

The Legal Position of Cancellation of Deed of Grant Due to Intervention Lawsuit

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Abstract. *This study aims to find out and analyze the form of third party intervention in a lawsuit for canceling a grant deed, to find out and analyze the legal standing of the cancellation of a grant deed due to an intervention lawsuit, and to find out and analyze solutions to avoid the emergence of an intervention lawsuit to cancel a grant deed. This research is empirical legal research, and was conducted in Bombana District, Southeast Sulawesi Province. Methods of data collection using interview techniques and field observations. All data, both Primary Data and Secondary Data, were analyzed using qualitative analysis techniques. The results of this study indicate that: (1) The form of third party intervention in a grant deed cancellation lawsuit can be in the form of: Voegings, namely the participation of a third party on its own initiative in examining civil disputes to defend one of the parties, either the plaintiff or the defendant, Tussenkomst, namely the participation of a third party on its own initiative in the examination of civil disputes, but does not side with either party, either the plaintiff or the defendant, but for the sake of defending his own interests, and Vrijwaring or guarantee, namely the participation of a third party in the examination of civil disputes because one of the parties is withdrawn to bear it. (2) The legal status of the cancellation of the deed of grant due to an intervention claim, in simple terms, is related to factors 1) Concerning the Sitting Case; 2) Intervention Lawsuit. In principle, being an intervention plaintiff is a right, so it can be done or not done. But in the case when carrying out a lawsuit, there are parties who should be used as Intervening Defendants but the plaintiffs do not do so in their lawsuit, an Error in Persona will occur. namely Lawsuit of less parties (Plurium Litis Consortium). (3) The solution to Avoid Intervention Lawsuits to Cancel Grant Deeds is to intensify legal counseling by Notaries/PPATs regarding various laws and regulations related to Notary/PPAT products including grants. In addition, the precautionary principle of the Notary/PPAT also needs to be further improved, in order to avoid formal and material defects.*

Keywords: Grants; Interventions; Legal.

1. Introduction

Law as a rule or social norm is inseparable from the values prevailing in society.¹ The family as part of society can provide a good teaching in social life. One of the problems that often arises is regarding the transfer of assets from parents to their children or to other families which are generally made in the form of grants. In practice, many of the grants given were later canceled by the grantor for various reasons, for example the recipient of the grant had bad behavior or had a spendthrift spirit. This was known after the grant was given. Even though the person previously displayed good behavior but then changed with the changing times.

Grants are a form of transferring assets to other people. In practice, grants are one of the legal actions that cause the most legal problems. In addition to the Civil Code, grants are also regulated in Islamic Law (Compilation of Islamic Law), this is reflected in the existence of general civil and religious civil cases relating to grants.²

It should be noted that there are several things that can cause a grant to be cancelled, which include:

1. Grants regarding new objects will be available at a later date (Article 1667 paragraph (2) of the Civil Code).
2. A grant by which the donor agrees that he still has the right to sell or give something to someone else included in the grant, are considered void. The null is related only to the object. (Article 1668 Civil Code)
3. Grants that make conditions that the recipient of the grant will pay off debts or other expenses besides what is stated in the deed of grant itself or in the list attached (Article 1670 of the Civil Code).
4. Grants for immovable objects become void if they are not made with a notarial deed (Article 1682 of the Civil Code).³

¹ Soerjono Soekanto, *Fundamentals of Legal Sociology* (Jakarta: PT. RajaGrafindo Persada, 2007).

² Law Online.com.

³ Letezia Tobing, "Grant Legitimacy," *Hukum online.com* (2014), accessed August 2, 2022, <https://www.Hukumonline.com/klinik/a/keabsahan-hibah-lt54912b4c6a82e>.

Article 1666 of the Civil Code states that a grant is a gift given by someone to another party for free and cannot be withdrawn. Grants cannot be withdrawn except for the conditions set forth in Article 1672 of the Civil Code and Article 1688 of the Civil Code. According to Article 1688 of the Civil Code, cancellation of grants can be made through the court if the conditions for grants are not met, the recipient of the grant commits a crime against the grantor, and the recipient of the grant refuses to provide a living to the grantor when the grantor's economic condition declines.

The grant contract will be complete with sufficient pillars and conditions.⁴The pillars and terms of the grant consist of:

- a. There is a person who grants or grants (*al-wahib*).
- b. There are people who receive grants (beneficiaries) (*al-mahublah*).
- c. The existence of a grant object, something that is donated (*al-hibah*)
- d. There is consent granted (*shighat hibah*).

According to Article 212 of the Compilation of Islamic Law, it states that gifts cannot be withdrawn, except for gifts from parents to their children. Cancellation or withdrawal of a gift (grant) is an act that is forbidden, even if the gift occurs between two people who are brothers or husband and wife. The grants that may be withdrawn are only grants made or given by parents to their children. Withdrawing a grant is illegal, except for a gift given by a father to his child. This is based on the argument of the Hadith narrated by the Hadith Sahih Muslim which reads: "Ibn Abbas said that the Prophet SAW said: a person who takes back what he has given is like someone who swallows his vomit back up."

The definition of a grant according to Article 171 letter g of Presidential Decree No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law ("KHI") is the giving of an object voluntarily and without compensation from one person to another who is still alive to own it. Grants in Islamic law are also irrevocable, except for gifts from parents to their children (Article 212 KHI).⁵

⁴ Abdul Halim Muhammad, Muamalat Law and Its Application to Islamic Banking Products, ndMatter. 32.

⁵ Ilman Hadi, "Can Grants be Withdrawn to Pay Heir Debts?" Law online.com (2022),

The Civil Code contains the legal substance of gift which consists of 4 parts containing Articles 1666-1693. These parts are:

- 1) The first part contains general provisions which consist of the notion of grants, grants made by living people, the goods donated, the validity of the grants and the terms of the grants
- 2) The second part contains the ability to give and receive grants which contains people who are entitled to give and receive grants and spousal gifts.
- 3) The third part contains how to donate something which contains the making of a grant deed to a notary, grants to women and to minors.
- 4) The fourth part contains the revocation and cancellation of grants which contains the conditions for revocation and cancellation of a grant.^{6\}

Basically grants can be made orally or in writing as stated in the Al-Qur'an Surah Al-Baqarah verses 282 and 283 as the basis of an agreement in Islam, based on this then if the grant is carried out orally/not made in writing with an authentic deed, this does not mean that the grant is invalid. With regard to legal consequences arising from grants that will be given to one of the heirs without the approval of other heirs and not made authentically, it can be canceled because there is no agreement from other heirs, and if the grant exceeds 1/3 of the inheritance. This is in accordance with the provisions of Article 210 paragraph (2) KHI further, if one of the heirs feels his rights have been violated, then he can file a lawsuit for cancellation of the grant to the Religious Court.

Grants for immovable property such as land and buildings made by parties without using an authentic deed, the validity of the grant is invalid because the grant must be made in an authentic deed, it cannot be made in an underhand deed.⁷If the awarding of a grant is made by private letter, then the grant for the transfer of ownership rights legally will only take effect when a Deed of Grant has been made before the authorized PPAT. If a grant is made without using an authentic deed and without the approval of the heirs, then when the heirs do not agree to the deed, the grant does not bind the parties.

<https://www.to-pay-heir-debt--lt501466b5af9b3>.

⁶ R. Subekti and R. Tjitrosudibio, Civil Code (Jakarta: PT. Pradnya Paramita, 2004).Matter. 446.

⁷Article 1682 of the Civil Code.

Decision Number 2/Pdt.G/2022/PN Psw, is a decision in a case in Bombana Regency regarding the cancellation of a grant deed due to an intervention lawsuit. In this case, Das Sein deviated from Das Sollen, so it is interesting to be researched.

Several other cases that have occurred in an effort to cancel a Deed of Grant in the form of an Intervention Lawsuit are in the Decision of the Religious Court Number 1485/Pdt.G/2011/PA.Sda and in Decision number 62/PDT/2014/PT YYK.

According to Das Sollen, grants cannot be withdrawn unless the conditions in Articles 1672 and 1688 of the Civil Code are fulfilled, but according to Das Sein, there are still those who file a lawsuit with the court to cancel the Deed of Grant, but the conditions in these articles are not fulfilled. The lawsuit was filed due to intervention from a third party. Article 1672 of the Civil Code states "The grantor may set conditions, that the goods donated will be returned to him if the person being given the grant or his heir dies earlier than the grantor, but such conditions may only be made for the benefit of the grantor himself. Meanwhile, Article 1688 of the Civil Code states "A grant cannot be revoked and therefore cannot be cancelled, except in the following cases:

1. If the terms of the grant are not met by the recipient of the grant;
2. If the person who is given the gift is guilty of committing or participating in an attempted murder or some other crime against the donor;
3. If the grantor falls into poverty while the recipient refuses to provide for him."

Based on the descriptions above, the writer is interested in compiling research in the form of a thesis with the title "Legal Position of Cancellation of Grant Deed due to Intervention Lawsuit (Case Study of Decision Number: 2/Pdt/G/2022/PN Psw)".

2. Research Methods

The research approach method used in this thesis is the Empirical Law research method. Empirical Legal Research emphasizes research that aims to gain legal knowledge by going directly to the object. The specification of this research uses descriptive analysis, namely research that besides providing an overview, writing and reporting an object or an event will also draw general conclusions from the issues discussed. Source of data comes from primary data and secondary data.

Data collection methods include interviews, document studies or library materials. The data analysis method used in analyzing the data is an interactive model of qualitative analysis.

3. Results and Discussion

3.1. Forms of Third Party Intervention in Claims for Cancellation of Grant Deeds

According to KBBI, intervention is interference in a dispute between two parties. This action can happen to people, groups, countries, and so on. Intervention comes from the Latin *intervention*, which means "to be present in between or interrupt". According to the Cambridge Dictionary, intervention is the act of deliberately getting involved in a difficult situation, to improve it or prevent it from getting worse. An act of inserting one thing among another, such as a person trying to help. Often interventions are steps intended to make things better. But, interventions can also be intended for negative purposes. Intervention is also a term related to political, economic, social and cultural, political and legal affairs.

Article 279 *Regulation op de Rechtsvordering (RV)*, reads:

"Anyone who has an interest in an ongoing civil case between other parties, can sue to join or intervene."

Parties based on Article 279 RV are parties other than the defendant and plaintiff in a dispute settlement through the courts which are referred to as intervening parties. Based on Article 279 to Article 282 RV, there are three types of intervening parties consisting of:⁸

- 1) *Voegings*, is the participation of a third party on their own initiative so that they can be involved in the process of examining disputes conducted in court to defend one of the parties, both the defendant and the plaintiff.
- 2) *Tussenkomst*, is the participation of a third party who because of his own initiative can be involved in the process of examining disputes conducted in court but not to defend one of the parties, but to defend his own interests.
- 3) *Vrijwaring* or guarantee, is the participation of a third party in a case because it is withdrawn by one of the parties to enter to share in the responsibility.

⁸ Caroline Maria M. and Harjono, "A Study of Intervention Lawsuits in Civil Cases," *Verstek Journal - Faculty of Law, Universitas Sebelas Maret* Vol. 8, no. No. 1 (2020).

a. Voegings

Is the participation of a third party on their own initiative so that they can be involved in the process of examining disputes conducted in court to defend one of the parties, both the defendant and the plaintiff. There are conditions necessary for third parties to be accepted in *Voegings*, that is:⁹

- 1) Requests to enter as a party contain claims for certain rights;
- 2) There is a direct legal interest from a third party that you want to protect by supporting one of the litigants;
- 3) These interests must have a connection with the subject matter being examined.

b. Tussenkomst

Is the participation of a third party because of their own initiative to be involved in the process of examining disputes conducted in court but not to defend one of the parties, but to defend their own interests. A third party wishing to enter as a party in an ongoing case must have a close relationship with the subject matter of the case. The direct relationship here is defined in the context of a legal relationship between a third party and the litigants, or because the object of the case has a direct connection with their legal interests that need to be protected. The *Tussenkomst* case actually consisted of three different parties. The intervention plaintiff makes all original parties (either the plaintiff or the defendant) as the defendant in his intervention case.¹⁰

c. Vrijwaring(Guarantee)

It is the participation of a third party in a case because it is pulled by one of the parties to enter to share in the responsibility. The main purpose *vrijwaring* is to free the party who withdrew it (the defendant) from the possible consequences of a decision on the subject matter of the case. The defendant in his answer or duplicate can submit a request to the panel of judges so that the third party is withdrawn as a party in the main examination of the case.

⁹ Mukti Arto A, *Practice of Civil Cases in Religious Courts* (Yogyakarta: Student Library, 2007).

¹⁰ M. and Harjono, "A Study of Intervention Lawsuits in Civil Cases."

The characteristics of Vrijwaring are:¹¹

- 1) The point is to combine the demands;
- 2) The Defendant as one of the parties involved in the litigation attracts third parties into the dispute at hand; and
- 3) The participation of third parties is not because of their own initiative, but because of coercion from the litigants.

3.2. Legal Position of Cancellation of Grant Deed due to Intervention Lawsuit

1. Legal Position

According to the Head of the Rumbia Religious Court, Zulfahmi,¹² related to the legal standing of the cancellation of the grant deed due to an intervention lawsuit, in simple terms, related to the following factors:

- 1) About Sitting Cases
- 2) Intervention Lawsuit

In principle, being an intervention plaintiff is a right, so it can be done or not done. However, when carrying out a lawsuit, there is a party that should be used as an Intervening Defendant but is not carried out, the lawsuit will become *Error in Persona*, namely Lawsuit of less parties (*Plurium Litis Consortium*).

If in a case to cancel the grant deed, of course what is seen is how the claim is made, and in this case the trial process is no different from a trial in general, is it true that there is a formal or material defect in the grant case so that the grant is to be cancelled, the legal consequences of which are is the cancellation of the grant deed.

According to him, the Deed of Grant is only a legal instrument related to the transfer of land rights. When a lawsuit occurs in court, what the parties want to annul is actually the legal act, namely the awarding of a grant, but the Deed of Grant is the most authentic evidence in the awarding process.grants, where grants can only be declared null and void when the Deed of Grant is cancelled.

¹¹ A, Practice of Civil Cases in Religious Courts.

¹²Interview on 12 August 2022 in Bombana District.

Regarding whether the Grant Deed can be canceled due to an intervention lawsuit, it is necessary to clarify whether it is related to the Intervening Plaintiff or the Intervening Defendant. If it is related to an Intervention Plaintiff, the court will review whether the intervention plaintiff meets the requirements to become an Intervention plaintiff or not, whether he meets the requirements or not. *Error in Personain* the form of in person disqualification. If you meet the requirements to become the intended intervention plaintiff, then all that remains is to pay attention to the form of the claim.

Furthermore, regarding the Intervening Defendants, this occurs more frequently in filing lawsuits. Lawsuit will be NO (*Niet ontvankelijke Verklaard*) if there is a party that should be used as an Intervening Defendant but the plaintiff fails to do so, this is no exception in the case of the cancellation of the deed of grant in question.

2. Error in Persona

M. Yahya Harahap,¹³ divide Error in persona into 3 (three), namely:

a) In person disqualification

In person disqualification occurs if the party acting as the plaintiff is a person who does not meet the requirements (disqualification) because the plaintiff is in the following conditions:

1) Do not have the right to sue disputed cases

For example, a person who does not participate in the agreement acts as a plaintiff demanding the cancellation of the agreement, or a father acting as a plaintiff demanding the cancellation of his child's gift.

2) Incapable of taking legal action

People who are minors or guardians, are incapable of taking legal action. Therefore, they cannot act as plaintiffs without the help of their parents or guardians.

b) One of the targets of the party being sued

¹³ M. Yahya Harahap, Civil Procedure Law: Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions (Jakarta: Sinar Graphic, 2017). Matter. 117-119.

Another form *error in persona* what might happen is mistakenly drawing people as defendants (*gemis aanhoeda nigheid*). For example, it is A who borrows money, but who is drawn as a defendant to pay off payments is R.

c) Less-party lawsuit (*Plurium Litis Consortium*).

This condition can occur if the party acting as plaintiff or withdrawn as plaintiff is incomplete because there are still people who must act as plaintiff or defendant. Another example is, there are parties who should be intervening defendants but are not included in the lawsuit as intervening plaintiffs.

3. Formal and material requirements on authentic deed evidence

An authentic deed is a deed that must be made by or in the presence of an authorized public official, so that in making the deed it must contain requirements in accordance with the applicable provisions. In proof the truth can be determined by looking at the formal requirements and material requirements for an authentic deed that have been stipulated by law. Thus, an authentic deed cannot be made outside of these provisions, if this is done it can cause legal defects in which the deed cannot be called an authentic deed, but will be degraded as an underhanded deed.

In a case, proving an authentic deed can be done through material and formal proof, where the evidence is strong to determine that the deed is truly an authentic deed made under the umbrella of law. Thus, the validity of an authentic deed if it has been tested for its truth and declared valid through the formal and material requirements of an authentic deed, it will not be legally flawed.

An authentic deed is a perfect means of proof for both parties and their heirs as well as all those who have rights from them regarding what is contained in the deed (Vide Article 165 HIR, Article 285 RBg, and Article 1870 of the Civil Code). An authentic deed is binding evidence, which means that the truth of the things written in the deed must be recognized by the judge, that is, the deed is true as long as it is true, no other party can prove otherwise.

On the other hand, private deed can be a perfect means of proof against the person who signed it as well as their heirs and people who get the rights from it only if the signature in the deed is the signature is recognized by the person

against whom the inscription is intended to be used. (Vide Article 1857 Civil Code).

4) Grant deed formal requirements

According to Farma,¹⁴In general, the formal requirements for making PPAT deeds have been regulated in the Regulation of the State Minister for Agrarian Affairs/Head of BPN Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 (hereinafter, in this study, it will be simply abbreviated as Permen ATR No. 3 of 1997).

Articles in Permen ATR No. 3 of 1997 which regulates the formal requirements for a PPAT deed are as follows:

- a) Article 95 Paragraph (1), regulates the types of deeds made before a PPAT;
- b) Article 96 Paragraph (1), (2) and (3), regulates the procedure for filling out a PPAT deed;
- c) Article 97 Paragraph (1) to (8), regulates the preparation for making a PPAT Deed;
- d) Article 99 Paragraphs (1) and (2), regulate the statements of the parties before the PPAT deed is drawn up;
- e) Article 100 Paragraphs (1) and (2), stipulates that the PPAT must reject the object in dispute;
- f) Article 101 Paragraph (1), (2) and (3), regulates the implementation of making a deed;
- g) Article 102, regulates the number of duplicate deeds;
- h) Article 103, regulates registration of deed at the BPN Office;
- i) Article 111 Paragraph (1) to (6), regulates the transfer of rights due to inheritance;
- j) In Article 112 Paragraphs (1) and (2), it regulates the testamentary grant;

C. Solutions to Avoid Intervention Lawsuits to Cancel Grant Deeds

The solution to avoiding the emergence of an intervention lawsuit related to the cancellation of the Grant Deed is to intensify legal counseling by Notaries/PPATs regarding various laws and regulations such as regulations governing grants. In addition, there needs to be an effective appeal that when there are parties to a dispute, they should come to the Notary/PPAT office so that they can be given

¹⁴Interview on 16 August 2022 in Bombana District.

legal consultation, which is then followed up with an agreement. Considering that the intervention lawsuit arose due to the lack of massive communication, and the ineffectiveness of binding agreements.

PPAT has two important responsibilities, namely responsibility to himself as PPAT and personally and responsibility to the parties who make the deed. Against him as a PPAT is the responsibility of fulfilling the formal requirements and material requirements in making the deed, while personally, the PPAT must comply with all the requirements of the code of ethics as stated in the PPAT's Code of Ethics.

Furthermore, the responsibility of the parties is to be able to guarantee that the deed made before them has the power of proof which is perfect as an authentic deed and free from lawsuits, both claims from the parties themselves and claims from third parties.

PPAT has an important role in land registration, namely assisting the Head of the District/City Land Office to carry out certain activities in land registration. The word "assisted" in Article 6 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration, does not mean that the PPAT is a subordinate of the Regency/City Land Office that can be governed by it, but the PPAT has independence in carrying out its duties and authorities, by Therefore, the value of the responsibility of a PPAT is very large.

PPAT in Article 1 paragraph (1) PP No. 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations Officials who make land deeds are public officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units.

Article 1868 of the Civil Code states that "an authentic deed is a deed made in the form determined by law, made by or in the presence of public officials who have power for that at the place where the deed is made. The PPAT also has the obligation to include that what is contained in the PPAT deed has really been understood and is in accordance with the wishes of the parties, namely by reading it so that the contents become clear, and the PPAT deed is made in the original form on 2 sheets. The first sheet of 1 copy is kept by the PPAT, the second sheet is 1 copy or more according to the number of Land Rights or Ownership Rights to Flats Units which are the object of legal action in the deed

submitted to the Land Office for registration purposes or in the case of the deed regarding granting power of imposing Mortgage.

4. Conclusion

Forms of Third Party Intervention in Grant Deed Cancellation Lawsuits can be in the form of Voeging, namely the participation of third parties on their own initiative in examining civil disputes to defend one party, either the plaintiff or the defendant, Tussenkomst, namely the participation of third parties on their own initiative in examining disputes civil law, but not in favor of one of the parties, either the plaintiff or the defendant, but for the sake of defending their own interests, and Vrijwaring or guarantee, namely the participation of a third party in the examination of a civil dispute because one of the parties is withdrawn to bear it.

5. References

- [1] A, Mukti Arto. *Praktek Perkara Perdata Pada Pengadilan Agama*. Yogyakarta: Pustaka Pelajar, 2007.
- [2] Hadi, Ilman. "Apakah Hibah Dapat Ditarik Kembali Untuk Membayar Utang Pewaris?" *Hukum online.com* (2022). <https://www.hukumonline.com/klinik/a/apakah-barang-hibah-dapat-ditarik-kembali-untuk-membayar-hutang-pewaris--lt501466b5af9b3>.
- [3] Harahap, M. Yahya. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. Jakarta: Sinar Grafika, 2017.
- [4] M., Caroline Maria, and Harjono. "Studi Kajian Tentang Gugatan Intervensi Dalam Perkara Perdata." *Jurnal Verstek - Fakultas Hukum Universitas Sebelas Maret* Vol. 8, no. No. 1 (2020).
- [5] Muhammad, Abdul Halim. *Undang-Undang Muamalat Dan Aplikasinya Kepada Produk-Produk Perbankan Islam*, n.d.
- [6] Soekanto, Soerjono. *Pokok-Pokok Sosiologi Hukum*. Jakarta: PT. RajaGrafindo Persada, 2007.
- [7] Subekti, R., and R. Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. Jakarta: PT. Pradnya Paramita, 2004.
- [8] Tobing, Letezia. "Keabsahan Hibah." *Hukum online.com* (2014). Accessed August 2, 2022. <https://www.hukumonline.com/klinik/a/keabsahan-hibah-lt54912b4c6a82e>.