JURNAL KONSTATERING
published by Master of Notary Law, Faculty of Law Sultan Agung Islamic University
Volume 1 No.2, April 2022 *Juridical Review Cancellation...(Andito Gema Bayhaqie)*
ISSN: 2828-4836

Juridical Review Cancellation of Grant Deed to Grantor's Heirs

Andito Gema Bayhaqie[*)]
[*)] Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: anditogbh@gmail.com

Abstract. *The purpose of this research to find out and analyze the legal consequences of canceling the grant deed in a juridical review of the cancellation of the grant deed to the grantor's heirs after a violation of the applicable legal regulations, refer to the compilation of Islamic Law Article 210 paragraphs (1) and (2).This research method uses the approach normative juridical research specification with descriptive analysis. Data sources and data collection methods used primary, secondary and tertiary data which were analyzed qualitatively. The results of this study indicate that the lawsuit filed by the plaintiff was due to the fact that in this case the legal wife of the grantor where the object of the grant was joint property and had been fully donated to one of his heirs without the consent of the other heirs and had also been renamed on behalf of the grantee. Knowing in this case, the plaintiff as the wife of the grantor objected and did not accept the act of the grant and filed a case against the Kediri Religious Court. In the Court's decision, the Judge granted the plaintiff's claim because the grant deed legally violated the applicable legal regulations and the grant deed was declared null and void.*

Keywords: Cancellation; Grant; Land; Renamed.

1. Introduction

The definition of a grant is a gift made by a person to another party that was made when he was still alive and the implementation of the gift was made when the grantor was still alive. The term grant as stated in Article 1666 of the Indonesian Civil Code, is an agreement in the name of the donor during his lifetime, free of charge and irrevocably, to hand over an object for the purposes of the beneficiary who receives the gift.[1]

In the process of awarding grants must be in accordance with applicable laws. Meanwhile, what can be the object of a grant is an inheritance or valuables from

[1]Grants according to the Civil Code.

the grantor, the relationship between a grant and inheritance, according to Article 211 of the Compilation of Islamic Law, a gift from parents to their children can be counted as inheritance. Or with the provisions contained in KHI Article 210 paragraph (1): a person who is at least 21 years old and of sound mind without any coercion can donate up to 1/3 of his property. And in KHI Article 210 paragraph (2): the assets that make up the object of the grant must be the rights of the grantor, in this case, not joint property.

Cases of withdrawal or cancellation of grants are frequent cases. This is because the recipient of the grant does not meet the requirements in carrying out the grant that has been given. In law, grants that have been given cannot be withdrawn, but there are several exceptions, where the grant can be withdrawn. Cancellation or withdrawal of this grant can be resolved through a review of Civil Law or Islamic Law.

One of the cases that occurred was the existence of a lawsuit to the Kediri Religious Court that occurred between parents (fathers) as grantors to only one of their heirs as grant recipients, through grant deed No. 453/HIB/M/XI/2007 dated 15 November 2007 made by Notary Kediri on a plot of land in accordance with the PROPERTY Right Certificate (SHM) No. 1629 which is located on Jl. KH. Agus Salim No. 83 RT. 20RWs. 03 Bandar Kidul Village, Mojoroto District, Kediri City. A plot of land with an area of 964 m2. Through the deed of grant, the recipient of the grant reverses the name on behalf of the land to become on behalf of the grantee.

The problem begins when in the granting of the grant, the grantor has donated entirely to one of his heirs and then the name has been transferred in the name of the grantee and is now also controlled by the grantee as well, in which the object of the grant is joint property resulting from marriage to the wife, which means that ½ of the object of the grant is joint property which is the property of the wife as the plaintiff, so that the object of the grant is null and void in the Religious Courts because the object of the grant does not fully belong to the grantor himself.

2. Research Methods

This research method uses the approach normative juridical. The normative juridical approach is used to analyze data by describing or illustrating the data. Therefore the target of this research is law or rule. The definition of rule includes legal principles, rules in a narrow sense, concrete legal regulations. This research has a normative object in the form of legal principles and the legal system. This is a descriptive analysis by presenting a systematic and accurate description of factual information or data regarding the juridical review of the cancellation of the deed of grants to the benefactor's heirs. Data sources and data collection

methods using primary data, it is through this primary data that later the data will be processed which will be filed into a research substance that refers to statutory regulations. Secondary data obtained from various sources in the form of several materials including the results of research conducted either directly or indirectly, including seminars, legal journals, magazines, online media, scientific papers, and opinions from legal experts. Tertiary data obtained from legal materials which are supporting in nature to be able to provide guidance and explanation of primary and secondary data. The data obtained were analyzed normatively which were described qualitatively in the form of coherent, orderly, logical and non-overlapping sentences so as to facilitate the understanding of the research results.

3. Results and Discussion

3.1. Case analysis of lawsuit for cancellation of grant deeds to heirs of grant based on decision No.324/Pdt.G/2010/PA.Kdr.

The judge's decision is a statement by the judge as a state official who is authorized to pronounce it in court and aims to end a case or dispute between the parties. After examining the case which includes the process of filing a lawsuit by the plaintiff, the defendant's response, the plaintiff's replica, the plaintiff's duplication, evidence, and the conclusions submitted by the litigants who have nothing more to say, the judge will make a decision on the case.[2].

A case in this case is a lawsuit from the plaintiff to the defendant, in this case the plaintiff is the mother or wife of the grantor of the defendant where the defendant is one of the plaintiff's adopted children. Whereas during the marriage between the plaintiff (wife) and the grantor (husband) owned joint property (object of dispute) in the form of a plot of land and a house building as well as the Pagaruyung restaurant business, which is located on Jalan KH. Agus Salim No. 83 Kelurahan Bandar Kidul Rt.20 Rw.03 Mojoroto District, Kediri City, with an area of 964 m2. The one mentioned in the Certificate of Ownership Number 1629, formerly in the name of Anas Rauf or the grantor, has now been changed to the name of Atik Winarti or the grantee.

The plaintiff has filed his lawsuit dated July 19 2010 which has been registered with the Kediri Religious Court Registrar with Register Number 324/Pdt.G/2010/PA.Kdr. which stated the following:

1. Whereas the plaintiff and her husband while living in marriage had joint assets in the form of: a permanent house in the name of Anas Rauf which was built on a plot of land with an area of 946 m2 which is located on

[2]Mertokusumo Suedikno, 2009, Indonesian Civil Procedure Code. Yogyakarta, p.175

Jalan KH. Agus Salim No. 83 Kelurahan Bandar Kidul R.t20 Rw.03 Mojoroto District, Kediri City.

2. Whereas the plaintiff's status when she married a girl while the plaintiff's husband (Anas Rauf) was a widower with 1 child, and with 3 adopted children, that last night the plaintiff's marriage to Anas Rauf did not have biological children.
3. Whereas in 2007 Anas Rauf had granted (the object of the dispute) to his third adopted child named Atik Winarti (defendant), and for this grant the certificate was later renamed to the name of the defendant and is currently in the possession of the defendant.
4. Whereas the plaintiff as the legal wife of Anas Rauf only realized that half of the object of the grant was joint property which was the property of the plaintiff so that the object of the grant had to be null and void because the object of the grant did not fully belong to the grantor.
5. Whereas basically the grantor still has other heirs, one natural child of Anas Rauf and three adopted children, so that if the grant is continued it will prevent the other heirs from receiving the inheritance.
6. Whereas therefore the plaintiff requests the Kediri Religious Court to cancel the grant made by the grantor to the defendant.

Considering based on these facts, it has been proven that Anas Rauf has donated all of his joint assets acquired during his marriage with the plaintiff to only one of his adopted children, namely Atik Winarti so that by taking into account the legal requirements for grants as referred to in Article 210 paragraph (1) and paragraph (2)) Compilation of Islamic Law. The Panel of Judges concluded that the grant had not fulfilled the legal requirements for a grant because:

1. The grants made by Anas Rauf have exceeded 1/3 of the total assets.
2. The object of the grant that is donated is not wholly owned by the grantor himself, but ½ of the object that is donated is the right and property of the plaintiff.

Considering, that because the grant is invalid, all consequences of the existence of the grant in the form of the issuance of a deed of grant which is then used as the basis for transferring the name of the owner of Certificate of Property Rights No. 1629, the change from Anas Rauf to Atik Winarti was null and void, therefore administratively procedurally, the Kediri City Land Agency had to return the Certificate of Ownership to the original name.

Considering, that based on the considerations mentioned above, the Panel of Judges should grant the lawsuit by the plaintiff by stipulating that the grant by Anas Rauf for the object of dispute to Atik Winarti was cancelled.

Considering, that with the cancellation of the grant, the Panel of Judges punished the defendant to hand over the object of the dispute to the plaintiff.

3.2. Status of the grant deed after the cancellation of the grant deed made by the notary

A Notary/PPAT has big duties and responsibilities in every deed he makes. Every deed made before a Notary/PPAT must be accountable in the future if a problem occurs one day.

Although the Notary has been given the authority to make an authentic deed in the form of attribution, which originates from the Law on the Position of a Notary. However, a notary is not only authorized to make authentic deeds, but is also responsible for the authentic deeds he has made. This also applies to the PPAT which makes an authentic deed on land.

The notary's responsibility relates to his obligations to everything that becomes his authority. According to Habib Adjie, the obligation of a Notary is something that must be carried out by a Notary, which if it is not carried out or violated, then the Notary will be subject to sanctions for the violation.[3].

An authentic deed provides perfect legal evidentiary strength for the parties, heirs and people who get the rights. The awarding of grants is made by means of a deed of grant. The grant deed is an authentic deed because the form has been determined by law, made by the authorized public official. The form determined by law in an authentic deed consists of the head of the deed, the body of the deed and the end of the deed[4].

The legal power of the grant deed lies in the function of the authentic deed itself, namely as evidence with perfect legal force according to the Civil Code Articles 1682, 2867 and 1868 so that this is a direct result which is a necessity of the provisions of the Act, that there must be authentic deed as a perfect proof tool[5].

If the grant is canceled due to non-compliance with the conditions, then the cancellation made by the judge has the force of material rights, in other words, the property whose gift is canceled must return to the grantor from the recipient

[3]Habib Adjie, Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary), Bandung, Refika Aditama, 2009, p. 86.
[4]Law Concerning the Position of Notary Public, Law no. 30 of 2004, Article 38
[5]Adrian Sutedi. Transfer of Land Rights and Registration, Second Printing, Sinar Graphic, Jakarta, 2008, page 100.

of the grant, also from the hands of a third party, free from all burdens that may be placed by the grantee[6].

The return of this grant is carried out by first emptying the object of the grant. For example, if the object of the grant given is in the form of a house, then the grantor who has occupied the house must leave the house he occupies until the specified period based on the decision of the Panel of Judges in canceling the grant. Meanwhile, if the object of the grant is in the form of land, if the recipient of the grant has erected a permanent building on the land, within that period the building will be demolished and leveled again with the ground.

If the object of the grant has been renamed or has been certified on behalf of the grantee, then the certificate is declared no longer valid. The grantor can submit a request to the National Land Agency (BPN) so that the disputed object certificate is no longer valid with a decision to cancel the grant. Thus the certificate of object of dispute is returned to the name of the grantor.

If the grant is made with an authentic deed, the legal consequence is that the grant made can be used as written evidence which has perfect evidentiary value which must be seen for what it is, does not need to be assessed or interpreted otherwise, other than what is written in the deed of grant, because it has been made in the form that has been determined by law in accordance with Article 38 of the Notary Office Law.

The legal consequences of an authentic deed made by a Notary, if a cancellation of a legal action contained in a deed is requested, will result in the authentic deed being reduced to the level of making the deed under the hand. As a result, the deed was reduced to a private deed resulting in the loss of imperfect legal evidentiary power.

However, even if the grant deed has become a private deed, this will not affect the grant deed, where the grant deed can still be carried out even without an authentic deed. It's just that there are differences in the deed made with an authentic deed and a deed under the hand. The difference lies in the legal proof, where an authentic deed has perfect legal evidence, while an underhanded deed has imperfect legal evidence.

In the case of cancellation of grants to land that has been renamed by the recipient of the grant that has occurred in the Kediri Religious Court with case number decision No: 324/Pdt.G/2010/PA.Kdr. After going through the process of examining the files and evidence submitted, the lawsuit filed by the plaintiff, the

[6]Tan Thong Kie, Notary Studies and Miscellaneous Notary Practice, First Book, Jakarta, PT.Ichtiar Baru, 2000, page 314.

Panel of Judges decided that it granted the plaintiff's claim. This is because the giving of grants made by the grantor is invalid because it has violated the Compilation of Islamic Law Article 210 paragraph (1) and paragraph (2).

As a legal consequence of a claim for a grant that has been renamed on behalf of the recipient of the grant, in the trial it was won by the plaintiff, even though the object of the grant dispute has been renamed or certified on behalf of the recipient of the grant, with this decision the certificate is null and void.

3.3. Form and nature of grant deed

The term or word of the deed in Dutch is called "Acte" or "Deed" while in English it is called "Act" or "deed". According to Sudikno Mertokusumo, a deed is a signed letter containing events which form the basis of a right or engagement, which was made from the outset on purpose for proof. According to Subekti, a deed is different from a letter, which is a piece of writing that is deliberately made to be used as evidence about an event and signed.[7]. Based on this opinion, it can be concluded that what is meant by a deed is:

1. Actions (handling) or legal actions (rechtshandeling)

2. A writing made to be used/used as evidence of said legal action, namely in the form of writing submitted to prove something[8].

The deed has 2 (two) important functions, namely the deed as a formal function which means that a legal act will be more complete if a deed is made. The function of evidence is the deed as a means of proof where the deed is made by the parties involved in an agreement to be shown for later.[9].

The deed is a signed letter, containing information about events or things that form the basis of an agreement. Article 1867 of the Civil Code states that proof in writing is carried out in authentic writings or with underhanded writings. Based on these provisions, there are two types of deed, namely authentic deed and private deed, which can be explained as follows:

1. Authentic deed
   An authentic deed is a deed made by an official who is authorized to do so by the authorities, according to predetermined conditions, either with

[7]Subekti, Law of Evidence, PT. Pradnya Paramitha, Jakarta, 2005, page 25.
[8]Victor M. Situmorang and Cormentyna Sitanggang, Gross Deed in Proof of Execution, Rinika Cipta, Jakarta, 1993, page 26.
[9]Sudikno Mertokusumo, Knowing the Law of an Introduction, Liberty, Yogyakarta, 2009, pp. 121-122.

or without assistance from interested parties, which records whatever is requested to be made in it by interested parties, an authentic deed especially contains statement of an official, which explains what he did and seen in front of him. The officials meant include Notaries, Registrars, Bailiffs, Civil Registry Employees, Judges, and so on.

An authentic deed according to the provisions of Article 1868 of the Civil Code, namely "an authentic deed is a deed which, in the form determined by law, is made by or before public officials who are in charge for that at the place where the deed is made". According to R. Soergondo, an authentic deed is a deed made and formalized in legal form, by or before a public official authorized to do so, at the place where the deed was made.[10].

An authentic deed is a product made by a Notary. From several opinions, it can be seen that there are 2 (two) types of deed made by a Notary, namely:

a. A deed made by a Notary or what is called a relaas deed or an official deed, is a deed made by an official who is authorized to do so, where the official explains what he saw and what he did, so the initiative does not come from the party whose name is explained in the deed . The distinctive feature of this deed is that there is no composition and the Notary is fully responsible for the actions of the deed.
b. Deeds made before a notary or what is called a partij deed, are deed made before officials who are authorized to do so and the deed is made at the request of the interested parties. The distinctive feature of this deed is that there is a comparison which makes the parties facing the notary the authority to draw up the deed[11].

The difference in the deed mentioned above is very important in relation to proving otherwise to the contents of the deed, thus the contents of the official deed or relaas deed cannot be challenged, except by alleging that the contents of the deed are fake, while the contents of the partij deed can be challenged, without alleging that the deed is a fake deed. Proving the deed, both the relaas deed and the partij deed which is the main or core basis in making an authentic deed, that is, there must be a wish or will and a request from the parties, if the wishes and requests from the parties do not exist then the public official will not make the deed in question .

2. Deed Under Hand

[10]R. Soergondo, Law of Evidence, PT. Pradnya Paramita, Jakarta, 1991, p. 89.
[11]Sjaifurrachman and Habib Adjie, Aspects of Notary Liability in Making Deeds, Bandung, 2011, page 109.

Private deed is a deed made and signed by the parties who agree in the engagement or between interested parties only. According to Sudikno Mertokusumo, underhanded deed is a deed that is deliberately made for the purpose of proof by the parties alone without the help of an official. So it is only made between interested parties[12].
Article 1874 of the Civil Code states that "what is considered underhanded are deeds signed underhanded, letters, lists of household affairs, and other writings made without the consent of a public official". In Article 1902 of the Civil Code, it is stated regarding the conditions when there is written evidence, namely:

a. There must be a deed
b. The deed must be drawn up by the person against whom the charges are made or by the person he represents
c. The deed must allow for the truth of the event in question

An underhand deed can be a perfect means of proof against the person who signed it as well as their heirs and the people who get the rights from it only if the sign in the underhanded deed is recognized by the person against whom the writing is intended to be used. Therefore it is said that the deed under the hand is written evidence.

Article 1868 of the Civil Code is a source for the authenticity of a notarial deed, which is also the legality of the existence of a notary deed. A notarial deed can be said to be an authentic deed if the deed meets the criteria listed in Article 1868 of the Civil Code. From the elucidation of this Article, an authentic deed is made by or before an authorized official who is called a public official. If the person who makes it is an official who is incompetent or incompetent or has a defective form, then according to Article 1869 of the Civil Code, the deed is invalid or does not fulfill the formal requirements as an authentic deed, therefore it cannot be treated as an authentic deed. Such a deed has the power of a private deed provided that the deed is signed by the parties[13].

There are 2 (two) types/classes of notarial deeds, namely deeds drawn up by a notary, commonly referred to as a relaas deed or minutes, deed drawn up before a notary, commonly referred to as a party deed or partij deed. A notarial deed can be said to meet the requirements as an authentic deed if the deeds made by or before the notary are in accordance with a predetermined form. In this case the form of a notarial

[12]Sudikno Mertokusumo, Civil Procedure Law in Indonesia, Yogyakarta, 1998, page 125.
[13]M. Yahya Harahap, Civil Procedure Law concerning Lawsuits, Trials, Confiscations, Evidence and Court Decisions, seventh printing, Sinar Graphic, Jakarta, 2008, p. 566.

deed is regulated based on the provisions of Article 38 UUJN, namely as follows:

(1) Each Deed consists of:
   a. Initial deed or head of deed;
   b. deed body; and
   c. End of deed or closing deed
(2) The beginning of the deed or the head of the deed contains:
   a. Deed title;
   b. Deed number;
   c. Hour, day, date, month, year; and
   d. Full name and domicile of the notary.
(3) The body of the deed contains:
   a. Full name, place and date of birth, nationality, occupation, position, position, place of residence of the appearers and/or the person they represent;
   b. Information regarding the position of acting as appearers;
   c. The contents of the deed which are the wishes and desires of the interested parties; and
   d. Full name, place and date of birth, as well as occupation, position, position and place of residence of each identifying witness.

4. Conclusion

The legal consequences of canceling the grant deed for grants that have been renamed to the name of the recipient of the grant result in an authentic deed made by a Notary being reduced to a private deed, while the grant process continues, because the grant does not have to be made with an authentic deed. As a legal consequence of a claim for a grant where all of the assets are only given to one of the heirs and have been renamed on behalf of the grantor, even though the object of the dispute has been renamed or has been certified on behalf of the grantee and has been guaranteed for bank credit, then with a decision Panel of Judges then the certificate becomes null and void and is no longer valid. If the grantor wants to make a grant, he should know in advance about everything he will do in connection with the grant, the grantor must be careful in calculating and considering his assets before determining the assets that will be the object of the grant and should if the grantor If this is done between parents and children, the other heirs should know about the grant. This is to prevent future disputes in the family.

5. References

Book:

[1] Adrian Sutedi. *Peralihan Hak Atas Tanah dan Pendaftarannya,* Cetakan Kedua, Sinar Grafika, Jakarta, 2008
[2] Habib Adjie, *Hukum Notaris Indonesia (Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris)*, Bandung, Refika Aditama, 2009.
[3] M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan,* cetakan ketujuh, Sinar Grafika, Jakarta, 2008
[4] Mertokusumo Suedikno, 2009, Hukum Acara Perdata Indonesia. Yogyakarta
[5] R. Soergondo, *Hukum Pembuktian,* PT. Pradnya Paramita, Jakarta, 1991
[6] Sjaifurrachman dan Habib Adjie, *Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta,*Bandung, 2011
[7] Subekti, *Hukum Pembuktian,* PT. Pradnya Paramitha, Jakarta, 2005
[8] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar,* Liberty, Yogyakarta, 2009
[9] Tan Thong Kie, *Studi Notariat dan Serba Serbi Preaktek Notaris,* Buku Kesatu, Jakarta, PT.Ichtiar Baru, 2000

Regulation:

[1] Civil Code
[2] Act No. 30 of 2004 Concerning the Position of Notary