Cancellation of The Grant Will by The Heirs

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ABSTRACT
In this article, the author raises the issue of the cancellation of wills by heirs regarding inheritance, including the issue of granting land rights through grants. The application of grants in everyday life has been applied and applied in the community, especially land grants. Grants are made in an agreement, making a will (will) is a legal act, a person determines what happens to his wealth after death. The creation of a will is bound by a certain form and way if it is ignored it can cause the will to be void. In accordance with the provisions of Article 875 of the Civil Code that a will made before a notary can be canceled if it turns out that the procedure for making it is not carried out in accordance with the terms and conditions that apply to a will grant deed.

Keywords: *Deed Testament, Notary, Legal Due*

1. INTRODUCTION

Islamic Inheritance Law is formulated as "a set of legal provisions that regulate the distribution of assets owned by a person at the time of his death." The main sources of Islamic Inheritance Law are the Qur'an and the Prophet's Hadith, then Qias (analog) and ijma' (same opinion). [1] In Islamic inheritance law there is a so-called grant, the grant aims to strengthen the relationship between humans and God. As evidence of caring for fellow human beings. While the word grant in Indonesian is adopted from Arabic which comes from the word wahaba which means to give.

According to the Compilation of Islamic Law Article 171 defines that a gift or gift is the giving of an object voluntarily and without compensation from someone to another person who is still alive to be owned. Giving a gift from someone on property means handing over an asset to someone else while he is still alive. That the act of transferring property rights is valid during life, and if it has died, it is called a will. Meanwhile, the object of the grant is the inheritance.

The relationship between grants and inheritance based on article 212 of the Compilation of Islamic Law, grants from parents to children can be counted as inheritance. The granting of this will is done while still alive. Grants as an alternative way out of the division of inheritance to avoid conflicts that occur in the distribution of inheritance due to the human factor itself. [2] The unequal distribution of inheritance is a very complex problem, including the issue of granting land rights through grants.

The application of grants in everyday life has been applied and implemented in the community, especially land grants. The grant is made in the agreement free of charge in words for free intended for one party only, while the other party is not involved in the grant. [3].

In civil law, grants are regulated in article 1666 of the Civil Code, namely, granting is an agreement whereby a donor delivers an item for free without being able to withdraw it, for the benefit of the person who receives the delivery of the item. The law only recognizes grants between living persons.

Based on this formula, it can be seen that the elements of a grant are as follows: A grant is a one-Sided agreement made free of charge, meaning that there is no counter-achievement on the part of the grantee; In grants it is always required that the donor has the intention to benefit the party who is given the grant. The object of the grant agreement is all kinds of property belonging to the donor, both tangible and intangible, fixed and movable objects, including all kinds of debts from the donor. [4].

The grant cannot be withdrawn, the grant must be made while the grantor is still alive, the grant must be recognized by a notary deed even though the grant is a one-sided agreement which according to its formula in Article 1666 of the Civil Code cannot be withdrawn. but with the approval of the grantee, but in Article 1688 of the Civil Code it is possible that the grant can be withdrawn or even abolished by the grantor, that is, because the official conditions for the grant are not met. or helping to commit other crimes against the donor, if the recipient of the grant refuses to provide a living or allowance to the donor after the donor falls into poverty. [5].

If the withdrawal or cancellation of the grant occurs, all kinds of goods that have been granted must be immediately returned to the donor in a clean state from the burdens attached to the goods. Therefore, in order to prevent claims in the future, in practice it is always required to have a Letter of Approval from the biological children of the Grant Giver. Thus, grants must pay attention to the consent of the heirs and do not violate their absolute rights. Absolute rights are part of the inheritance that has been determined by law for

each heir. In the event that freedom is always limited by the rights of other parties, it is well accommodated by law. The law still respects the right of property owners to share, without prejudice to the rights of the heirs. In conclusion, if it can be proven that the grant does not exceed 1/3 of the inheritance of the testator, then it can be implemented. [6].

Grants adhere to the principle of equal distribution between all children without discriminating between one another, as taught by Rasulullah SAW to his friends first. As a human being, when determining the right to give grants, you must be fair, especially to the closest people, one of whom is a child. The fair distribution is based on Article 176 of the KHI for girls if only one person gets half the share, if two or more people together they get two-thirds of the share, and if it's a boy, then the share of the boy is two to one with the girl. The best way out is for boys and girls to be equal or equal. Therefore, giving a gift to a child can be counted as a testamentary gift, so there is a difference of opinion if the father makes a distinction between giving grants to his children, Rasulullah SAW said,

"Be fair to your children, be fair to your children, be fair to your children" (H.R. Ahmad, Abu Daud and An-Nasai).

It will be different if the dispute over the cancellation of the grant is made by the grantor against his heirs not based on the rule of law. The grantor gives part or all of his assets to his heirs in accordance with the pillars and terms of the grant. [7]. As in the Decision of the Religious Court Number: 1532/Pdt.G/2018/PA.JS. in which the plaintiff is the biological child of the first marriage of Mr. Andi Wahab, S.H bin Badarudin Daeng Patanga with Mrs. Agustini Azhari bint H Entol Assarie Samaun. During the marriage they have obtained joint property purchased during the marriage in the form of a plot of land and the building on it which is located in south Jakarta. That apparently, their marriage did not go smoothly, resulting in a divorce.

As a result of the divorce, H. Andi Wahab, S.H bin Badarudin Daeng Patanga had a second marriage with a woman named Rini. From this marriage two (2) children were born. Before Andi Wahab, SH bin Badarudin Daeng Patanga died, he went to the notary's office in the south Jakarta area to make a Will Grant Deed, which stated that the contents of the testamentary grant deed were assets that were obtained together with the first wife, namely a building located on in South Jakarta, all of it was given to his second wife and two (2) children. After being donated in its entirety by the Plaintiff's biological father. Whereas Defendant I, Defendant II, and Defendant III sold the grant without notifying the plaintiff.

Based on the grant which was not known by one of the heirs, namely the plaintiff, the plaintiff requested the South Jakarta Religious Court to cancel the deed of grant made before a notary and cancel the sale and purchase transaction of a plot of land and building located in south Jakarta in accordance with the contents of the will.

Based on the above background, the author is interested in conducting research on the cancellation of the Willing Grant Deed, the object of which is inheritance as stated in the title: Cancellation of the Willing Grant Deed by the Heirs Based on the Decision of the Religious Court Number: 1532/Pdt.G/2018/PA.JS.

this research, the formulation of the problem will be presented as follows:

1. What is the responsibility of a notary to make a will grant deed without the approval of the heirs based on the case of the decision of the Religious Court Number: 1532/Pdt.G/2018/PA.JS?
2. Can the sale and purchase of inherited land without the consent of the heirs be canceled by the South Jakarta Religious Court based on the case of the Religious Court's decision Number: 1532/Pdt.G/2018/PA.JS?

2. METHOD

The research method is a research method by collecting data using various secondary data such as legislation, and legal theory as an important requirement in writing a paper which is then used as material for writing a thesis consisting of:

The type of research used in this research is normative research. Normative research is legal research that uses secondary data on applicable laws and regulations relating to principles, rules, norms, legal synchronization and legal comparisons. This study deals with Islamic Inheritance Law in Indonesia, especially in the distribution of inheritance according to Islamic law in Indonesia. [8].

The nature of the research used in this research is descriptive analytical research, that is, what is stated is researched and studied as a whole. intended to provide data that is as accurate as possible about the situation that is the object of research so that it can confirm the hypothesis and can help strengthen old theories or create new theories. [9].

3. DISCUSSION

The responsibilities of a Notary/PAT when making a deed of a grant must comply with all regulations relating to grants, namely for Muslim appearers, if the grant is given by both living parents, the grant can be made without the approval of the heirs but may not grant more than 1/3 part of his property, so that there is no dispute in the inheritance. [11].

As a Notary who makes a will grant deed, as regulated in Article 15 paragraph 1 of the Law on Notary Positions Number 2 of 2014 which states that: Notaries are authorized to make authentic Deeds regarding all acts, agreements, and stipulations required by laws and regulations and / or what is desired by the interested party to be stated in an authentic deed, guaranteeing certainty of the date of making the deed, keeping the deed, providing grosse, copies and quotations of the deed, all of this as long as the making of the deed is not assigned or excluded to other officials or other people determined by Constitution. [12].

According to Article 1 point 7 of Law Number 2 of 2014 concerning Notaries, a deed made before or by a notary is domiciled as an authentic deed according to the form and procedure stipulated in the UUJN.

There are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed, namely:

1. In the form determined by
2. Act;
3. Made by and in the presence of a public official.
4. Deed made by or in the presence of a public official who is authorized to do so and the place where the deed was made. [13].

As a Notary/PPAT in making a grant deed, it is necessary to pay attention to the implications of making a grant deed, based on Supreme Court Decision No. 3704 K/ Pdt/1991, Supreme Court Decision No. 2161 K Pdt/1995 and Supreme Court Decision No. 1333 K/Pdt 1999, the rule of law states "Grants can be canceled if they harm the heirs". We can understand that the grant is the free will of the owner of the goods or property (the grantor) to donate to whomever he wishes. The grantor actively transfers ownership of his property to the grantee. However, although the grant is the free will of the owner of the goods and cannot be withdrawn, in certain circumstances if the grant violates the absolute part (Legitieme Portie / LP) of the child as his heir, and this LP is protected by law. In West Inheritance law, if the grant violates the LP of the heirs, then an incorting (deduction) can be made on the grant to fulfill the heirs. And in Islamic Inheritance Law that the grant may not exceed 1/3 (one third) of the entire property of the grantor.
If the grant violates the LP and more than 1/3 (one third) in the Islamic Inheritance Law, then the heirs who feel that their LP or their rights have been violated can apply to the general court for (Western Inheritance Law) and to the religious court for (Western Inheritance Law) Islam). be the beneficiary of the grant.

3.1. Process of Will Grants before A Notary/PPAT

In the process of granting, it must go through procedures in accordance with the provisions of the applicable laws. The provisions of the grant are regulated in Article 1666 of the Civil Code (BW), that a grant is a gift by a person to another person free of charge and cannot be withdrawn, on movable or immovable goods with a deed of the Land Deed Authorization Officer PPAT/ Notary when the grantor is still alive.
In this case, the land and buildings on it are granted (immovable property). Then the process must be carried out before the PPAT / Notary. The following is the provision of the grant as intended:

a. The grantor must be an adult, that is, legally competent, except in the rights stipulated in chapter VII (seven) of book I (one) Article 1677 of the Civil Code.
b. A grant must be made with a notarial deed originally kept by a notary, Article 1682 of the Civil Code.
c. A grant binds the grantor or issues a consequence starting from the grant with firm words received by the grantee, Article 1683 of the Civil Code.
d. Grants to minors who are under parental control must be accepted by persons exercising parental authority (Article 1685 of the Civil Code).

In connection with the provisions of item 2 above, after the enactment of Government Regulation no. 24 of 1997 concerning Land Registration, every grant of land and buildings must be carried out with a deed of the Land Deed Maker Official (PPAT). Based on the provisions of Article 38 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the making of the deed is attended by the parties who carried out the legal action concerned and witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the act. that law. Based on Article 40 PP 24/1997, no later than 7 (seven) working days from the date of signing the deed in question, the PPAT is obligated to submit the deed he made along with the relevant documents to the Land Office for registration and PPAT is obligated to submit written notification regarding the submission deed to the Land Office to the parties concerned. In order to prevent future claims, in practice it is always required to have a letter of approval from the biological child(s) of the grantor.
Thus, grants must pay attention to the consent of the heirs and do not violate their absolute rights. Based on Article 913 of the Civil Code, absolute rights are part of the inheritance that has been determined by law for each heir. If the process has been carried out and does not violate the absolute rights of the heirs, then the land is legally transferred to its ownership.
If the Notary violates the provisions of the UUJN in Article 16 paragraph (1) letter I, K, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, Article 52, the grant deed made by the Notary/PPAT only has the power of proof as deed under hand. An agreement that does not meet the objective requirements, namely the object is not certain and the clause is prohibited, then the agreement is null and void. [14].
Then the deed of grant made by a Notary can be declared null and void if the deed of grant does not state that the deed has been read out, there is no initial or signature of ratification by the appearers, witnesses and the Notary, or there is a change but no mention of changes or additions, or there are omission if any is crossed out, does not correct the written error in the Minutes of Deed that has been signed nor does it make an official report of the correction nor does it convey the official report of the correction to the parties concerned in the deed.
But in reality, in making a deed, as a notary, he does not ask in detail whether the heir has ever been divorced or not, if he is divorced whether his children agree or not in making the deed. and in making the deed, all must be present, must not be absent and must be agreed by all parties, so that the notary does not become a defendant in the making of the deed, if there is a lawsuit for the cancellation of the deed, the notary must prove the correct data and documents, so that it can be proven in court. [15].
In the case of Decision Number 1532/Pdt.G/2018/PA.JS, it can be concluded that the panel of judges decided that the deed of will grant made on May 20, 2010 before Notary/PPAT Olivia Afiaty, SH, M.Hum in south Jakarta, had been annulled by the court. Religion, because the distribution of inheritance is unfair, is not according to Islamic law in accordance with the Compilation of Islamic

Law as stated in Article 210 (1) "people who are at least 21 years old, have sound mind without any coercion, can donate as much as 1/3 from his property to another person or institution in the presence of two witnesses to be owned" and the making of the will grant deed the plaintiff was not present in the making of the will grant deed.
The sale and purchase of inherited land without the consent of the heirs can be canceled by the religious court.
Based on the rule of law as Land Deed Making Official (PPAT) is given the authority to make certain deeds in the field of transfer and assignment of land rights as regulated in:

a. Article 1 paragraph (4) of Law Number 4 of 1996 (UUHT).
b. Article 1 number 24 of PP Number 24 of 1997 concerning Land Registration.
c. Article 1 paragraph (1) Government Regulation Number 37 of 1998 (PP PPAT).
d. Article 1 paragraph (1) and (4) as well as Article 2 paragraph (1) Perkaban Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official Making Land Deed.

The above provisions emphasize that the PPAT's authority to make a PPAT deed, all actions of the parties as outlined in the PPAT deed are civil legal acts. While the provisions regarding the cancellation of the PPAT deed are contained in Article 46 paragraph (1) letter g of PP Number 24 of 1997 concerning Land Registration: "The head of the land office refuses to register the transfer of rights or the assignment of rights if the legal action as referred to in Article 37 paragraph (1) Government Regulation No. 24/1997 was annulled by the parties before being registered by the land office". [16].
Article 37 paragraph (1) of PP Number 24 of 1997 confirms: "The transfer of title rights to land and ownership rights to flat units through buying and selling, exchanging, grants, income in the company, and other legal acts of transferring rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by PPAT. authorized in accordance with the provisions of the applicable laws and regulations."
Then, in the elucidation of Article 45 of PP Number 24 of 1997, it is also emphasized:
"The PPAT deed is a tool to prove that a legal act has been committed. Therefore, if the legal action is canceled or canceled, the PPAT deed concerned no longer functions as evidence of the legal action. if a legal act is canceled by the parties concerned, while the legal act has been registered at the land office, the registration cannot be cancelled. Changes in land registration data according to legal actions must be based on other evidence, for example a court decision or PPAT deed regarding a new legal act".
Based on these provisions, there are two provisions regarding the cancellation of the PPAT deed, namely:

a. Cancellations are made prior to registration at the land office.
b. Cancellation after it is done or in the registration process at the land office.

If the cancellation is made prior to registration with the land office, it can be done by notarial deed (deed of parties) because the deed of action stated in the PPAT deed is a civil act of the parties. Meanwhile, if a cancellation is made in the registration process at the land office, based on the provisions of Article 45 PP Number 24 of 1997, the cancellation must be with a court decision. In accordance with the principles in civil law, when a cancellation is made, all these conditions must be returned to their original state before the legal action mentioned in the deed in question.
Regarding the cancellation of the PPAT deed, the cancellation is in the registration process at the land office, which according to Article 45 of PP No. 24 of 1997 requires it to be subject to a court decision because the cancellation needs to be carefully studied. The deed of legal action which is later in the PPAT deed is the act of the parties. If the parties agree or do not object, the parties come to a notary to make a deed of cancellation. However, if the parties have a dispute, one of the parties can file an annulment to the general court or district court. This method can actually be done for the cancellation of the PPAT deed which is in the registration process at the land office. Even though the PPAT deed is in the registration process at the land office and there is no dispute whatsoever, if the parties wish to cancel it, they can cancel it with a notarial deed and then apply for cancellation by attaching the cancellation deed. The land office or BPN is an official or State Business Entity that is not related and does not need to interfere in individual civil matters. When there is a request for cancellation, the land office is only authorized to issue a decision to cancel the registration.
In the case of Decision Number 1532/Pdt.G/2018/PA.JS, it can be concluded that Defendant I, Defendant II, and Defendant III sold the object of the dispute without the knowledge and approval of the Plaintiff, to Yusuf Usman on February 12, 2014 in accordance with a copy of the binding deed sale and purchase between Defendant II and Defendant III issued by Notary Ny. Elliza Asmawel, S.H as a Notary in the South Jakarta Administrative City area. Prior to selling the land and buildings, Defendants II and Defendants III provided evidence of Ownership Certificates on behalf of the Rightsholders of Defendant II (29-05-1984) and Defendant III (18-09-1987) Tebet Barat Village, Tebet District, South Jakarta dated 03 June 2010. In addition, the defendants also provided evidence of the 2013 Rural and Urban Land and Building Tax Tax Return on behalf of the Taxpayer Defendant II Hambsari Andy Putri which was issued by the Tax Service Office on 03 February 2014 and sold the inherited land and buildings. with an agreed price of Rp. 5,500,500,000, - (five billion five hundred million rupiah). and the judge's consideration explained that the land was still in dispute, the process of changing the name from the Seller to the Buyer was not legally valid, this has been explained in Article 3 of the Sale and Purchase Binding Deed Number 17 dated February 12, 2014 between Defendant II and Defendant III with Yusuf Usman issued by Notary Elliza Azmawel, SH.

The author can conclude that from this case the sale and purchase of inherited land without the consent of the heirs is not valid, because all other heirs must be present to give approval. In the event that one of the heirs is unable to appear before the PPAT of the deed maker, the heir must make a personal approval letter legalized by a local notary or make an approval letter in the form of a notary deed. If there are parties who sell the inherited land without the consent of the heirs, the heirs can sue in a civil manner on the basis of unlawful acts.

The law does not systematically regulate the consequences of cancellation. In general, the result of a cancellation is retroactive and returning to its original state or ex tunc. Returning to the situation before the legal action occurred sometimes it cannot be done, such as achievements in the form of doing a job, rent that has been enjoyed, the object has been sold to someone else, or canceled due to actions that are contrary to good conditions. It is possible that the value of the non-refundable achievements will be compensated in the form of a sum of money. What is often a problem regarding the assessment is determining the amount, and using the basis of the assessment at the time the agreement is made or when the cancellation is made.

The legal consequences arising from the grant property requested for cancellation at the Court with a decision on the cancellation of the grant that has permanent force, the ownership of the grant property will return to the grantor so that all the grant assets that have been donated will return to his own right. If the object of the grant has been reversed or has been certified on behalf of the grantee, then the certificate is declared invalid. The grantor can submit an application to the National Land Agency (BPN) so that the disputed object certificate is no longer valid with the decision to cancel the grant. Then the disputed object certificate can be returned in the name of the grantor. [17].

4. CONCLUSION AND SUGGESTION

As a Notary/PPAT in making a testament grant deed, if one of the parties is not present in making a testament grant deed, it is better for the Notary to notify that in making a testament grant deed it must be approved by all heirs, because if one of the heirs is not present then the deed made is invalid. legitimate. The responsibility of the Notary/PPAT when making a deed of grant must comply with all regulations relating to grants, namely for Muslim appearers, if the parents are still alive, donating the inheritance should not be more than 1/3 of the property, so that there is no dispute in the inheritance. .

The sale and purchase of inherited land without the consent of the heirs is not valid, because all other heirs must be present to give approval. In the event that one of the heirs is unable to appear before the PPAT of the deed maker, the heir must make a personal approval letter legalized by a local notary or make an approval letter in the form of a notary deed. If there are parties who sell the inherited land without the consent of the heirs, the heirs can sue in a civil manner on the basis of unlawful acts.

Based on the results of the research, the authors expect a notary in carrying out his duties, especially in terms of making a will must pay attention to the conditions that are met so that a will can be valid as an authentic deed.

In addition, a notary must be able to understand his obligations and responsibilities in making a will made before him so that it does not harm the testator or the notary himself.

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