

Cancellation of Parents' Grants Giving to Children According to the Islamic Law Compilation and the Civil Code

¹Yulies Tiena Masriani

¹University of 17 August 1945, Semarang - Indonesia
 Email : yuliestiena@gmail.com

ABSTRACT--Grants are gifts given to others while they are still alive, free of charge without any conditions and irrevocable. However, giving of these grants often also causes disputes between heirs who disagree on the grant giving rise to disputes reaching the court. The causes are: 1) How to cancel the grant given by parents to their children according to the Compilation of Islamic Law and according to the Civil Code?; 2) What factors are the Judges' considerations regarding the cancellation of a grant given by a parent to their children?. The method used is normative juridical. Secondary data sources as the main data source. Data collection methods by means of library study. Analysis of the data used is qualitative. The conclusions obtained are: 1) Cancellation of grants given by parents to their children according to the Compilation of Islamic Law and according to the Civil Code are equally permissible as long as they meet certain specified conditions; 2) Factors that cause the cancellation of grants given by parents to their children include the existence of an element of coercion and the amount of grants exceeds 1/3 of the grantor's assets (Article 210 of the Compilation of Islamic Law). The legal basis for judges' consideration of the cancellation of grants given by parents to their children is Article 49 of the Religious Courts Act and the application of Article 212 of the Compilation of Islamic Law and Article 1668 of the Civil Code.

Keywords: *cancellation of grants giving, parents, children*

I. INTRODUCTION

Basically, law functions as protection of human interests, in the form of rules and norms.[8] Norms or rules are a guide to life, which is a guide to how we should act, behave and do not behave in society[10], because in society there are various kinds of interests in which shared interests require order. And in society, there is a legal relationship that arises; between the grantor and the recipient of the grant. This is a legal relationship because there is an agreement between the grantor and the recipient of the grant. Grants create a legal relationship between the grantor and the recipient of the grant, even though the relationship is a one-sided relationship (the grantor gives the grant goods to the recipient for free and without asking for anything in return). This shows that the grantor only has obligations without rights.

Grant is an act of approval from the grantor at the time of his life, which is free and irrevocable to surrender something for the purpose of receiving the grant (Article 1666 of the Civil Code). The law recognizes grants that occur among living people. Making a deed of

grants is done by a notarial deed (Article 1682 of the Civil Code).

Grants set out in the Civil Code (Civil Code) there are similarities with grants according to the Compilation of Islamic Law (KHI). In Article 171 letter (g) the Compilation of Islamic Law states that the Grant is the gift of an object voluntarily and without compensation from someone to someone else who is still alive to have.[7] The gift of grants must also meet the conditions set out in the Compilation of Islamic Law and Civil Code. The terms and conditions for grants regulated in Article 210 paragraph (1) of the Compilation of Islamic Law forms the basis of positive law in Indonesia which states that people who are at least 21 years old, are of sound mind and without coercion can grant as much as 1/3 of their property to another person or institution in the presence of two witnesses to own. Likewise, the terms and conditions of a grant are regulated in Article 1677 of the Civil Code that a person who is not an adult is not allowed to give a grant. The intention is that the grantor is someone who is capable or at least 21 years old or has been married, without coercion and common sense can give away his assets with the limit not to exceed the absolute portion of inheritance (legitimate portion).

Giving of these grants often leads to disputes reaching the court, namely the cancellation of grants that have been given by the grantor. In law, a given grant cannot be requested back, however there are some exceptions that the grant can be withdrawn. The government has set the provisions regarding grants as follows:

Grant is an agreement with which the grantor, at the time of his life, is free and irrevocably, gives up something for the purpose of the recipient of the grant who received the handover (Article 1666 of the Civil Code).

Grants cannot be withdrawn, except for parent grants to their children (Article 212 Compilation of Islamic Law).

Thus it can be seen that the grant is a commendable act because the grantors give their property voluntarily without expecting compensation for services and are not accompanied by any conditions. However,

the granting of these grants often leads to disputes with other heirs as well as against the grantor who disagree on the grant, so that it can go to court.

As a case for claiming a grant cancellation submitted by the heirs (Plaintiff) against one of the heirs (Defendant) because their parents gave their parents' sole assets only to one of their children (Defendant) in the form of land and buildings as listed in the deed of grants No.xxxx dated October 8, 2010 made by and before a Notary in the City of Semarang. Other cases regarding the claim cancellation Number 122 / Pdt.G / 2007 / PN.Mlg and have been decided by Malang District Court Decision No.45 / Pdt.G / 2008 / PN.Mlgjo. Decision of the Surabaya High Court Number: 228 / PDT / 2009 / PT.SBY jo. Decision of the Supreme Court Number: 2576 / K / Pdt / 2009 / MARI, that in deciding upon a dispute over a grant, the Panel of Judges at any level considers the rights of the parties to the object of the disputed grant. In that case, the grant was canceled because the grant recipient did not deserve the grant. Therefore, the grantor may submit a withdrawal of the grant property that he has given to the grant recipient through a judicial institution.

Based on this background the problems to be examined are: 1). How is the cancellation of grants given by parents to children according to the Compilation of Islamic Law and according to the Civil Code?; 2) What factors are the Judges' considerations regarding the cancellation of a grant given by a parent to their child?

II. RESEARCH METHOD

The method of approach used is normative juridical, which refers to written legal norms, both as outlined in the form of regulations and in the form of literature. Descriptive analytical research specifications are expected to be able to give a detailed, systematic and comprehensive picture based on the correlation of data from one another about the cancellation of grants given by parents to their children. Types and sources of data used are secondary data sources as primary data sources, consisting of primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques carried out by means of literature study. Literature study was conducted to obtain secondary data by reviewing the cancellation of grants given by parents to children, in terms of the Compilation of Islamic Law and the Civil Code. The method of data analysis is qualitative, namely research that refers to the legal norms contained in the legislation and norms that live and develop in society.

III. FINDINGS AND DISCUSSION

A. *Legal consequences of canceling grants given by parents to children according to the Compilation of Islamic Law and according to the Civil Code.*

1. *The legal consequences of canceling grants given by parents to children according to the Compilation of Islamic Law.*

Grants are giving someone in his lifetime to others without expecting anything in return with the aim of establishing brotherly relations between fellows.[6] One of the rules in the Al-Quran that relates among people who have social values and worship is a gift.[2] Grants are one of one's actions to transfer ownership of property to others while living without compensation.

Grants are required by Islam, and contain some very great wisdom including:

- a. Live the spirit of togetherness and help one another in kindness.
- b. Cultivating generosity and eroding nuns.
- c. Cause commendable qualities, such as mutual affection for fellow human beings, sincerity of sacrifice for the benefit of others, and eliminate despicable traits, such as greed, indifference, hatred, and others.
- d. Equitable distribution of income leads to the creation of solid social stability.
- e. Achieve fairness and prosperity.[2]

According to the Compilation of Islamic Law, Article 171 letter g states: a grant is the gift of an object voluntarily and without compensation from someone to someone else who is still alive to own. Based on these definitions, the criteria for a grant are ⁽¹⁾ A gift, ⁽²⁾ Without expecting contra-achievement or free of charge, ⁽³⁾ done while the grantor is still alive, ⁽⁴⁾ irrevocably, ⁽⁵⁾ the grant is an agreement one-sided (not reciprocal), because there is only one party that achieves.[1]

A grant as is generally agreed with the agreement that it cannot be withdrawn unilaterally without the approval of the opposing party, but regulations in Indonesia such as the Compilation of Islamic Laws give the possibility for the grantor to withdraw what has been given to others in accordance with Article 212 of the Compilation of Islamic Law states that grants cannot be withdrawn unless the parents grant to their children.[3]

According to the Shafi'i School, some grants are given as follows:[4]

- a. Giving the right to own an object without any conditions must be compensated, the grant is given when the giver is still alive. The object owned to be given is the legal property of the giver.
- b. Giving the right to own a material substance without expecting compensation / compensation. grants are solely for the person who is given (mauhublah). This means that the grantor only wants to please the person he is giving without expecting any

reward from Allah. Grants in the general sense can be interpreted as alms.

The Shafi'ite School of Ulema explained: if the grant has been assessed to be perfect by accepting it with the permission of the grantor, or the party giving the grant has given away the goods given, then this grant has been perfect, meaning that it cannot be withdrawn. The Hambalishool of scholars stressed that people who gave grants were allowed to revoke their grants before they were received.[9]

The giving of grants that occur in community life is often the case of grant cancellation and has been decided by the Semarang Religious Court, such as the Judge's Decision in case Number: XXXX / Pdt.G / 2016 / PA.Smg, The Plaintiffs who are biological children of Alm.XXXX and XXXX who is also an heir, it turns out that when XXXX and XXXX donated land and houses in the city of Semarang, it was proven that they had never asked for the approval of the Plaintiffs as their biological children, and the grants provided exceeded one third of the assets, therefore it was natural for the Plaintiffs to sue so that the deed of the grant is canceled, because as an heir of the Plaintiffs, their rights have been impaired.

The provisions of Article 210 of the Compilation of Islamic Law state that if the grant exceeds one third, it can be canceled (vide Jurisprudence MA Number: 76 K / AG / 1992 dated October 23, 19 although the provisions of Article 212 of the Compilation of Islamic Law state that the Grant cannot be withdrawn unless the parent grant to his son, but in the case of AquoAlm.XXXX and XXXX have given all of his assets to one of his children namely the Defendant, even though there are still other children, and proved not to get approval from the Plaintiffs as heirs, and it turns out until the death of Alm XXXX and XXXX mother The Plaintiffs did not know and were not informed that the assets had been donated entirely to the Defendant, so the actions of the XXXX and XXXX were proven to have harmed the Plaintiffs, therefore the Panel of Judges was of the opinion that the implementation of the grant had made a real error because there was an aggrieved party and the deed grant No.XXXX / 2010 stated cac at law and canceled.

Grant of as much as 1/3 of his assets with due regard to the provisions that have been regulated and the principle of justice is the main thing that is needed. Legal actions in the form of grants need to be considered in accordance with the rule of law. To avoid fights between families, the grants are divided equally based on the teachings of the Prophet Muhammad to his friends to do justice to their children.[12]

Another case regarding the case of a claim for cancellation of a grant which in Article 5 of the Grant Act states: the two parties in this case with all the consequences chose the place of general and unchanged legal residence at the Registrar's Office of the District

Court. Disputes that arise are resolved in the Malang District Court not in the Malang Religious Court. If you look at the principles or principles in civil law, among others the principle of consensualism (Article 1320 of the Civil Code) is a statement of agreement that binds the parties making the agreement; the principle of freedom of contract (Article 1338 paragraph (1) of the Civil Code) that an agreement made legally applies as a law for those who make it; the principle of Pacta Sunt Servanda (Article 1228 paragraph (1) and (2) Civil Code) said that legal certainty for third parties is also included here because the judge must respect the contents of the agreement and the principle of good faith or Goede Trouw (Article 1338 paragraph (3) Civil Code)) which provides the basis that the parties to the agreement must have an honest attitude. Based on these principles the Malang Religious Court has no authority to examine and try the plaintiff's claims, but the Malang District Court is authorized.

With respect to the lawsuit, the Defendant denied the arguments of the lawsuit and filed a lawsuit back to the Malang Religious Court and the exception was granted. The Plaintiffs appealed to the Surabaya High Court of Religion and could be accepted and upheld the Decision of the Malang Religious Court No.1000 / Pdt.G / 2011 / PA.Mlg. The losing party submits an appeal to the Supreme Court with the verdict: granting the cassation request from H. Ahmad Jakoen and canceling the decision of the Surabaya High Court of Religion No.48 / Pdt.G / 2012 / PTA.Sby which corroborates the decision of the Malang Religious Court No.1000 / Pdt .G / 2011 / PA.Mlg. Based on Article 49 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts it is stated that the Religious Courts have the duty and authority to examine, decide upon, and settle cases at the first level among people who are Islamic in the fields of (a) Marriage; (b) Inheritance, wills and grants carried out based on Islamic law; (c) Waqf and Sadaqah. The claim for cancellation of a grant by the Plaintiffs against the Defendant has fulfilled the elements of Article 1688 of the Civil Code. There are a number of exceptions regulated in Article 1688 of the Civil Code which can make a grant withdrawn or canceled, bearing in mind that the Defendant committed a crime against the grantor, namely his own parent, this is one of the reasons that strengthens the grant must be canceled. As a result, all objects of dispute again belong to the grantor.

In canceling a deed of grants by the heirs after the ruling of the Religious Court basically, it has a legal consequence that the grant can be withdrawn as stated in Article 210 KHI, ie the grantor can give as much as 1/3 of his property to another person or institution in the presence of two witnesses, and Article 212 KHI that a grant cannot be withdrawn, except for a parent grant to his child.

2. *The legal consequences of canceling a grant given by a parent to a child according to the Civil Code*

Arrangements regarding grants in the Civil Code are regulated in Article 1666 which reads as follows: Grant is an agreement with which the grantor, at the time of his life, free of charge and irrevocably, hands over an object for the recipient's needs grant that receives the surrender. Grants can only be in the form of objects that already exist. If the grant covers items which will only be available in the future, the grant will be canceled (Article 1667 of the Civil Code).

The elements that must be present at the time of the grant are:

- a. At the time of his life the grantor. There is a similarity between giving grants with a will that is given when the grantor is still alive,
- b. Grants cannot be withdrawn. Granting a grant is the same as an agreement, then automatically the agreement cannot be withdrawn unilaterally by the grantor.
- c. The object is given by the Grant Giver.

Although a grant, as is the case with an agreement in general, cannot be withdrawn unilaterally without the consent of the other party, the law provides the possibility for the grantor in certain cases to withdraw or cancel the grant. Withdrawal of the awarding of grants is done by stating his intention to the recipient of the grant accompanied by the prosecution of objects that have been donated.[11] As stated in the Civil Code that grants that have been given cannot be withdrawn. However, the grantor may file a claim for canceling the grant to court if the grantee has done things as stated in Article 1688 of the Civil Code:

- a. If the conditions with which the grant has been made are not met by the grant recipient,
- b. If the recipient of the grant has been guilty of a crime to take the life of (kill) the grantor or other crime against the grantor,
- c. If the recipient of the grant refuses to provide financial assistance to the grantor, when the grantor has fallen into poverty.

The grantor can submit the cancellation of the grant if it can be proven in court that the conditions for the grant are not met by the grantee. The grant cancellation process must use a court decision.

Such as the case regarding the claim for grant cancellation Number 122 / Pdt.G / 2007 / PN.Mlg and has been decided by Malang District Court Decision No.45 / Pdt.G / 2008 / PN.Mlgjo. Decision of the Surabaya High Court Number: 228 / PDT / 2009 / PT.SBY jo. Decision of the Supreme Court Number: 2576 / K / Pdt / 2009 / MARI. The case began as follows: Drs. S, a father, residing in Malang (Plaintiff) filed a lawsuit against his

son number 2 named W (Defendant I) and B, Notary and PPAT (Defendant II). The Plaintiff's reason for submitting the cancellation of the grant to the Defendant: because the Plaintiff's other children: A, T and H (the first, third and fourth children) submitted a letter to the Plaintiff about unfair acts towards the distribution of grants / inheritance. Also because of the behavior and attitude of W (second child / Defendant) which was very unpleasant to the Plaintiff and his wife as his parents because of the influence of the Defendant's wife. In that case, that W (Defendant) as the second son of the Plaintiff has obtained more than 1/3 of the plaintiff's assets. Whereas A (the first child) gets a house building worth Rp.150,000,000.00 (one hundred and fifty million rupiah): T (third child) gets property business capital of Rp. 350,000,000.00 (three hundred fifty million rupiah) and H (fourth child) obtains working capital in the property business of Rp. 350,000,000.00 (three hundred fifty million rupiah).

Legal consequences are the result of something that arises because of an act, in accordance with applicable regulations.[13] The legal consequences arising from the cancellation of the grant from the above case are as follows:

- a. The grant object that has been received by the recipient must be returned to the grantor.
- b. With respect to the results of what the grant recipient has collected for the grant, it must be submitted to the grantor from the time the lawsuit is filed with the Court.

B. The factors considered by the Judge regarding the cancellation of grants given by parents to their children are as follows:

1. Grants to children must be fair.

Judge's Considerations in Decision Number. 460 K / AGg / 2014 in the case between Gresiana (the Cassation Appellant) against Novalinda, Tiananda and Anton (the Cassation Respondent) regarding the cancellation of a grant given by a parent to their child because of a grant to an unfair child. Because the will is only for the Cassation Appellant without including the Cassation Respondent who is also the son of the Grant Giver and the Kasai Respondent does not accept the existence of the Wate Grant, legally the Grant Grant can be canceled because it violates the grant law in Islam in Article 211 Compilation of Islamic Law. Grants to children are counted as inheritance.

2. Grants may not exceed one third of the assets. Parental property is the absolute right of other heirs.

In Article 913 of the Civil Code it is stated that in the assets of parents there are absolute rights of other heirs, therefore in the case of a grant between a parent to another person or to one of his children, in practice the Notary party needs to consider the conditions for the

approval of the letter from other children from the Grant Giver, so that the rights of the heirs are fulfilled.

Judge's Consideration in Case Decision Number: XXXX / Pdt.G / 2016 / PA.Smg, Plaintiffs who are biological children of Alm.XXXX and XXXX who are also heirs, it turns out that when XXXX and XXXX gave land and houses in the city of Semarang proved to be not have requested the approval of the Plaintiffs as their biological children, and the grants exceeded one third of the assets, therefore it is natural that the Plaintiffs claim that the deed of the grant is canceled, because as Plaintiffs heirs have their rights impaired.

The provisions of Article 210 of the Compilation of Islamic Law state that if the grant exceeds one third, it can be canceled (vide Jurisprudence MA Number: 76 K / AG / 1992 dated October 23, 19 although the provisions of Article 212 of the Compilation of Islamic Law state that the Grant cannot be withdrawn unless the parent grant to his son, but in the case of Alm.XXXX and XXXX have given all of his assets to one of his children namely the Defendant, even though there are still other children, and proved not to get approval from the Plaintiffs as heirs, and it turns out until the death of Alm XXXX and XXXX mother The Plaintiffs did not know and were not informed that the assets had been donated entirely to the Defendant, so the actions of the XXXX and XXXX were proven to have harmed the Plaintiffs, therefore the Panel of Judges was of the opinion that the implementation of the grant had made a real error because there was an aggrieved party and the deed grant No.XXXX / 2010 stated cac at law and canceled.

3. *The gifted item is (milkut tam) or the perfect grant of the grantor.*

Judge's consideration that in Islamic Law, there are several conditions regarding the implementation of the grant, the existence of goods or something that is granted and the existence of Kabul consent, and related to the gifted object must be perfectly owned by the grantor giving not the assets that are still in dispute, not assets that are still related to ownership by third parties and not joint assets of husband and wife. If it does not meet these requirements, then the grant can be canceled.

IV. CONCLUSION

Based on the description above, it can be concluded:

1. As a result of the legal cancellation of grants given by parents to children according to the Compilation of Islamic Law and according to the Civil Code,
 - a. According to the Compilation of Islamic Law, the cancellation of a grant given by a parent to a child occurs because the parent grants his only inheritance to only one of his children, already in excess of one third of the heirs. Granting of grants is not based on

the rule of law in Article 210 Compilation of Islamic Law, causing injustice to other children, because it is only given to one child, so that the legal consequences of the grant can be withdrawn or canceled (Article 212 Compilation of Islamic Law).

- b. According to the Civil Code, the cancellation of a grant given by a parent to a child occurs because: the conditions of the grant are not fulfilled by the recipient of the grant, if the recipient has been guilty of committing a crime to take life (kill) the grantor or other crime against the grantor, if the recipient of the grant refuses to provide assistance to the grantor, when the grantor has fallen into poverty (Article 1688 of the Civil Code). The legal consequences arising from the cancellation of the grant is that the object of grant that has been received by the recipient of the grant must be returned to the grantor and to the results of what has been collected by the recipient of the grant, must be submitted to the grantor as of the lawsuit submitted to the Court.
2. Factors considered by the Judges regarding the cancellation of grants given by parents to their children are:
 - a. Grants to children must be fair.
 - b. Grants may not exceed one third of the assets. Parental property is the absolute right of other heirs.
 - c. The gifted item is (milkut tam) or the perfect grant of the grantor.

REFERENCES

- [1]. Abdul Ghafur Anshari, 2010, Islamic Agreement Law in Indonesia, GadjahMada University Press, Yogyakarta.
- [2]. Abdul Shomad, 2010, Islamic Law (Normalizing Sharia Principles in Indonesian Law), Kencana, Jakarta.
- [3]. Ahmad Rofiq, 2013, Islamic Civil Law in Indonesia, Rajawali Press, Bandung.
- [4]. Idris Ramulyo, 2004, Comparison of Islamic Inheritance Law with Inheritance of the Civil Code, Sinar Grafika, Jakarta.
- [5]. Idris Ramulyo, 2001, Fiqh Mawaris, PT.RajaGrafindoPersada, Jakarta.
- [6]. Satria Effendi, 2004, Problems of Contemporary Islamic Family Law: Jurisprudence Analysis using the Ushuliyah approach, Kencana, Jakarta.
- [7]. Saekan and Erniati Effendi, 1977, History of the Compilation of Islamic Law Compilation in Indonesia, Arkola, Surabaya.
- [8]. Sudikno Mertokusumo, 2010, Bunga Rampai Hukum Ilmu, Liberty, Yogyakarta.
- [9]. Usep Saefullah, 2015, Islamic Law Thinking about Grants in KHI (Fiqh Analysis and Decision of the Supreme Court), UIN Sunan Gunung Djati, Bandung.

- [10]. YuliesTienaMasriani, 2017, Introduction to Indonesian Law, SinarGrafika, Jakarta.
- [11]. HengkyPrasetya, 2018, Juridical Analysis of the Implementation of Grant Cancellation, Journals.usm.ac.id.downloaded on December 10, 2019.
- [12]. Muhammad FikriSyuhada, 2019, Cancellation of Deed of Grant by the Heirs After the Decision of the Religious Court, Journal of Law and Notary Volume 3 Number 2 August 2019.
- [13]. NuratusSuraida, 2018, Juridical Review Regarding Dispute Cancellation Grants Against Children, eprints.ums.ac.id/65172/6/NASKAH%20PUBLIKASI.pdf
- [14]. Indonesian Code of Civil law
- [15]. Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law (KHI).
- [16]. Number Verdict. 460 K / AGg / 2014
- [17]. Decision on case Number: XXXX / Pdt.G / 2016 / PA.Smg
- [18]. Malang District Court Decision No.45 / Pdt.G / 2008 / PN.Mlg
- [19]. Decision of the Surabaya High Court Number: 228 / PDT / 2009 / PT.SBY
- [20]. Decision of the Supreme Court Number: 2576 / K / Pdt / 2009 / MARI
- [21]. Magelang District Court Decision Number 122 / Pdt.G / 2007 / PN.Mlg
- [22]. Malang District Court Decision No.45 / Pdt.G / 2008 / PN.Mlg
- [23]. Decision of the Surabaya High Court Number: 228 / PDT / 2009 / PT.SBY
- [24]. Decision of the Supreme Court Number: 2576 / K / Pdt / 2009 / MARI