

Legal Analysis of The Cancellation of The Recording of Transfer of Ownership Rights to Land Based on The Deed of Grant in Central Java

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Abstract. *This study analyzes the cancellation of the recording of the transfer of land ownership rights based on the deed of gift with a focus on the Decree of the Head of the Regional Office of the National Land Agency of Central Java Province Number 02/Pbt/BPN-33/I/2024. The legal procedures followed and their legal impact on the related parties, both from a civil and agrarian law perspective, are the main focus. This study uses a normative legal approach with a case study method. The results of the study indicate that although the procedures are in accordance with applicable regulations, there are obstacles in their implementation, mainly due to the lack of public understanding of proper legal procedures and conflicts of interest between the parties involved. This study makes an important contribution to the development of agrarian law in Indonesia. The results of the study indicate that the procedures followed in the cancellation of the transfer of rights have been in accordance with applicable provisions, but there are several obstacles in its implementation. These obstacles include the lack of public understanding of the correct legal procedures and the existence of conflicts of interest between the parties involved.*

Keywords: *Cancellation; Deed; Gift; Recording; Transfer.*

1. Introduction

Land is one of the natural resources that is very vital for the sustainability of human life. Land is used for various purposes, such as housing, business premises, or means of production. Therefore, land has a high economic value. This is reinforced by the 1945 Constitution Article 33 paragraph (3) which reads, "The land and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people."¹Therefore, it is appropriate that the utilization of the functions of the earth, water, and the wealth contained therein is aimed at achieving the greatest prosperity for all Indonesian people.

¹Republic of Indonesia Law Number 5 of 1960 concerning Basic Agrarian Provisions

Land is also a wealth that has a high selling value because of its function as a source of life for the community, so that every inch of land is maintained until the end of life. Development activities that require land as a medium are carried out by the government through land acquisition and very high population growth in Indonesia, resulting in high land rights transfer activities. As a result, both the government and the community when they need a plot of land to meet their needs require certainty about who the actual owner of the land is.

In order to obtain land ownership rights, each person or individual can obtain land rights by applying for land that can have the status of State Land, land that is being applied for is not yet certified or not certified and the status of Land Management Rights at the District/City Land Office. If the land that is being applied for is already certified, then the transfer of land rights is carried out. Ownership Rights are hereditary rights, the strongest and most complete that a person can have on land (Article 20 of the UUPA). If the transfer of land rights has been carried out, the land must be immediately registered at the Land Office which is usually called land registration. Land registration in question is data maintenance, data registration is a land registration activity to adjust physical data and legal data in land registration maps, land lists, name lists, measurement letters, land books, and certificates with changes that occur later. Changes in legal data can concern the rights, namely the expiration of the validity period, canceled, revoked or burdened with other rights. Changes can also concern the rights holder, namely if there is inheritance, transfer of rights/transfer of rights, or change of name.

Transfer of land rights through a deed of gift is one form of transfer of ownership recognized in the land law system in Indonesia. This process aims to regulate and protect the rights of the parties involved. However, in practice, the transfer of rights does not always run smoothly. The case of cancellation of the recording of the transfer of land ownership rights based on the deed of gift that occurred on the Certificate of Ownership Number 532 in Adirejo Village, Tunjungan District, Blora Regency, is a real example of the problems that can arise.

In 2012, Suparmi and the late Damin gave a grant in the form of a plot of land to Hery Teguh Ilistiawan through Deed of Grant Number 228/TJN/2012 made by Notary and PPAT Niken Sukmawati, SH, M.Kn. However, in 2013, Hery Teguh Ilistiawan left Suparmi and Damin without any news, which resulted in Suparmi experiencing economic difficulties after Damin passed away in 2018.

Due to these conditions, Suparmi filed a lawsuit at the Blora District Court to cancel the grant based on Article 1688 of the Civil Code, which states that the grantor can revoke the grant if he becomes poor and the grantee refuses to provide maintenance. The Blora District Court, in decision Number 38/Pdt.G/2021/PN.B1a, declared the grant null and void and ordered that the

land rights be returned to Suparmi as the grantor. This decision was then followed up by the Head of the Central Java Province National Land Agency Regional Office through Decree Number 02/Pbt/BPN-33/I/2024, which canceled the registration of the transfer of land ownership rights and returned the land status to Suparmi. This case is interesting to analyze because it involves various legal aspects, including the process of transferring rights, reasons for cancellation, and its impact on the parties concerned.

Therefore, this study intends to conduct a legal analysis of the cancellation of the recording of the transfer of land ownership rights based on a deed of gift, focusing on a case study of the Decree of the Head of the Regional Office of the National Land Agency of Central Java Province Number 02/Pbt/BPN-33/I/2024. This study is expected to provide a deeper understanding of the legal procedures involved, as well as the legal implications of the decision, which can be a reference for similar cases in the future.

2. Research Methods

The type of research used in this study is normative juridical. Normative juridical research is a research method that refers to legal norms contained in laws and regulations. This study also uses an empirical-sociological juridical approach, namely research that emphasizes individual or community behavior in relation to law.² Researchers look for relationships (correlations) between various symptoms or variables as data collection tools consisting of document studies, observations, and interviews.³ Through this approach, the author also conducted an analysis of the Implementation of Transfer of Land Rights with a Deed of Grant in Central Java, which focuses on the Decree of the Head of the Regional Office of the National Land Agency of Central Java Province Number 02/Pbt/BPN-33/I/2024.

3. Results and Discussion

Grants are the process of transferring rights to something to another person voluntarily without expecting anything in return. Arabic terminology states that grants come from the word wahab, yahibu which means to give. In short, grants can be interpreted as granting rights to property to another person while still alive without expecting any reward or return, accompanied by ijab and qabul. Meanwhile, according to the Compilation of Islamic Law referring to article 171 concerning grants, it is a procedural transfer of property without any element of

²Soerjono Soekanto and Sri Mamadji, 2009, Normative Legal Research: A Brief Review, Raja Grafindo Persada, Jakarta, page 1

³Amiruddin, 2012, Introduction to Social Research Methods, Rajawali Pers, Jakarta, p. 15

coercion from any party and does not expect any return from someone to another party and the method of implementation when the grantor is still alive⁴. However, the majority of scholars have different opinions in defining this grant. Like Imam Abu Hanifah, he stated that "a grant is the process of transferring ownership of property from one person to another without expecting anything in return". However, Imam Syafi'i stated that a grant is the process of transferring ownership from one person to another during his lifetime and is done voluntarily, meaning there is no element of coercion from another party and without any particular orientation. Meanwhile, according to Sayyid Sabiq, he defines a grant because there is an *ijab* and *qabul* related to the transfer of ownership from one person to another while still alive without expecting anything in return.⁵

The provisions on granting grants have been regulated in the Civil Code. This is contained in Book III of the Civil Code which states that the grant process uses an open system. Thus, everyone can enter into any form of agreement, even though it has not been or is not regulated in laws and regulations. This means that the existence of these legal provisions provides space for freedom for the community to enter into certain agreements/bonds which are not in conflict with the law, public order, and human rights (the principle of freedom of contract).⁶

Basically, a gift that has been given by one person to another cannot be withdrawn unless there is a lawsuit/application. As regulated in Article 1688 of the Civil Code, including: (1) One of the causes is because the pillars and conditions of a gift according to the law are not met. This means that only those grants that meet the requirements are permitted, such as the grantor implementing the applicable provisions. Not only that, if the recipient of the gift is not present in the context of the transfer of the gift that is carried out (after death/not yet born), the transaction can be declared void; (2) If the recipient of the gift commits an act that has a negative impact, such as a crime that can threaten the life of the grantor. Then the gift can be canceled. Not only that, if the recipient of the gift commits a crime/criminal act such as assisting in the action or becoming the main subject that can threaten the life of the grantor, the grant agreement can also be canceled. The meaning of 'crime/error' in this consensus is someone who violates legal norms, laws and regulations, and will receive the threat of criminal sanctions for their actions. One example is committing murder, blasphemy against the donor and other acts; (3) If the recipient of the grant does not provide the right to support the donor (based on

⁴Budi Hariyanto, "Legal Review of the Distribution of Inheritance of Different Religions According to the Civil Code (Kuh Perdata) and the Compilation of Islamic Law (KHI)," *IUS: Scientific Journal of the Faculty of Law* 8, no. 2 (2020): 28–42.

⁵Endra Syaifudin, "Islamic Views on Grantors Who Withdraw Their Grants from Grant Recipients," *Warna Warni Ideas*, nd, 64.

⁶N Nursandi, I Nyoman Putu Budiarta, and Ni Gusti Ketut Sri Astiti, "Legal Consequences of Land Grant Agreements to Adopted Children Made Before Land Deed Officials (PPAT) According to the Civil Code," *Jurnal Analogi Hukum* 4, no. 3 (2022): 271–76.

the agreement) in a state of illness or poverty, but a grant process has occurred according to applicable provisions. The meaning of 'poor' in this consensus is that the donor can no longer meet the needs of life, such as clothing, food and shelter. Moreover, in terms of the amount of income, it is below the average family's living needs.⁷.

3.2. Legal Analysis of the Procedure for Cancellation of Recording of Transfer of Ownership Rights to Land Based on a Deed of Grant

Real legal certainty actually includes juridical legal certainty but can be more than that. Otto provides an explanation as a possible opportunity that in certain situations⁸:

- a) The existence of clear, consistent, and easily obtained regulations, issued by or recognized because of state power.
- b) Government agencies establish legal regulations consistently and comply with them.
- c) The majority of citizens agree with the content and therefore adjust their behavior accordingly.
- d) An independent and impartial judicial judge applies the rules consistently in resolving a dispute.
- e) Judicial decisions are concretely implemented.

The application of the theory of legal certainty can be a means to ensure the smoothness and validity of the process of transferring land ownership rights with a deed of gift. By applying this theory, it is hoped that the gift process can run fairly and provide legal certainty to all parties involved. This theory has consequences for the implementation of the transfer of land rights with a deed of gift, including:

- a) The deed of gift must be made in writing and signed by the parties. This is to ensure that all parties know their rights and obligations in the gift process.
- b) The deed of gift must be registered with the land office. This is to provide legal certainty to the parties involved and avoid disputes in the future.
- c) The process of transferring land ownership rights must be carried out in good faith. This is to avoid abuse of rights and obligations in the grant process.

Withdrawal or cancellation of a deed of gift can be done by withdrawing the gift or eliminating the gift by stating his will to the recipient of the gift by means of deliberation or mediation first to make a PPAT deed regarding legal acts, if this is not fulfilled voluntarily then the re-claim must go through the court, regarding the cancellation of the PPAT deed, the cancellation is in the registration process

⁷Mohammad Miftahus Sa'di and Rachmad Risqy Kurniawan, "Analysis of Grants and Their Correlation with Inheritance and Cancellation of Grants According to Laws and Regulations in Indonesia," 2021, p. 13.

⁸Jan Michiel Otto, 2012, Socio-Legal Study, Larasati Library, Denpasar, p. 121.

at the land office, where according to Article 45 of PP Number 24 of 1997 requires a court decision because the cancellation needs to receive a Proper and Careful review, If the lawsuit regarding the cancellation of the deed of gift can be submitted to the Religious Court according to Article 49 of Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts states that the Religious Court, Clearly the Class 1 A Religious Court has the authority to examine, decide, and resolve the grant lawsuit case not only formally but also materially, in this case including the grant (its actions).

3.2.1 Position of Cancellation Case

The case of cancellation of land ownership rights based on grants in this study is the existence of a document in the form of a Decree of the Head of the Central Java Province National Land Agency Regional Office Number 02/Pbt/BPN-33/I/2024 issued to cancel the recording of the transfer of rights based on Grant Deed Number 228/TJN/2012 against Certificate of Ownership Number 532/Adirejo in the name of Hery Teguh Ilistiawan. This cancellation is based on legal defects that were found and have been determined by a court decision that has permanent legal force. This process began with an application from Elizabeth Estiningsih, SH, as Suparmi's attorney, who filed the cancellation on November 11, 2022.

The legal considerations of the Decree of the Head of the Central Java Province National Land Agency Regional Office Number 02/Pbt/BPN-33/I/2024 are based on: (1) Application Letter and Related Documents, this cancellation application is attached with various related documents that support Suparmi's claim. This includes a letter from the Blora Regency Land Office and the results of a field inspection showing the status and condition of the land; (2) Minutes and Case Title Meetings, several minutes from the results of field inspections and case title meetings at the Blora Regency Land Office and the Central Java Province National Land Agency Regional Office indicate legal defects in the transfer of rights; (3) History of Transfer of Rights and Social Conditions, where Suparmi and her late husband, Damin, donated the land to their nephew, Hery Teguh Ilistiawan, with the aim that in their old age there would be someone to take care of them. However, Hery Teguh Ilistiawan left them without saying goodbye in 2013, causing Suparmi to experience economic difficulties to the point of poverty. Based on Article 1688 of the Civil Code, this is the basis for Suparmi to revoke or cancel the grant.

The theory of legal protection emphasizes the need to protect the weaker party, such as the grantee. Ensure that the grant process does not benefit one party excessively and ensure that the grantee understands the legal implications of the transfer of ownership.⁹ Thus, the Blora District Court, in its decision Number 38/Pdt.G/2021/PN.Bla dated May 31, 2022, granted Suparmi's lawsuit in part and declared the grant given to Hery Teguh Ilistiawan void. This decision

⁹Philpus M.Hadjon, 1987, Legal Protection for the Indonesian People, PT. Bina Ilmu Surabaya, p. 29.

strengthens the legal basis for the cancellation of the transfer of land rights, which then became the basis for the issuance of the Decree. The decision of the Head of the Central Java BPN Regional Office stipulates that the recording of the transfer of rights based on Deed of Grant Number 228/TJN/2012 is canceled, and the rights to the land are returned to Suparmi. The Head of the Blora Regency Land Office was ordered to cross out and record the cancellation of this transfer of ownership in the land book, certificate, general register, and land registration system stored at the Blora Regency Land Office.

3.2.2 Cancellation of Recording of Transfer of Ownership Rights to Land Based on Deed of Grant

The cancellation of the transfer of rights based on the Deed of Grant Number 228/TJN/2012 was carried out due to legal defects in accordance with the court decision that has permanent legal force, namely based on agrarian and civil law regulations. The analysis and discussion can be presented as follows:

- a) Article 1688 of the Civil Code states that a grant can be canceled if the grantor becomes poor and the grantee refuses to provide maintenance to the grantor. The legal flaw in this case is that Suparmi as the grantor became poor after being abandoned by Hery Teguh Ilistiawan, who was the grantee. Hery Teguh Ilistiawan did not fulfill his obligation to provide maintenance to Suparmi after Damin, Suparmi's husband, died. The inability of the grantee to fulfill the obligation to provide maintenance is the basis for the legal flaw based on Article 1688 of the Civil Code.
- b) Government Regulation Number 24 of 1997 concerning Land Registration, regulates land registration, including procedures and requirements that must be met to carry out the transfer of land rights. Legal Defects: The transfer of land ownership rights through a gift must meet the legal requirements, including compliance with the obligations agreed upon in the deed of gift. When these requirements are not met, such as not providing for the poor grantor, the transfer is considered legally defective and can be canceled in accordance with applicable regulations.
- c) Blora District Court Decision Number 38/Pdt.G/2021/PN.Bla. Legal Basis, a court decision that has permanent legal force (*inkracht van gewijsde*) has legal force that must be respected and implemented by all parties, including government agencies such as the BPN. Legal Defects: The Blora District Court Decision stated that the grant was void because the grantee did not fulfill his obligation to provide support to the grantor who fell into poverty. This decision confirms the existence of legal defects in the implementation of the grant, which then became the basis for the BPN to cancel the recording of the transfer of rights.

- d) Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Legal basis, UUPA as the basis for agrarian law in Indonesia regulates rights and obligations related to ownership and transfer of land rights. Legal Defects: The implementation of a grant that does not meet the specified requirements and obligations, such as providing a living to the grantor, is considered contrary to the principles of justice and order of agrarian law regulated in UUPA. This causes the transfer of rights to be legally defective and can be canceled.

The recording of the transfer of land ownership rights in the Deed of Grant Number 228/TJN/2012 was canceled due to a legal defect in this case (between Suparmi and her nephew, Hery Teguh Ilistiawan) which occurred because the recipient of the grant did not fulfill his obligation to provide a living for the grantor who fell into poverty, in accordance with Article 1688 of the Civil Code. In addition, non-compliance with court decisions that have permanent legal force and the failure to fulfill the requirements in PP No. 24 of 1997 and the principles stipulated in the UUPA strengthen the basis for the cancellation of the recording of the transfer of land ownership rights.

4. Conclusion

The cancellation of the registration of the transfer of land ownership rights based on the Deed of Grant Number 228/TJN/2012 recorded in the Certificate of Ownership Rights Number 532/Adirejo in the name of Hery Teguh Ilistiawan was carried out due to a legal defect. This legal defect occurred because the recipient of the grant, Hery Teguh Ilistiawan, did not fulfill his obligation to provide a living for the grantor, Suparmi, who fell into poverty, as regulated in Article 1688 of the Civil Code. In addition, the implementation of this grant did not meet the requirements and obligations stipulated in PP Number 24 of 1997 concerning Land Registration and the principles of justice and agrarian legal order regulated in the UUPA. The decision of the Blora District Court Number 38/Pdt.G/2021/PN.Bla which has permanent legal force strengthens the basis for the cancellation of the registration of the transfer of land ownership rights.

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