

The Juridical Analysis of the Legal Consequences of Granting Land Rights Without the Consent of Heirs and the Liability of Notaries & PPAT

Sutan Dio Dwiky Purnomo¹⁾, Aziza Kamila Zakaria²⁾, Daffa' Khoiri³⁾ & Dedi Pranata⁴⁾

¹⁾Master of Notarial Law, Universitas Pancasila, Indonesia, E-mail: sutandio.dwiky07@gmail.com

²⁾Master of Notarial Law, Universitas Pancasila, Indonesia, E-mail: azizakamila14@gmail.com

³⁾Master of Notarial Law, Universitas Pancasila, Indonesia, E-mail: daffakhoiri36@gmail.com

⁴⁾Master of Notarial Law, Universitas Pancasila, Indonesia, E-mail: dedypranata2512@gmail.com

Abstract. *This research analyzes the legal consequences of granting land rights without the consent of other heirs and examines the legal responsibility of Notaries and/or Land Deed Officials (Pejabat Pembuat Akta Tanah/PPAT) in the preparation of such grant deeds. In practice, land grants are frequently executed without due consideration of the absolute rights (legitime portie) of lawful heirs, resulting in inheritance disputes and legal uncertainty regarding the validity of the grant and subsequent land registration. This study employs normative legal research using a statutory approach and a conceptual approach. The analysis is based on primary legal materials in the form of legislation regulating grants, inheritance law, land registration, and notarial authority, supported by secondary legal materials including legal doctrines, scholarly journals, and relevant legal opinions. The findings demonstrate that a land grant made without the consent or acknowledgment of other heirs may be subject to legal challenge and potential annulment, particularly when it infringes upon the legitime portie guaranteed by the Indonesian Civil Code. Furthermore, the study reveals that Notaries/PPAT bear professional and legal obligations to apply the principle of prudence, verify the legal status of the parties, and ensure compliance with applicable laws. Failure to fulfill these obligations may result in administrative sanctions, civil liability for damages, and, in certain circumstances, criminal responsibility. However, the liability of Notaries/PPAT may be excluded if it can be proven that the deed was prepared in good faith and that any defects arose from falsified data or the concealment of material facts by the parties. This research contributes to the development of inheritance and notarial law by providing a clearer framework for assessing the validity of land grants and reinforcing the role of Notaries/PPAT in ensuring legal certainty, justice, and protection for all interested parties.*

Keywords: Grant; Land; Inheritance; Notary; Transfer.

1. INTRODUCTION

Humans are legal entities that possess rights and obligations within various forms of legal agreements (Hidayatulloh et al., 2023). When a person passes away, the legal

relationships associated with their rights and obligations do not cease but may continue to affect other legal subjects. One significant example of such a relationship is inheritance law (Suardana, 2023).

In the context of inheritance law, a person approaching the end of their life has the freedom to determine how their estate will be distributed after death. However, civil inheritance law generally establishes limitations and rules governing the distribution of inheritance. These rules are often disregarded by testators who attempt to distribute their estates according to personal wishes without considering applicable legal provisions.

Ownership rights over land constitute rights granted by the state to the public, as regulated under Law Number 5 of 1960 concerning Basic Agrarian Principles. Ownership rights may be transferred or devolve to another individual through legal events such as the death of the owner or through legal acts such as grants (Utomo, 2016).

An individual has the capacity to transfer property during their lifetime, commonly referred to as a grant. However, when a testator decides to transfer their property to a specific individual through an instrument that takes effect only after death, such a transfer is categorized as a testamentary grant. The practices of grants and testamentary grants indicate that individuals possess a degree of freedom in arranging the distribution of their estates. Nevertheless, this freedom is not absolute and remains subject to legal limitations.

One limitation frequently overlooked in the distribution of property is the provision concerning the absolute portion, known as *legitime portie*. The absolute portion constitutes a mandatory share that must be allocated to heirs in a direct line under the law, as stipulated in Article 913 of the Indonesian Civil Code. This portion may not be reduced through a will or lifetime grant. It represents an alienable right that cannot be eliminated or nullified by the heirs through testamentary dispositions, including legacies (*legaat*) or inheritance appointments (*erfstelling*) (Sudiro & Putra, 2023).

Legitime portie represents an absolute right of blood heirs that cannot be appropriated by any party. According to Article 914 of the Civil Code, when a decedent leaves one legitimate child, the absolute portion amounts to one-half of the share determined by law. If two legitimate descendants are left, the absolute portion equals two-thirds, while three or more legitimate descendants are entitled to three-quarters of the lawful share. This portion represents what heirs would receive in the absence of enforceable grants or wills (Malahayati et al., 2019). Furthermore, Article 915 of the Civil Code provides that ascendants are entitled to an absolute portion of one-half. Article 916 stipulates that acknowledged illegitimate children are entitled to one-half of the share they would legally receive.

Certain beneficiaries do not possess fixed or legitimate inheritance shares. Typically, surviving spouses may be considered primary beneficiaries with legal rights, whereas collateral relatives such as siblings generally lack absolute inheritance rights due to their position in the collateral line. The calculation of *legitime portie* depends on the existence of enforceable grants or wills; where none exist, distribution is governed strictly by statutory provisions.

The law guarantees protection to legitimate heirs, particularly direct descendants, by ensuring their entitlement to a specific portion of the estate. Despite this protection, inheritance disputes frequently arise in society.

Legally competent adults may grant their property during their lifetime. Grants are often made in response to particular circumstances, such as concerns regarding blended families or adopted children who are not statutory heirs (Pernia, 2021).

A grant must be made voluntarily and gratuitously, not through sale transactions. The grant agreement remains effective during the lifetime of the grantor and cannot be revoked after the grantor's death unless otherwise provided by law (Harto Karjono & Turisno, 2025). The essential elements of a grant include its unilateral nature, the intention to benefit the grantee without compensation, the object of the grant (movable or immovable property), irrevocability, and execution during the grantor's lifetime. Grants must be executed in a notarial deed. The Civil Code further stipulates that grants may only concern existing property; grants of future property are null and void (Pangestu, 2019). In practice, heirs' statements of consent are often included as a preventive measure to mitigate potential disputes.

A notary is a public official vested with exclusive authority to prepare authentic deeds required by law or requested by interested parties. Notaries certify the date of execution, retain original deeds, and issue copies or excerpts. Under the amended Notary Office Law, a notary is defined as a public official authorized to create authentic deeds under statutory regulations.

Land Deed Officials (PPAT) are responsible for safeguarding legal rights related to land transfers through grants (Putra & Purwanto, 2024). This reflects Indonesia's commitment to the rule of law, ensuring legal certainty and justice. Law serves to regulate society, ensure fairness, and impose legal consequences for violations.

Authentic deeds constitute conclusive and binding evidence for the parties and their heirs. Any challenge to such deeds places the burden of proof on the contesting party. Authentic deeds encompass all evidentiary elements, including written instruments, witnesses, presumptions, confessions, and oaths.

The involvement of notaries in grant transactions is essential to ensure legal validity and certainty. In Islamic law, grants serve social and familial harmony; however, unfair or unilateral grants often lead to family disputes (Oping, 2017).

A common issue arises when a grantor transfers property to one heir through a testamentary grant in an inequitable manner, thereby infringing upon the absolute rights of other heirs. This situation generates dissatisfaction among legitimaries. Accordingly, this research addresses two issues: (1) the legal consequences of grants executed through unilateral grant statements without involving other heirs; and (2) the legal liability of notaries/PPAT in executing grant deeds without obtaining heirs' consent.

This study aims to analyze the legal consequences of land grants executed without heirs' consent, particularly concerning the protection of legitime portie, and to examine the legal responsibility of notaries/PPAT in ensuring legal certainty, justice, and protection in land grant transactions.

2. RESEARCH METHODS

This study employs a normative legal research method (juridical-normative), which focuses on examining prevailing legal norms by analyzing statutory regulations, legal principles, and legal doctrines related to grants, civil inheritance law, and the transfer of land rights. The approaches applied in this research include the statutory approach and the conceptual approach, which are used to examine legal provisions concerning grants, legitime portie, as well as the authority and liability of notaries/Land Deed Officials (PPAT) in the execution of grant deeds. The legal materials utilized consist of primary legal materials in the form of statutory regulations, secondary legal materials comprising books, scientific journals, and previous research findings, and tertiary legal materials such as legal dictionaries and encyclopedias.

The collection of legal materials was conducted through library research, involving the systematic inventorying, examination, and analysis of relevant legal sources. The analysis of legal materials was carried out qualitatively using deductive reasoning, namely drawing conclusions from general legal norms to their application in the specific legal issues under study. The results of this analysis are intended to provide a comprehensive understanding of the legal consequences of grants executed without the consent of other heirs and the legal liability of notaries/PPAT, thereby enabling the formulation of conclusions and recommendations oriented toward legal certainty and justice.

3. RESULTS AND DISCUSSION

3.1 Legal Consequences of Granting Land Rights Based on a Statement of Grant Without Involving the Consent of Other Heirs.

The systematic recording procedure, commonly referred to as land registration, must be carried out for every parcel of land in order to provide legal certainty for all holders of land rights as well as for the public at large (Mokoagow, 2017). This procedure encompasses both juridical and physical data. Land registration is defined as a series of activities conducted continuously and regularly by the state government. In order to ensure legal certainty in the field of land affairs, these activities include the collection of specific information or data concerning land within a particular area, its processing, storage, and presentation for public purposes. This process also involves the issuance of land certificates and their maintenance. However, if the land rights registration process involves the collection of false data through a series of fraudulent acts that may cause losses to other parties, such registration cannot be justified, and the transfer of land rights shall be deemed unlawful.

After submitting the required documents to the Land Office, land that has already been certified may have its rights transferred through a grant (*hibah*). Subsequently, the Land Office provides the Land Deed Official (*Pejabat Pembuat Akta Tanah*/PPAT) with proof of receipt of the returned application, which is then handed over by the PPAT to the grantee. At the same time, the Head of the Land Office or an authorized official cancels the previous land certificate by marking it in black ink and initialing it. The name of the grantor is also recorded in the land book. Thereafter, the Head of the Land Registration Office signs the certificate to confirm the date of registration and records the name of

the new grantee in the designated page and column of the land book. Finally, the grantee or their authorized representative receives the updated land certificate.

According to Kansil, a grant is a type of agreement in which one party transfers assets to another party for the benefit of the latter. Meanwhile, R. Subekti defines a grant as a legally binding agreement whereby one party promises to give something of value gratuitously (*om niet*) to another party, namely the grantee, without any obligation for the recipient to provide compensation or return it, and such transfer takes effect immediately upon the conclusion of the agreement in accordance with the intention of the grantor.

Once the grantor executes the deed of grant and delivers the object of the grant to the grantee, the grant is considered valid. To draw up a deed of grant, the involvement of a public official with the requisite authority is mandatory. A notary is required to draw up deeds of grant concerning movable property, while deeds of grant concerning immovable property must be made before a Land Deed Official (PPAT). This requirement is in accordance with Article 1682 of the Civil Code, which stipulates that "No grant shall be valid, except in the cases referred to in Article 1687, unless it is made by notarial deed" (Sari, 2020). The original deed must be retained by the notary; otherwise, the grant shall be deemed invalid (Damayanti, 2020).

By formalizing legal acts related to land rights in the form of authentic deeds, the PPAT is responsible for performing specific duties within the land registration procedure. The existence of the PPAT is regulated by law and is intended to assist and support parties who require valid written documentation concerning land, including information regarding circumstances, events, or legal actions related thereto. Grantees may face legal consequences, including difficulties in completing the name transfer process at the Land Office, if a statement of grant is not subsequently converted into a deed of grant. This is due to the requirement that a PPAT deed be used to recognize and maintain granted land rights. The preparation of a deed of grant becomes even more difficult if the grantor has passed away, especially when the grant was made long before the registration process was initiated (Aliffa & Wiryawan, 2021).

Article 1682 of the Civil Code provides that a grant must be made in the form of a notarial deed, and the original copy of such deed must be retained by the notary concerned. Failure to comply with this requirement renders the grant invalid. Conversely, Article 1687 of the Civil Code regulates exceptions to this rule, stipulating that the transfer of bearer instruments (*aan toonder*) or movable property delivered physically does not require a notarial deed. In such cases, the grant may be effected simply by delivering the tangible goods or negotiable instruments to the grantee.

Proof of a deed of grant may be established through an authentic deed or a private (underhand) deed. An authentic deed is a legally valid agreement made before a notary or other authorized public official in a prescribed form. In contrast, a private deed is drawn up without the involvement of a public authority and generally does not require witnesses. A deed of grant is essentially a gratuitous transfer from the grantor to the grantee. Nevertheless, such grants are subject to limitations in the form of the legitime portion of the grantor's heirs, which may not exceed one-third of the portion belonging to the other heirs. Under the Civil Code, grants made without the consent of heirs may still be carried out; however, from a preventive perspective, notaries often require a written

statement of consent signed by the heirs in the preparation of a deed of grant in order to avoid potential legal disputes.

A private deed refers to a written agreement made without the involvement of a third party or an official authority such as a notary. Typically, such agreements are signed solely by the parties involved. Although private deeds are legally valid, their evidentiary value may be weaker, as additional evidence—such as witnesses or notarization—may be required to establish their authenticity. Private deeds function primarily as evidentiary instruments, and when used as such, they often require supplementary proof. If one party acknowledges the private agreement or if no party denies it, this acknowledgment determines its evidentiary strength. A private deed may have the same evidentiary force as an authentic deed if all parties recognize its existence and validity or if no denial is raised. However, its probative value becomes contested if one of the parties disputes or denies it (Jaya, 2017).

In practice, authentic deeds are generally regarded as having stronger evidentiary value than private deeds, as their execution involves a notary or other authorized public official. Notaries are responsible for ensuring that the deed is executed in accordance with applicable legal requirements. Another advantage of authentic deeds lies in the presence of witnesses at the time of execution, who may provide additional proof of the deed's validity. Consequently, authentic deeds enjoy a higher degree of trust within the legal system and are often considered more difficult to challenge. By contrast, private deeds may still constitute sufficient evidence if all parties agree and no denial is raised; however, in the event of a dispute, their evidentiary value may be more difficult to establish before a court.

The burden of proof rests with the party who denies or objects to a statement or claim. In the context of legal agreements or transactions, if one party challenges the validity of an agreement, the burden of proof lies with the challenging party. Such a party is required to present sufficient evidence and arguments to substantiate the objection. The party relying on the agreement is generally presumed to have a valid and legally grounded agreement, unless proven otherwise by the opposing party.

Courts, as institutions vested with the authority to resolve legal disputes, assess the evidence and arguments submitted by both parties. If the party challenging the agreement fails to present sufficient evidence or persuasive arguments, the court may determine that the objection is unfounded and uphold the validity of the agreement. Grants involving immovable property such as buildings and land are deemed invalid if not executed through an authentic deed, as grants cannot be made by private deed alone but must be formalized through an official deed.

A deed of grant must be executed before a notary or a Land Deed Official (*Pejabat Pembuat Akta Tanah*/PPAT) in order for the transfer of rights to be legally valid. Only under such circumstances is the acquisition of rights considered lawful. Heirs who suffer losses as a result of a grant made without an authentic deed and without their consent have the right to file a lawsuit. Authentic deeds drawn up by a notary or PPAT play a crucial role in validating and conferring legal force upon grant transactions. If heirs believe that a grant has been made without obtaining the necessary consent or without complying with proper legal procedures, they may file a claim seeking the annulment or cancellation of the grant. Potential legal consequences arising from such claims may include the invalidation of the grant and the restoration of the heirs' rights, as follows:

1. Annulment of the Grant
The court may decide to annul the grant if it is found that the required legal procedures were not followed or that the consent of the heirs was not obtained.
2. Restitution
The court may order restitution or the return of the granted property to the party filing the claim, particularly if the grant is deemed legally invalid.
3. Investigation and Rectification
The court may order further investigation and, if violations or errors are identified, may impose appropriate corrective measures.

These measures are intended to protect the rights of heirs and to ensure that the grant process is conducted in accordance with applicable legal provisions. Therefore, it is essential for notaries or PPATs to ensure that all legal requirements are fulfilled and that authentic deeds are properly executed when handling grant transactions.

3.2 The Liability of Notaries/Land Deed Officials (PPAT) in the Execution of Deeds of Grant Made Without the Consent of Other Heirs

The Indonesian Civil Code (KUHPerdata) defines an agreement as a legal act that binds two or more parties without the need for external coercion. Article 1313 regulates the concept of an agreement, while Article 1320 sets out the essential requirements for the validity of an agreement.

However, the granting of a gift (*hibah*) constitutes a legal act that requires clear and lawful legal provisions in order to be formally recognized. Therefore, proof of a grant must be carried out through the execution of a valid deed by a Notary or a Land Deed Official (*Pejabat Pembuat Akta Tanah*/PPAT) who possesses the authority in accordance with the applicable regulations. A deed drawn up by a Notary or PPAT serves as strong legal evidence of the grant transaction. This document contains comprehensive details of the grant, including the identities of the parties involved, a description of the granted property, applicable conditions (if any), and other relevant provisions. In the process of preparing a deed of grant, the Notary or PPAT acts as an independent party whose function is to ensure that all legal procedures and requirements have been properly fulfilled.

The existence of such a deed also provides legal certainty for the grantee and protects the interests of both parties. In addition, it is essential to understand and comply with the applicable regulations governing grants within the relevant jurisdiction. These may include tax obligations, notarial fees, and other specific provisions that must be observed. With a valid deed, a grant is no longer merely an informal agreement between the parties, but rather becomes a document that is officially recognized by legal institutions. This provides legal security and clarity that are crucial in grant transactions. The purpose of such regulation is to ensure the legitimacy and clarity of laws and regulations concerning the allocation of land or ownership rights over residential properties. A Notary is a member of the public who is vested with the authority to draw up authentic deeds and other powers as stipulated by law. The Law on the Office of Notary regulates, among other matters, the authority of a Notary to draw up deeds of grant. A Notary also bears the responsibility to ensure that the process of preparing a deed of grant strictly complies with all applicable procedures and legal provisions.

Notaries and/or PPATs have both professional and legal responsibilities to ensure that every legal transaction, including deeds of grant, is carried out in compliance with prevailing legal provisions. If a deed of grant is executed without obtaining the consent of other heirs as required by law, the Notary or PPAT may face legal and ethical consequences, including:

1. Violation of Professional Ethics:
Notaries/PPATs are required to perform their duties with integrity and in accordance with professional ethical standards. Executing a deed of grant without the consent of other heirs may be deemed a violation of notarial ethics.
2. Legal Consequences:
Notaries/PPATs may be subject to legal claims if the execution of a deed of grant without the consent of other heirs causes losses to interested parties. Aggrieved parties may file a lawsuit seeking compensation or the annulment of the grant transaction.
3. Refusal of Registration:
A deed of grant that fails to meet legal requirements, including the consent of heirs, may be rejected by the land registration authority. This may result in obstacles to the recognition of ownership or the legal status of the granted property.

It is important to note that a notary acts as an independent public official and must perform their duties with integrity and compliance with the law. If there are allegations of violations, aggrieved parties or supervisory bodies of the notarial profession may take legal measures to resolve the matter. Should a notary breach their obligations or commit errors, they may be subject to various types of sanctions, including administrative, civil, and even criminal sanctions. Under the Law on the Office of Notary, administrative sanctions may include a written warning, temporary suspension, honorable dismissal, or dishonorable dismissal. Furthermore, pursuant to Article 16 paragraph (2) of the Law on the Office of Notary, parties who suffer losses as a result of a notary's actions are entitled to seek civil compensation. In addition, under the Indonesian Criminal Code, a notary may be subject to criminal sanctions if proven to have violated the law (Herawati, 2022).

As public officials bearing a high level of professional responsibility, Notaries/Land Deed Officials (PPAT) play a crucial role in ensuring that every legal transaction they handle complies with applicable legal regulations. The following are several reasons why Notaries/PPAT must ensure the involvement of all interested parties, including heir

1. Legal Certainty:
The involvement of heirs in legal transactions is essential to create legal certainty. This helps prevent potential disputes in the future and ensures that the rights of heirs are formally and lawfully recognized.
2. Protection of the Rights of the Parties Involved:
Ensuring the involvement of all parties, including heirs, provides protection for their respective rights. This includes the provision of accurate and comprehensive information regarding the property or rights involved in the transaction.
3. Prevention of Family Disputes:
By involving heirs, Notaries/PPAT can help prevent potential family disputes that may arise due to ambiguity or insufficient information provided to the parties involved.

4. Legal Compliance:

Notaries/PPAT have a responsibility to ensure that every transaction complies with applicable legal regulations. This includes ensuring that all required documents are properly prepared and that all legal procedures have been duly followed.

5. Transparent Transaction Record:

The involvement of heirs also contributes to the creation of a transparent transaction record, which is beneficial for tracing the history of ownership and transactions in the future.

By ensuring the involvement of all interested parties, Notaries/Land Deed Officials (PPAT) are able to provide better services and contribute to the enforcement of law and justice. A transparent process that complies with applicable legal regulations is essential to fostering trust and legal certainty in every legal transaction.

4. CONCLUSION

With regard to the legal consequences arising from the granting of a gift to one heir without the consent of the other heirs and without execution in an authentic form, such a grant may be annulled due to the absence of consent from the remaining heirs. Furthermore, a grant may only be made insofar as the property granted does not exceed one-third (1/3) of the total assets of the grantor. Second, a notary who draws up a deed of grant without obtaining the consent of all heirs may be subject to administrative sanctions for violating the principle of prudence and the professional obligations of a notary, which require integrity, trustworthiness, and the prioritization of the interests of the parties to the agreement. The notary may also be held civilly liable to pay compensation if an aggrieved party files a claim. If it is proven that the notary was aware of the objection of one of the heirs to the grant, the notarial/PPAT deed may be declared null and void by operation of law, and the notary may face criminal liability for falsification of documents in accordance with Articles 264 and 266 in conjunction with Articles 55 and 56 of the Indonesian Criminal Code concerning document forgery. However, if the notary/PPAT is able to prove that they have acted responsibly with respect to the accuracy, certainty, and truthfulness of the contents of the deed in accordance with the legal requirements for the execution of the grant, and that they were unaware of the existence of heirs who did not consent due to falsification of data or concealment of information by the parties involved, then the notary/PPAT shall not bear legal responsibility.

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Regulation:

- The Civil Code (KUHPerdata), specifically:
- Article 1313 of the Civil Code (definition of agreement);
 - Article 1320 of the Civil Code (conditions for a valid agreement);
 - Article 1682 of the Civil Code (gifts must be made by a notarial deed);
 - Article 1687 of the Civil Code (exceptions for gifts for movable property);
- Provisions regarding legitime portie.
- Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA);
 - Law Number 30 of 2004 concerning the Position of Notary;
 - Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, specifically Article 16 paragraph (2);
- Government Regulation Number 24 of 1997 concerning Land Registration