

## Cancellation of Grant Deeds Made Before The Sub-District Head as the Official Officer of Temporary Land Deeds (Case Study of Decision No. 0200/Pdt.G/2019/PA.Pkj)

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**Abstract.** *This research aims to analyze the judge's consideration of the cancellation of a grant deed made by the Subdistrict Head as the Temporary Land Deed Making Officer, and the resulting legal consequences based on Decision No.0200/Pdt.G/2019/PA.Pkj as well as examples of grant deeds made before the Subdistrict Head as the Temporary Land Deed Making Official. The method used in this research is a normative legal research method. The approach employed is qualitative. The data types and sources used are primary and secondary data. The data analysis method used in this research is prescriptive. From the results of this study are: Judge's Consideration Regarding the Cancellation of the Deed of Grant in the case of Decision No.0200/Pdt.G/2019/PA.Pkj the panel of judges who decided the cancellation of the grant based the reason for their decision that the cancellation of the grant based on the deed of grant number 222 j/BR/PK/XI/2007 dated November 23, 2007, was legally flawed, because it was not signed and/or fingerprinted/thumbprinted by the HUSBAND OF DEFENDANT 2 as the grantor. The legal consequences of the cancellation of the Deed of Grant by the Pangkajene Religious Court stated that the deed of grant was void and had no legal force and had fulfilled the provisions of Article 1688 of the Civil Code.*

**Keywords:** *Cancellation; Court; Decision.*

### 1. Introduction

The Unitary State of the Republic of Indonesia, based on Article 33 paragraph (3) of the 1945 Constitution, mandates that all matters relating to land as part of the earth, water and natural resources contained therein in Indonesia must and must be managed and utilized for the greatest prosperity of the Indonesian people. This is important to do considering that land is one of the main problems in Indonesia. To provide protection and guarantee legal certainty, the government holds land rights registration as regulated by government regulations. Then a land rights

certificate will be issued as the final product of the land registration which provides certainty regarding the conditions of the land.

Article 5 paragraph (3) of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials ("PP 37/1998") as amended by Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials ("PP 24/2016") states that the Sub-district Head may be appointed as a Land Deed Making Official ("PPAT") by the Minister who administers government affairs in the agrarian/land sector (Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency – "Minister") if there are not enough PPATs in the area to serve the public in making PPAT deeds. In this case, the Sub-district Head is appointed as a Temporary PPAT. The Minister may appoint the following officials as temporary PPATs or special PPATs, namely:

- 1) Sub-district Head or Village Head to serve the creation of deeds in areas where there are not enough PPATs as Temporary PPATs;
- 2) The Head of the Land Office to serve the making of PPAT deeds required in the context of implementing community service programs or to serve the making of certain PPAT deeds for friendly countries based on reciprocity according to considerations from the Department of Foreign Affairs, as a Special PPAT.

Inheritance law is a collection of regulations that regulate the law regarding wealth due to a person's death, namely regarding the transfer of wealth left by the deceased and the consequences of this transfer for the people who receive it, both in their relationship with themselves and their relationship with third parties.<sup>1</sup>

In fact, grants are not included in inheritance law material, but rather This includes the law of contracts, as regulated in Book Three, Chapter Ten of the Civil Code (KUH Perdata). Furthermore, one of the requirements in inheritance law for the inheritance process to take place is that someone has died leaving behind a certain amount of assets. In the case of a gift, the person giving the gift must still be alive at the time the gift is made.

According to Article 1666 of the Civil Code, a gift is:

"A gift is an agreement whereby the donor, during his lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the gift who accepts the gift." Grants can only be in the form of objects that already exist. If the gift includes objects that will only come into existence at a later date

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<sup>1</sup>Pitlo, 1986, *Inheritance Law According to the Dutch Civil Code*, PT. Intermedia, Jakarta, p. 1

then simply because of that the gift is void (Article 1667 of the Civil Code).

Based on the article above, it is very clearly explained that gifts cannot be withdrawn except for gifts from parents to their children, meaning that the ability to withdraw gifts only applies to parents who give gifts to their children, the intention is that parents in giving gifts to their children must pay attention to the values of justice.<sup>2</sup>

The legal basis for gifts in Islamic inheritance law is found in the Qur'an and the hadith of the Prophet Muhammad, which means that a gift is a gift from one person to another.<sup>3</sup> Today, the definition of a grant has evolved, meaning a gift from one country to another. It can even be interpreted as a gift from one legal entity to another.

Thus, it can be concluded that according to Islamic law, Civil Law (KUH Perdata), and Customary Law in Indonesia, a grant is a unilateral agreement made without any counter-performance from the recipient of the grant, or in other words, a free agreement only. Eman Suparman defines a grant as a type of gift given by someone while they are still alive.<sup>4</sup>

In simple terms, a gift can be defined as the gift of some or all of one's assets to another while still alive, and the gift to the recipient takes place immediately. The striking difference between the transfer of ownership of assets using the legal means of a gift and other legal means such as sale and exchange is that a gift does not involve any element of counter-performance.

Then there are other rights that must be issued before the assets are distributed to the heirs, namely a will. A will is "a statement or statement from one person to another requesting the transfer of assets, waiving debts, or providing benefits from an item after death."<sup>5</sup> According to Article 171 point f of the Compilation of Islamic Law (KHI), "A will is the gift of an object from the testator to another person or institution which will take effect after the testator dies."

Regarding this matter, Anisitus Amanat, in his book entitled *Dividing Inheritance Based on Articles of Civil Law (BW)*, explains that the grantor

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<sup>2</sup>Mustamam and Zulfan AZ, 2020, Legal Analysis of the Revocation of Parental Grants to Their Biological Children from the Perspective of the Compilation of Islamic Law, *Journal of Principle Law, Media Communication and Information Law and Society*, vol. 20, p. 36

<sup>3</sup>M. Idris Ramulyo, 2004, *Comparison of Islamic Inheritance Law with Inheritance in the Civil Code*, Sinar Grafika, Jakarta, p. 116

<sup>4</sup>Eman Suparman, 1995, *The Essence of Indonesian Inheritance Law*, Mandar Maju Publisher, Bandung, p. 85

<sup>5</sup>Moh. Syamsul Mu'arif, "Comparison of Wills from the Perspective of the Compilation of Islamic Law (KHI) and the Burgerlijk Wetboek (BW)", *Journal of Islamic Research and Studies, Tafaquh*, Vol. 3, No. 2, p. 94.

transfers ownership rights over some or all of his assets to another party without any compensation from the recipient of the grant. Perhaps because there is no counter-performance in such a grant, the legislators created a rule requiring the recipient of the grant to return all assets received to the grantor's inheritance for recalculation.<sup>6</sup>

In practice, agreements are often found to arise from agreements that contain flaws in will. According to Article 1321 of the Civil Code, an agreement contains a legal flaw (*wilsgberek*) if the agreement is made based on:

- 1) Coercion (*dwang*);
- 2) Dwelling;
- 3) Fraud (*bedrog*).

Fraud, cheating, and trickery are commonplace in society. All three are intended to deceive the other party, allowing the perpetrator to profit from the deception. The conclusion of an agreement is often preceded by negotiations, in which one party makes statements of fact intended to persuade the other party to enter into the agreement. If such statements are untrue or false, they are called fraud or misrepresentation.

According to the provisions of Article 1328 of the Civil Code, if the trickery is used by one party in such a way that it is clear and obvious that it makes the other party interested in making an agreement, whereas if the trickery was not carried out, the other party would not have made the agreement. This deception is a reason to cancel the agreement.

The problem arose when Plaintiffs I and II investigated the inheritance, which had been taken over by the Defendant. After conducting investigations and seeking amicable solutions, but without success, the Plaintiffs finally brought the matter to the Pangkajene Religious Court to file a lawsuit. This prompted the researcher to conduct a detailed and in-depth study.

Judge's Consideration Regarding the Cancellation of the Deed of Gift in the case of Decision No.0200/Pdt.G/2019/PA.Pkj the panel of judges who decided to cancel the gift based the reason for their decision that the cancellation of the gift based on the deed of gift number 222 j/BR/PK/XI/2007 dated November 23, 2007, was legally flawed, because it was not signed and/or fingerprinted/thumbprinted by the HUSBAND OF DEFENDANT 2 as the grantor. The legal consequences of the cancellation of the Deed of Gift by the Pangkajene Religious Court stated that the deed of gift was void and had no legal force in accordance with the provisions of

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<sup>6</sup>Anisus Amanat, 2001, *Dividing Inheritance Based on Articles of Civil Law BW*, PT. Raja Grafindo Persada, Jakarta, p. 70

Article 1688 of the Civil Code.

Based on the formulation of the background, the author is interested in conducting research on the Case in Decision Number No. 0200/Pdt.G/2019/PA.Pkj dated August 13, 2019 with the title

CANCELLATION OF GRANT DEEDS MADE BEFORE THE SUB-DISTRICT HEAD AS THE OFFICIAL OFFICER OF TEMPORARY LAND DEEDS (CASE STUDY OF DECISION NO.0200/PDT.G/2019/PA.PKJ)

## **2. Research Methods**

The research method used is normative legal research, which positions law as a system of norms. This system of norms includes legal principles, statutory regulations, court decisions, agreements, and scholarly doctrines. This approach was chosen because the problem being studied is directly related to the interpretation of norms and the validity of a legal action in the context of the cancellation of a deed of gift. According to Mukti Fajar and Yulianto Achmad, normative legal research aims to examine legal materials through a process of juridical reasoning. Meanwhile, Peter Mahmud Marzuki emphasizes that normative legal research is conducted to discover relevant legal rules, principles, and doctrines in addressing the legal issues being studied, as well as to formulate legal prescriptions as solutions.<sup>7</sup>

Data collection was conducted through a literature study, which involved searching for legal materials from books, official documents, scientific articles, and reliable electronic sources. The data was analyzed using prescriptive analysis, an analytical technique aimed at providing legal arguments, determining the rightness or wrongness of an action, and formulating what should be done according to law. Through this analysis, the research produced a legal prescription regarding the validity of the deed of gift and the legal consequences of its cancellation.

Data sources come from primary data, secondary data and non-legal materials. MethodsData collection in normative legal research is conducted through literature studies of legal materials, including primary, secondary, tertiary, and/or non-legal materials. The data analysis method involves conducting studies or reviews of the data processing results, supported by previously obtained theories. The analysis in this research is prescriptive in nature.<sup>8</sup>

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<sup>7</sup>Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, First Edition, Pustaka Pelajar, Yogyakarta, p. 34

<sup>8</sup>Ibid. p. 160

### **3. Results and Discussion**

#### **3.1. The Judge's Consideration Regarding the Cancellation of a Deed of Gift Made Before the Sub-district Head as the Temporary Land Deed Making Official (PPAT) in Decision Number 0200/Pdt.G/2019/PA.Pkj**

According to Habib Adjie, there are two provisions regarding the cancellation of PPAT deeds, namely:<sup>9</sup>

- 1) Cancellation is carried out before registration at the land office;
- 2) Cancellation after it has been carried out or during the registration process at the land office.

Cancellation carried out before registration at the land office, is sufficient to be done with a notarial deed (party deed) because the deed in the PPAT deed is a civil act of the parties. If the cancellation is carried out after the registration process at the land office, then based on the provisions of Article 45 of PP Number 24 of 1997, the cancellation must be by court decision.

Based on the findings above, the case of the cancellation of the deed of gift which has no legal force based on the Decision of the Pangkajene Religious Court NO.0200/Pdt.G/2019/PA.Pkj is in accordance with where the judge decided to cancel the gift made by Plaintiff 1 and Plaintiff 2 against Defendant 1, Defendant 2, Defendant 3, and Defendant 4 due to the object of the dispute 4.2 as outlined in Based on concrete facts in the trial, regarding the assets belonging to the deceased. DEFENDANT 2'S DECEASED HUSBAND consists of disputed object 4.1 and disputed object 4.2, or referred to as disputed object 1.1 and disputed object 1.2, so that the Panel of Judges can conclude that by taking into account the entirety of the assets belonging to DEFENDANT 2'S DECEASED HUSBAND from the aspect of area and quantity of the objects that have been donated by DEFENDANT 2'S DECEASED HUSBAND to DEFENDANT 1/Defendant I, namely disputed object 4.1 or disputed object 1.1 with an area of approximately 100 m2 based on deed of gift number 222j/BR/PK/XI/2007 dated 23 November 2007 issued by the Sub-district Head/PPAT of Bungoro District, Pangkep Regency, it is appropriate to consider that it has fulfilled the requirements for a gift that does not exceed 1/3 as stipulated in Article 210 paragraph (1) of the Compilation of Islamic Law.

Regarding the object of dispute 4.2 as outlined in the concrete facts or object of dispute 1.2, where the object of dispute was donated by the HUSBAND OF DEFENDANT 2 to DEFENDANT 1/Defendant I based on the deed of gift 222 j/BR/PK/XI/2007 dated 23 November 2007, there is no signature and/or stamp.finger/thumb of the grantor (HUSBAND OF DEFENDANT 2) to DEFENDANT

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<sup>9</sup>Habib Adjie, 2014, *Weaving Thoughts in the World of Notaries & PPAT*, Citra Aditya Bakti, Bandung, p. 95.

1/Defendant I, therefore according to the opinion of the Panel of Judges by citing Article 1869 of the Civil Code which confirms that:

"a deed that cannot be treated as an authentic deed, either because of the inability or incompetence of the public official concerned or because of defects in its form, has the force of private writing if signed by the parties."

Where from the provisions of the Article it should be interpreted that one of the elements of an authentic deed has the power as a private writing or an authentic deed cannot be treated as an authentic deed if it is defective in its form even though it is signed by the parties. So if an authentic deed is not signed and/or stamped with a finger/thumb by one of the parties as in fact, then by itself the deed does not have the power as an authentic deed. Therefore, in relation to the object of dispute 4.2 or the object of dispute 1.2 mentioned above, which according to the facts is legally defective, because it was not signed and/or stamped with a finger/thumb by the DEFENDANT 2'S HUSBAND as the grantor, then the object of dispute 4.2 or the object of dispute 1.2 must be returned in its original condition.

By paying attention to the provisions of Article 1688 of the Civil Code, number 1, which states that a gift cannot be revoked and therefore cannot be cancelled unless the conditions of the gift are not fulfilled by the recipient of the gift.

### **3.2. Legal Consequences of Cancellation of a Deed of Gift Made Before the Sub-district Head as the Temporary Land Deed Making Official (PPAT) in Decision Number 0200/Pdt.G/2019/PA.Pkj**

With the grant, a legal relationship will arise between the grantor and the grantee, even though the legal relationship is unilateral, meaning that the grantor only has obligations without having rights. When granting a grant to someone, the recipient of the grant should first consider the suitability and appropriateness of the grantee to receive the grant, so that there is no cancellation of the grant which causes problems in the legal relationship between the two parties.

Which provisions, if used in grammatical legal interpretation, do not provide a clear and definite meaning regarding what conditions the grant is not fulfilled by the grant recipient. Are the conditions referred to related to an obligation as stipulated in Article 1320 of the Civil Code regarding lawful causes that must be fulfilled in the conditions of the agreement, or do they provide room for

to judges to be free and independent in giving meaning and purpose to the law in the norms as can be obtained in several provisions of legal norms, among which the conditions that must be fulfilled are as follows:

- 1) The object of the gift may not exceed 1/3 of the assets (Article 210 paragraph

- (1) of the Compilation of Islamic Law, and Decision of the Supreme Court of the Republic of Indonesia Number 76 K/AG/1992 dated 23 October 1993);
- 2) The object of the gift must be the right of the grantor (Article 210 paragraph (2) of the Compilation of Islamic Law);
- 3) The object of the gift is not inherited property that has not been divided or is in dispute (Supreme Court Decision of the Republic of Indonesia Number 332 K/AG/2000 dated 3 August 2005);
- 4) Objects donated by the donor when he is sick and close to death must have the consent of all his heirs (Article 213 of the Compilation of Islamic Law).

Therefore, from the 4 (four) elements that have been explained above, if there is such a grant process, cancellation of a grant can be carried out because it does not fulfill the legal provisions that regulate it, so that in relation to the facts of the trial where the disputed object 4.2 or the disputed object 1.2 was granted by the HUSBAND OF DEFENDANT 2 to DEFENDANT 1/Defendant I, and it has been considered that the grant of the disputed object 4.2 or the disputed object 1.2 which

based on the deed of gift number 222 j/BR/PK/XI/2007 dated 23 November 2007, is legally flawed.

Based on the provisions of Article 1688 of the Civil Code, a gift cannot be withdrawn or abolished, unless: (1) The conditions under which the gift was made are not met, (2) If the recipient of the gift is guilty of assisting in committing a crime aimed at taking the life of the grantor; (3) If the recipient refuses to provide maintenance to the grantor, after which the grantor falls into poverty, (4) If the demand is made again by the grantor and is granted, then all the actions of the grantor are considered void (Article 1690 of the Civil Code). Therefore, in the opinion of the Panel of Judges, the elements for declaring the gift void have fulfilled the provisions of Article 1688 of the Civil Code, and furthermore the object of dispute 4.2 or the object of dispute 1.2 must be returned in its original condition and become inheritance for the heirs of the DECEASED DEFENDANT 2'S HUSBAND

### **3.3. Example of a Deed of Gift Made Before the Sub-district Head as the Temporary Land Deed Making Official (PPAT)**

A deed of gift drawn up by the Sub-district Head as a Temporary Land Deed Official (PPAT) is essentially an authentic deed with full evidentiary force as long as it is made in accordance with statutory provisions. The example of a deed of gift as described in this study shows that the deed of gift must contain the identities of the parties, a description of the object of the gift, a measurement letter, a certificate, a Land Registration Number (NIB), a Land Registration Number (NPP), land boundaries, a statement of the gift, and qualified witnesses. By fulfilling all

these formal and material requirements, the deed of gift obtained is fully valid and is free from the risk of cancellation by any party at a later date.

#### 4. Conclusion

Judge's Consideration Regarding the Cancellation of the Deed of Gift in the case of Decision No.0200/Pdt.G/2019/PA.Pkj, the panel of judges who decided to cancel the gift based their decision on the reason for the cancellation of the gift in accordance with the facts in the trial where the disputed object 4.2 or disputed object 1.2 was granted by the HUSBAND OF DEFENDANT 2 to DEFENDANT 1/Defendant I, and it has been considered that the grant of the disputed object 4.2 or disputed object 1.2 which is based on the deed of gift number 222 j/BR/PK/XI/2007 dated 23 November 2007, is legally flawed, because it was not signed and/or stamped with the finger/thumb by DEFENDANT 2's HUSBAND as the grantor. As a result of the legal cancellation of the Deed of Gift by the Pangkajene Religious Court against the above deed, the Court granted the lawsuit for the cancellation of the deed of gift which was examined at the Pangkajene Religious Court and stated that the deed of gift was void and had no legal force and had fulfilled the provisions of Article 1688 of the Civil Code, and furthermore the object of dispute 4.2 or the object of dispute 1.2 must be returned in its original condition and become an inheritance for the heirs of the DEFENDANT'S DECEASED HUSBAND2. Example of a Deed of Gift drawn up before the Sub-district Head. To prevent errors and cancellation of the deed of gift, the Sub-district Head, acting as the Temporary Land Deed Official (PPAT), needs to increase accuracy in verifying the identity and authority of the parties. Regular training for Land Deed Officials (PPATS) is also needed to ensure that the deed is prepared according to standard standards and avoids administrative errors. The public needs to be educated on the importance of complete signatures, spousal consent, and clarity of land status. Furthermore, coordination between land agencies and PPATS must be strengthened to ensure accurate validation of physical and legal land data.

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