there is a form of Services, Sale, Buy, Gift and so forth and one form of help please that there is a form of Grant. Indeed, all humans will die. This event will lead to inheritance in a civil law. Usually, heirs while still alive give grants or donations either to his heirs or to others. And usually, the grant is not known by the heirs, which then raises the issue of the heritage property. Thus came the issues and also the

questions about how the civil law regulates the grant in the Civil Code. So, in this paper will explain what grants and grant cancellation and examples of cases that occurred in Indonesia related to the problem of grants.

KEYWORDS. *Grant Cancellation, Islamic Law, Civil Law*

I. INTRODUCTION

Marcus Tullius Cicero (Roman) in *De Legibus* states that law is the highest reason implanted by nature in man to determine what is and what not to do. The dimensions and elements used in this perspective are aspects of human actions and the aspects of deeds to be avoided. Human acts between may and may not be made harmless or harmless, contrary to the norms set by the state or not constitute some elements that determine the formulation of the law.

The Indonesian Civil Code (hereinafter as KUHPer) in Article 1666 states that, A grant is an agreement whereby the beneficiary in his or her life is free and irrevocably, delivers something to the Grantee receiving the surrender. The grant includes a one-sided agreement, in which only one party shall have the obligation of the treaty, namely the grantee, while the party receiving the *Hibah* has no obligation at all ([Azni, 2015](#); [Al Faruq & Khisni, 2018](#)).

The amalgamation includes the "*free*" (omniet) agreement in which the word "*free of charge*" is shown in only the achievements of one party only, while the other does not need to provide counter-achievement in return. Such a treaty is also called "*unilateral*" as opposed to a "*bilateral*"

agreement. The multitude of agreements is reciprocity, since the common one is that the person who commits it is an achievement because it will receive an achievement-*contra* (Subekti, 1995).

The grant in Dutch is "*Schenking*". Whereas according to the terms referred to as grants, as mentioned in Article 1666 of the Civil Code, are: "*Something of agreement with which the recipient in his life, free of charge and irrevocably, hands over an object for the purpose of the grantee receiving the surrender.*" A grant is a gift made by a person to another party committed while still alive and the execution of the division is usually done at the time the grant is still alive as well (Suparman, 1995; Suryadini & Widiyanti, 2020). Usually, the gifts are never reproached by relatives who do not accept the gift, because basically someone who owns the property is entitled and free to give his property to anyone.

Actually, the grant does not include the material of inheritance law but includes the law of engagement arranged in the Third Book of the tenth chapter of the Civil Code (KUHPer). In addition, one of the conditions in inheritance law for the inheritance process is the presence of a person who dies by leaving a number of assets. While in the grant, the grantee is still alive at the time of the grant.

The law of inheritance in the Civil Code is defined as: "*All rules of law governing the fate of wealth someone after he dies and determine who the person who can accept it*" (Tamakiran, 2000; Ramadhani, Basri, & Arisaputra, 2022; Izzah, Saharuddin, & Tijjang, 2022). Giver in testament (The testament may also contain one or more some specific objects, for example are the provision of cars and so forth. Giving by means of a testament is called a donation grant or *legaat*) (Utami, 2016). This is closely related to the nature of "*herroepelijkheid*" from the testament's determination (Soekanto, 1986). According to BW (*Burgerlijk Wetboek*) is called *legaat* (grant of will), which

is regulated in the Law of Inheritance, while this grant is a covenant, then by itself can not be pulled back unilaterally by the grant. Thus, according to BW (*Burgerlijk Wetboek*) Grant there are 2 (two) kinds, namely: ordinary grants and grants of wills whose provisions on grant will often apply also in the provision of grant.

The difference between a regular grant and a grant of a will lies when the grant occurs. If the grant was made at the time the grantee was alive, then it was called a regular grant (Article 1666 Civil Code). If the grant is made after the death of the grantee it is called a grant of a will where grant is set forth in a deed called the deed of grant (Article 957 Civil Code, *Hibah* is a special determination, in which the heir gives to one or more persons certain goods, or all goods and kinds, for example, all mobile goods or fixed goods, or the right to use the proceeds of some or all of its goods. Here are the Articles concerning the grants in KUHPer:

1. Article 1667 Civil Code:

"Grants can only concern existing things, if they include new things in the future, then just about that grant is void".

2. Article 1668 Civil Code:

"The beneficiary must not agree that he remains in power to sell or give to others an object including in such grants simply regarding such objects being considered void".

3. Article 1669 Civil Code:

"It is permissible for the recipient to promise that he still has the pleasure or favor of the goods granted, whether moving objects or immovable objects, or that he may give favors of such results or pleasures to others, in that case where the provisions of the tenth chapter of the second book of the law should be taken into account. "

About how to give something is regulated in the Civil Code, as set forth in the following section:

1. Article 1682 Civil Code:

"No grant except as set forth in Article 1687, may be a threat of nullity, carried out in addition to the notarial deed, originally deposited by the notary".

2. Article 1683 Book of the Civil Code:

"No grant binds the grant or publishes any consequence, other than that from the moment of grant with the words expressly accepted by the grantee himself or by a person who by an authentic deed by the grantee has been authorized to receive grant- the grant awarded by the grantee or will be given to him in the future. If the grantee has done in his or her letter the grant itself, then it can be done in an authentic deed, then the original must be kept, provided that it is done at the time the benefactor is alive, in which case the grant to the last person only valid from the moment the recipient was notified to him".

Therefore, this study used a normative legal approach. Method means appropriate by certain means, systematically means based on a system, while consistent means the absence of things contradicting within a certain framework ([Wijaya, 2014](#)). Type of Research in the writing of this law is the normative legal research that is research conducted by reviewing laws that apply or applied to a particular legal problem. Research conducted by reviewing the applicable legislation and literature to be applied to a particular legal problem. At this writing the authors examine aspects of the reasons and legal effects underlying the cancellation of deed by the Judge. The research approach used is statute approach and conceptual approach. The statutory approach is used by researchers with the intent of being the initial basis for analyzing. Conceptual approach

used by researchers from the views and doctrines that developed in the science of law.

Research is an attempt to discover, develop and test the truth of a knowledge, symptom, or hypothesis, which effort is done by using the scientific method. Scientific research can be trusted if it is compiled by using a method that is appropriate to understand the object of the target of the science concerned. Research is a scientific activity related to analysis and construction that is done methodologically, systematically, and consistently. Methodological means in accordance with certain ways, systematic means based on a system, while consistent means the absence of things that are contradictory within a certain framework. Legal research is a scientific activity based on method, systematics, and certain thoughts, which aims to study legal symptoms by analyzing them. In addition, there is also a deep assessment of the legal facts, to then seek a solution to the problems that arise in the symptoms concerned. Furthermore, the existing legal material is analyzed by linking other legal materials. The legal substances are analyzed with using the grammatical interpretation method (by language) with interpreting the words in the Act in accordance with the rules of grammar.

II. CANCELLATION OF GRANTS IN ISLAMIC LAW PERSPECTIVE

Grant cancellation, and the concept of grant itself can be seen on the Compilation of Islamic Law Article 171 letter (g) is said to be a grant is the giving of a thing voluntarily and without reward from someone to someone else who is still alive to have. Further According to Article 210 The Compilation of Islamic Law in paragraph: (1) states that the person

who has aged at least 21 years of age, sensible in the absence of coercion grant as much as one-third of his property to others or institutions in the presence of two witnesses to possess. Furthermore, in paragraph (2) declare the granted property shall be the right of the grant. Thus, if a person donates a non-property is the right, then the grant becomes void (Hindrato & Purwadi, 2018; Hadiyanti, Safa'at & Anshari, 2017).

According to Islamic law grants granted to persons under the supervision of their guardians such as minors, crazies, wasteful people, etc., shall be submitted to their respective guardian (Santoso, 2014). Based on the above provisions, it can be said that everyone can give or receive grants, except those who are otherwise incompetent. Therefore, in addition, the element of willingness in doing legal deeds without the coercion of the other party is an element that must exist within implementation of grants (Hamidi, 2005; Husni, 2019).

Furthermore, according to Article 211 Compilation of Islamic Law states that grants from parents can be counted as inheritance. In connection grant functions as a social function that can be assigned to anyone without looking at race, religion and class, then grants can be used as a solution to solve the problem of inheritance law today. Article 212 Compilation Islamic law states, grants can not be withdrawn, except grants from parents to their children.

The case of grant cancellation is a frequent case the grantee does not meet the requirements in running the grant has been given. By law, grants already granted can not be with drawn again, but there are some exceptions so grants can be with drawn back.

Judging from the above grant definition, it can be seen some things that can make a grant void, that is if the grant includes new objects will be in the future, if the grant promises that he keep trying to sell or give to

others an object which is included in the grant, hika is made on condition that the grantee will pay off debts or other expenses and if the grantee is immature and / or incompetent.

According to the Civil Code that grants have been given by someone to another person irrevocably or canceled, except:

1. If the grant terms are not fulfilled by the grantee
2. If the person given the grant is guilty by committing or participating in an assassination attempt or a crime other than self-giving,
3. If the grant felt poor grants who were given grants refused to give a living to her (Pasaribu& Lubis, 1996).

III. CANCELLATION OF GRANTS IN CIVIL LAW PERSPECTIVE

If we look at the arrangement of grants in Indonesia, under Article 1666 of the Civil Code, it is stated that the grant is an agreement with which the grantee, in his free and irrevocable lifetime, hands over a grant for the grantee receiving the surrender. So, the grant should not be withdrawn unilaterally without the consent of the Grantee, even though the Grant takes place between two brothers or husband and wife ([Asri & Asri, 1988](#); [Marthianus, 2019](#)).

Basically, when referring to Article 1678 Civil Code which states that the prohibition of grant between husband and wife, during the marriage is still ongoing. This indicates that when the grant between husband and wife is done during the marriage is still in progress, the grant is violated the provisions of Article 1678 Civil Code, unless the granted goods are tangible mobile goods that are not too high in price when compared with the

amount of wealth of the grant (Article 1678 paragraph (2) of the Civil Code) (Soeroso, 2003).

Therefore, the grant can not be revoked and can not be annulled by the person. Withdrawal of a grant, is only possible based on the reasons set forth in Article 1688 Civil Code, namely:

1. if not fulfilled the conditions under which the grant has been made
2. if the grantee has been guilty of committing or assisting a crime aimed at taking the life of the beneficiary
3. if the grantee refuses to provide subsistence to the beneficiary, after the grantor has fallen into a poor or insolvent state (Bafadhah, 2013).

IV. CASE OF GRANT CANCELLATION

Based on the above explanation, to find out the settlement of grant dispute by Pati District Court with regard to the cancellation of grant can be clarified by the existence of 1 (one) case in case of petition of grant cancellation at Pati District Court Number 20 / Pdt.G / 1996 / PN .Pt dated June 18, 1996, as follows:

The Plaintiff is RAMIDJAN LIMPUNG bin MANGUN REDJO, with Defendant WARTINAH binti RAMIDJAN LIMPUNG, Defendant Defendant I WARMAN bin KROMOSARDI, Jatiroto Village, Kayen Sub-district, Pati Regency in this case represented by the Head of the Village named Sukardji H. Mustofa as the Defendant II.

The plaintiff with the letter of his lawsuit dated June 18, 1996 which has been registered with the Court of the Pati District Court Number 20 / Pdt.G / 1996 / PN.Pt and has been revised by the Plaintiff dated July 11, 1996, principally as follows:

1. That during his life Plaintiff once married and married three times, each with his 1st wife, with a woman named Sukini, ended up with divorce to have a biological child named: Wartini; The 2nd wife named Warsiyah, the divorce died, acquired a biological child named Wartinah (the defendant), and with his 3rd wife, Warsinah, has now obtained the two sons of Sumijan and Suparti, thus all the plaintiffs four people.
2. Whereas in addition to having four natural children, the Plaintiff has a parcel of land, from the inheritance of his late father named Mangun Redjo located in Jatiroto village, area \pm 3850 M2, no. 34 C No. 1068 class II, with boundaries: North: the great road of the direction of Gabus.Timur: land belonging to Pak Sondong and Pak Rebo. South: crooked land kamituwo. West: land belonging to Pak Ngaspan. or to be easily referred to as land disputes
3. That more or less since 1977, on the land of the dispute has been erected a house building by and owned by the Defendant I, and has been inhabited until now with the consent of the Plaintiff to be purchased and has given money to the Plaintiff of Rp. 350.000, - (three hundred fifty thousand rupiah), but until now has not measured the land area occupied by the Defendant I for the purpose behind the name and so forth.
4. That several years later after the Defendant married and married, the Plaintiff from the disputed land was given an area of \pm 380 M2 which has now been established and inhabited by the Defendant.
5. For the certainty of sale and purchase, between the Plaintiff and the Defendant I for the part of the dispute, and for the purpose of reversing the name and fulfilling the procedure of land purchase and

- sale according to the prevailing regulations, the Plaintiff shall conduct the measurement of the land, but shall be prevented by the Defendant.
6. Whereas by the act of obstructing and preventing the measurement and management of the Land of the Plaintiff's dispute by the Defendant, it is clear that the Defendant has committed against the law adversely affecting the Plaintiff.
 7. Whereas besides the Defendant has harmed the Plaintiff, as the Plaintiff's sons, has completely disrespected her parents and did not know how to repay her, let alone look at the time of Plaintiff suffering from illness.
 8. Whereas because of the behavior of the Defendant, the Plaintiff declares to revoke and cancel the land granted to the Defendant a portion of the dispute land of ± 380 M2.
 9. That now without the consent and without the consent of the Plaintiff in Book C of Jatiroto village, the whole disputed land has been turned into the name of the Defendant.
 10. Whereas with such event the concern arises from the Plaintiff, if then the disputed land is sold or transferred to the third party by the Defendant, in order to guarantee this lawsuit, please request the Pati District Court to place a confiscation or conservatoir beslaag on the land of the dispute.
 11. Whereas for the actions of the Defendant, which is very damaging to the Plaintiff, it is appropriate to be punished to pay compensation or a fine.
 12. That besides that here either the Defendant I, or the Defendants II, are the parties who are interested in this case.

In this case the panel of judges has judgment-based considerations during the trial. According to the panel of judges, the Plaintiff / giver can

not prove the argument of the claim to the land of dispute, where in this proof the Defendant is the one with the evidence of the letter and witnesses supported by the testimony of the third-party Plaintiff's witness who reinforces the argument of the denial of the Plaintiff's claim, the land of the disputed yard remains the property of the Defendant.

In other words, the Plaintiff's claim to the object of the dispute is rejected, the claim of the remaining Plaintiff should not be considered anymore. This is because the Plaintiffs can not prove the origin of ownership of the disputed object which at that time was not registered in the Land Office, so that proved to have land legally is the Defendant, Wartinah. While concerning the non-devotion of a child is not a judge's consideration in deciding this case.

Since the panel of judges decided that rejecting the Plaintiff's claim to the object of the dispute there was no cancellation of the land grant of the dispute from the plaintiff to the Defendant. So that the confiscation of the proceeds made during the trial is lifted and the land of dispute is again the right of the Defendant.

In relation to the decision of the Panel of Judges of the District Court, the Plaintiff objected and then submitted an appeal. An appeal may be filed whenever the parties are dissatisfied with the judge's decision ([Wakarmamu, 2015](#)). Normally the appeals are those who are decided to lose. In the case of this appeal there is a comparative term for the appellant while the opposite is named comparable.

In this appeal, the panel of judges in the High Court of Semarang in his consideration sees in terms of a child's unworthiness to his parents. Where here is recognized by Comparable that it is true to have committed against the law, not filial to the parents, because there is a dislike to his father who has remarried after his mother died and not take care of his

children. On the basis of such considerations, the judges decided to revoke the decision of the Pati District Court and to grant the Plaintiffs' claim.

Based on the above explanation it can be seen that in deciding the dispute over the grant of the judges at any level concerned the rights of the parties to the disputed grant object. As a legal consideration, the panel of judges uses customary inheritance law which has been adjusted to the Islamic law and civil law inheritance law so that it can decide justly.

In solving the dispute problem and the like people usually choose to seek a peaceful and just settlement, but also through the way of justice according to legislation, judge decisions, and feelings of judges. This is because in deciding the matter in the panel of judges requires legislation, the decision of the previous judge and also the feelings of the judge itself as a matter of consideration ([Hardianti, 2017](#)).

In the case of the cancellation of the grant in the above case, the panel of judges who decides to annul the grant is based on the reason of its decision that the grant cancellation is possible if the grantee does not qualify as the grantee. Where one of the requirements as a grantee concerns a person's decency. So that if a person has committed an unlawful act against the grantor, then the grant that has been granted can be done cancellation.

V. CONCLUSION

Grants are often equated with inherited events, but when analyzed much deeper it will be known that the grant is different from inheritance. The grant occurs when the grantor is still alive during the time of execution of the award, whereas in the inheritance will occur when a person has passed away by abandoning property or inheritable things. The object of the grant

can only be done on any existing object, if grant or delivery is done on a new object there will be in the future, the grant will be void. And The transfer of rights is made when the holder of the right to the object of the grant is alive and constitutes a legal act of cash, except in the will of grant. In addition, grants can also be used as one solution in solving an inheritance problem. On the other hand, in the fact that the grant community can also cause problems, so that the purpose of the actual grant is not in line as it should be. The settlement if a dispute concerning the object of the grant has to be settled in court.

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