

Cancellation of Legacy Grant Deed as Authentic Deed

Mesdiana Purba and Elpina

Faculty of Law
Universitas Simalungun
North Sumatera-Indonesia

Rony Andre Christian

Faculty of Teacher Training and Education
Universitas Simalungun
North Sumatera-Indonesia

Abstract

Grants made by grantors are valid according to the law, both Civil law and Islamic law. This case is because the donated object does not exceed 1/3 of the inheritance and does not interfere with the heirs' Legitime Portie (absolute right). The actions of the heirs who object to the grant is something that is not grounded and seems to be fabricated because the grant has been following civil law and Islamic law, all heirs should maintain and appreciate the thing that has been donated by the grantor because the object provided for the benefit of the ummah/society which will later become the practice of the grantor and the heirs.

Keywords: Grant, Grantor, Heirs, Civil Law, Notary, Deeds

Introduction

In the context of the Indonesian people's social life, they often use donation activities on land. Land granting activities become a social form within society's scope to transfer land ownership from one person to another, both individually and in groups. Usually, the land that is the grant's object is used in accordance with the grant agreement between the grantor and the grantee. Land grants are one way to obtain land rights and transfer land rights. A gift is an agreement by which a giver delivers an item free of charge, without withdrawing it, for the benefit of the person receiving the item's delivery. However, in fact, there are now many problems in the grant-giving activity, one of the problems is that there is an attempt to withdraw land grants. As happened in the land grant activity with grant deed Number 61/2024/2007, the grantor was later withdrawn without reason. This study will examine the grant and cancellation of Grant in the Book of Civil Law and Compilation of Islamic Law and know and analyze the Concept of Settlement on disputes over the grant and cancellation of wills.

Deeds are divided into three, namely authentic deeds, underhand deeds, and ordinary letters. According to Article 1868 of the Civil Code (hereinafter abbreviated to the Civil Code), "an authentic deed is a deed which is stipulated by law, made by or in front of public officials who have the power to do so in a place where the deed of making. " Of the types of deeds, authentic deeds are deeds that have perfect evidentiary power, meaning that the power of proof is complete (binding) and the proof is sufficient with the deed itself unless there is opposing evidence (tagenbewijs) that proves otherwise or proves otherwise from the deed. The judge deemed the word binding as written truth following a deed's legal provisions as stipulated in the Civil Code.

An authentic deed made by a notary public has solid legal proof, considering that authentic deeds are perfect evidence. So it is not uncommon for various laws and regulations to require specific legal actions to be made in authentic deeds.

The law only recognizes the granting of people who are still alive. According to Ali Achmad Chomsah (2004), several things need to be considered for this grant, namely; (1) Grant is a one-sided agreement made by the

grantee to give something free to the grantee during his lifetime. (2) The Grant must be made between living persons. (3) The grant must be made with a notary deed, and if not with a notary deed, the grant is canceled.

Based on the preceding, when a grant is made to a new object that will exist or an uncertain item, whether it is a moving object or an immovable object, the grant is canceled. Unilaterally the grant may promise to enjoy/collect the proceeds from the gifted object by the grant's donor. However, the grantor may not promise that he/she remains in power to sell or give another person an item. That is included in the gift; grants of this kind, only regarding the goods, are deemed as null and void following the provisions stipulated in Article 1668 of the Civil Code that the grantor cannot promise that he remains in power to use his / her property rights over the gifted goods, such grants merely concerning the goods invalid.

In reality, many grant implementation practices are carried out not in accordance with applicable laws and regulations or outside existing legal provisions. This case means an unprocedural, either to the Compilation of Islamic Laws or the applicable law relating to the grant. This case can cause legal uncertainty both to Grant's object, and the grant itself is subject.

For the grant to have the power as perfect evidence, Grant must be made in the form of a Deed and made before a Notary Public. Notaries qualify as general officers. A general official is someone who is appointed and dismissed by the government and given the authority and obligation to serve the public in some issues because the notary participates in exercising a power that comes from the authority of the government (Hartanti Sulihandari and Nisya Rifiani, 2013: 3-5).

Legal uncertainty due to grant activities that are not under statutory regulations will become a problem and even create conflicts in the community's life order. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Article 1 states notaries are public officials who are authorized to do authentic deeds and have other powers. Such as the Cancellation of the Legacy Grant Deed in the Decision of the South Jakarta District Court Number: 53 / Pdt.G / 2012 / PN.Jkt Sel. states in the decision canceling the will as evidence that has perfect evidentiary power and is binding for the parties. This case is, of course, contrary to the provisions in the Civil Procedure Code, which states that an authentic deed has perfect proof power. The discrepancy between legal norms and legal facts that are depicted creates a legal problem so that the author is interested in conducting a more in-depth study of the norms and legal facts in the cancellation of a grant deed as an authentic deed that can be canceled in the process of examining civil cases in court.

Based on the description of the problems mentioned above, two problems are the object of this study, namely:

1. What is the concept of giving a grant and canceling a grant in the Civil Code and Compilation of Islamic Law?
2. How is the settlement of disputes regarding the grant and cancellation of the grant deed No. 590.4 / 23/2007?

Discussion

An authentic deed is one of the pieces of evidence that is the most robust and most fulfilled in civil procedural law. The power of proof is complete and has sufficient minimum legal evidence without the need for other evidence. Concerning the authentic deed, which is the perfect evidence, it is contained in volledig bewijs, and if one of the parties submits an authentic deed, the judge must accept it and consider what is written in the deed has actually happened something right, so the judge may not order add another evidence. Article 1870 of the Civil Code regulates the power of proof of authentic deeds. In that article, it is stated, for interested parties and their heirs or for people who get rights from them, an authentic deed provides perfect proof of what is contained in it.

The evidentiary power attached to an authentic deed is perfect (volledig bewijskracht) and binding (bindende bewijskracht). However, if the opposing party denies the proof of the authentic deed for this perfect and binding proof, the power of proof will decrease to become preliminary evidence (begin bewijskracht) (M. Natsir Asnawi, 2013: 52).

As public officials, notaries are given the authority to do authentic deeds; these deeds are made to fulfill the requirements as valid, authentic deeds. Suppose he has experienced deviations and/or violations of deed requirements in doing the authentic deed. They are resulting in the invalidity of a deed made by a notary.

The factor that causes the cancellation of the authentic deed is the cancellation as referred to in the provisions of Article 1320 of the Civil Code. The provisions of this article govern the terms of the agreement's validity in general, regarding the terms of the agreement in Article 1320 of the Civil Code states; (1). Agreeing on those who bind themselves; (2) The ability to do an agreement; (3) A particular thing; (4) Causes that are lawful or not prohibited.

If the provisions of Article 1320 of the Civil Code in the above elements are not fulfilled, one of them will cause the agreement to be legally flawed so that the provisions contained in the deed cause the deed to be canceled or null and void by law. The legal terms of an agreement in Article 1320 of the Civil Code are further explained as follows (Retna Gumanti, 2012: 4-9).

Agreement

The agreement is basically a meeting or agreement between the parties to the agreement. A person is said to be giving his consent or agreement (toestemming) if he really wants what is agreed upon. An agreement can become legally flawed or deemed non-existent if the following things happen—first, coercion (dwang). Any act of unfairness or threats that obstruct the parties' freedom will be included in the act of coercion. In this case, every act or threat of violating the law if the act constitutes an abuse of one of the parties' authority by making a threat to give the other party a right ultimately is considered coercion.

Second, fraud is an act of deception. Article 1328 of the Civil Code clearly states that fraud is the reason for the agreement's cancellation. In the event of fraud, the party being deceived does indeed make a statement by his will, but his intention is deceit, intentionally directed to something contrary to the valid will, which would otherwise be the right action.

Third, error (dwaling). In this case, one party or several parties have a wrong perception of the object or subject contained in the agreement. There are 2 (two) kinds of mistakes—first, error in person, which is an error. Second, substantial error, namely errors related to the characteristics of an object.

Fourth, abuse of circumstances (misbruik van omstandigheden). Abuse of circumstances occurs when someone in an agreement is influenced by something that prevents him from making an independent judgment from the other party not to make an independent decision.

The ability to enter into an engagement

The second condition for the validity of the agreement according to Article 1320 of the Civil Code is the ability to make an engagement (om eene verbintenis aan pressure). Article 1329 of the Civil Code states that everyone is capable. Then Article 1330 of the Civil Code states that some people are not capable of making agreements, namely: First, people who are not yet mature; Second, those who are put under interdiction; and Third, women in marriage, (after the enactment of Article 31 paragraph 2 of Law No. 1 of 1974 on marriage, women in marriage are considered legally competent).

An adult may be incapable of making appointments if the person is placed under guardianship (curatele or conservatorship). A person can be put under interdiction if he is insane, ignorant (onnoozelheid), dark eyes (razernij), intellectually (zwakheid van vermogens), or also a waste. Such a person does not use his common sense and therefore can harm himself. A person who has been declared bankrupt is also incapable of performing specific engagements. A person who has been declared bankrupt to make an engagement involving his assets may only enter into an engagement that reveals bankruptcy, which must be recognized by the curator.

A particular thing

The third condition for the agreement's validity is the existence of a particular thing (een bepaald onderwerp). Article 1333 of the Civil Code stipulates that an agreement must have the principal of an object (zaak) of which the type can be determined at least. An agreement must have a specific object. An agreement must be about a particular thing (indeed of terms). It means that what is being agreed upon, namely the rights and obligations of both parties. The type of goods referred to in the agreement can at least be determined. The object of the agreement is not only an object but can also be a service. The Civil Code stipulates that the item in question does not have to be stated, as long as it can be calculated or determined later. For example, the agreement

harvest tobacco from a field in the following year is valid. The sale and purchase agreement for "tea for a thousand rupiah" without further explanation should be deemed unclear.

Legal causes that are lawful

The condition for the validity of the fourth agreement is that there is a legal cause. The word *causa*, which is translated from the word *oorzaak* (Dutch) or *causa* (Latin), does not mean something that causes someone to agree but refers to the agreement's content and purpose. For example, in a sale and purchase agreement, the content and purpose or cause is that one party wants property rights to an item, while the other party wants money.

According to Article 1335, Jo. 1337 Civil Code that a cause is declared prohibited if it is contrary to law, decency, and public order. A cause is said to be contrary to law if the cause in the agreement concerned is contrary to the law if the cause in the agreement concerned is contrary to the applicable law.

Cancellation is regulated incompletely in Article 1444-1456 BW and is equipped with Jurisprudence and Doctrine as another source of law, where cancellation can be caused by 1. Inability to act; 2. Unauthorized action; 3. Defect of will 4. Form of an agreement; 5. Contrary to the Law; 6. Contrary to public order and good morals. Likewise, according to BW (Burgerlijk Wetboek), there are 2 (two) types, namely grants and will grants. The provisions of a wills grant often apply to the grantor's provisions, where the grantee will be obliged to his heirs to make the grant when the heir has died. Grants are only things that already exist. If the grant includes items that will be available later, then the grant is canceled. Based on the provisions of Article 1667 of the Civil Code, Grants may only be made for items that were already there at the time the gift took place. If the grant includes items that do not yet exist, then the grant is null and void just for items that do not yet exist.

From the article's sound above, when a grant is made to a new object that will exist or an item that is not sure whether it is a movable object or an immovable object, the grant is canceled. Unilaterally the grant may promise to enjoy/collect the proceeds from the gifted object by the grant's donor. However, the grantor may not promise that he remains in power to sell or give to another person an item included in the gift; grants of this kind, only regarding the goods, are deemed null and void under the provisions of Article 1668 of the Civil Code. The grantor may not promise that he remains in power to use his / her rights to the gifted item; such a gift merely regarding the item is deemed invalid.

In the grant procedure, the main conditions that must be fulfilled include a living donator, a living grantee, and the presence of movable and immovable goods/objects controlled by the grantee. As for the terms of the grant, the donated goods are the property of the grantee. Thus it is not legal to grant other people's property. When the grantee is still alive, the grant is given does not have a marital relationship as husband and wife with the grant recipient. The grantee is not a person whose rights are limited due to something of a reason. A Comforter is a person capable of acting according to the law (mature and lacking in a sense). The grantor is not forced to give a grant.

Also, what must be considered is the conditions for the object being donated, namely the object that is donated actually exists, the object that is donated has a value, the object can have its substance, its circulation is accepted, and the owner can be transferred, the object given can be separated and handed over to the grantee, can donate as much as 1/3 of the object of the grantee. As for the conditions for a grant to be valid, according to the understanding in the Complications of Islamic Law, There are several pillars of grants as explained by Muhammad Daud Ali (1988), namely the pillars of a grant consisting of the giver, the recipient, the goods are given, *sighah* (*ijab Qabul*).

In this grant's event, the late Shafi Amin left eight heirs, among all the heirs, 2 (two) people had died, and 6 (six) people were still alive. The heirs carried out on 4 June 2007 through a certificate regarding the grant have been carried out following the grant's terms. Grant must be made with a grant deed made by the PPAT. The heirs who made the gift, initially only with a certificate of Grant, became the reference for doing the granting act by the Julok sub-district PPAT on 20 June 2007. This case is under the provisions of Article 1683 of the Civil Code, which states that no gift is binding on the granter or causes something before the gift is received in firm words. The person who was given the gift or by his representative who has been given the power by him to receive the gift he has given or will be given.

If the receipt is not made with the grant deed, then the acceptance can be made with an authentic deed later, the original manuscript must be kept by a notary as long as it happened while the grantee was still alive; in such a case, the grantor provides concrete reasons related to the cause and effect of withdrawal of the grant. The reason is that grant withdrawal is made to avoid slander and fuss between the grantor of the grant and the grantee. Also, the letter of grant revocation was carried out unilaterally, which was only signed by the five heirs involved in the signing of the grant certificate without involving other parties involved in implementing the grant. Currently, the land has been sold and controlled by another party through a Freehold Certificate.

The heir of Syafi Amin (Syafi Amin's son) donated 1 Ha of 5 Ha of land left by his parents (Syafi) to a mature village, Julok District, East Aceh, on 4 June 2007. The donated land must be used for the construction of an educational place (dayah or school). The one who received the grant at that time was Ramlan Dabet as the head of the village at that time, and suddenly the heir who gave the land withdrew the grant unilaterally and sold it to someone else.

Based on Article 1666 of the Civil Code, a grant is an agreement whereby a gifter delivers an item free of charge, without withdrawing it, for the benefit of the person who receives the said item's delivery. The law only recognizes the gifts between people who are still alive. In connection with this grant, several things need to be considered, namely; A grant is a one-sided agreement made by the grantee when he is alive to give something free of charge to the grantee, the grant must be made between living people, the grant must be made with a notary deed, if not with a notary deed, the grant is void.

From the article's sound above, when a grant is made to a new object that will exist or an item that is not sure whether it is a movable object or an immovable object, the grant is canceled. Unilaterally, the grant may promise to enjoy/collect the proceeds from the object granted by the grant's donor. However, the grantor may not promise that he remains in power to sell or give another person an item included in the gift.

This case means that in the grant process carried out by Syafi Amin's heirs under the article's provisions above, a gift binds the grantee to his agreement in the certificate of his grant. Furthermore, if the grant's object is a building or land, then no later than seven days after making the grant deed made by PPAT of Julok sub-district on 20 June 2007 and signed by the grantee (heir). The PPAT is obliged to submit the grant deed made by him and documents to the land office following Government Regulation no. 24 of 1997 Article 40 paragraph 1 for registration and transfer of property rights under Article 37 paragraph 1 of Government Regulation Number 24 of 1997. it states that the transfer of land rights and property rights to apartment units through sale and purchase, exchange, Grant, importation in companies, and other legal actions of transfer of rights, except the transfer of rights through auction, can only be registered if proven by deeds made by authorized PPAT according to the provisions of the prevailing laws and regulations.

However, the problem that arises is that the land received by the head of Matang Village, Julok District from the Grant has been registered with BPN, this is so that the object granted by the heirs of Syafi Amin is no longer in control of the grantee. Therefore it is necessary to transfer the rights to and property rights. There is a possibility that when an heir grants the property or property of a parent's (heir) legacy, both movable and immovable objects, the gift can be based on two types of grants from BW (Burgerlijk Wetboek), namely ordinary grants and will grants.

According to Irma Devita Purnamasari (2014), basically, a will grant is the same as an ordinary grant, but there is one crucial thing that deviates from ordinary grants, namely the provision that the grantee is still alive. Meanwhile, in a will grant, granting a grant only takes effect when the donor of the grant dies. After that, if the heir wishes to donate an inheritance, regardless of the will, it is necessary to pay attention to the heir's determination, and the distribution of assets to the heirs themselves must be by the provisions of the applicable law.

After determining the heir and the distribution of the inheritance, the grant made by the heirs may be made as long as the goods/assets donated will not exceed the provisions of the grant. According to Article 210 paragraph 1, Complications of Islamic Law can grant as much as 1/3 property to another person or institution in the presence of two witnesses to be owned. Meanwhile, according to the Civil Code, the heir may grant property/inheritance to another person or institution on the condition. It will not harm or reduce the Legitieme

Portie (absolute right) of the heir regarding this, Article 920 of the Civil Code also regulates the provision of grants which states (1) Gifts or grants, both living and wills, which harm the legitime portie, may be reduced at the time the inheritance is opened, but only at the demands of their legitimaries and their heirs or their successors.

The relationship is because both are related to the transfer of other people's property, that every inheritance belongs to, and the heir's right. Meanwhile, regarding the grant given when the granter is sick, there must be other heirs' approval. According to Imam Shafi'i in the book *I'alah al-Tholibin*, it is explained about the *tasaruf* of the sick near death, stating that the sick who are approaching death such as wills, debt relief, grants of something and *waqf* on some of the heirs, its interpretation depends on the agreement of other heirs.

In KHI, a grant is giving rights (property) voluntarily to others with a good cause. In this study, the authors know that this grant's purpose is to be used as a location for educational facilities and that the grant is addressed to Matang Village, Julok District, East Aceh Regency represented by "Kepala Desa." The Islamic Law Compilation (KHI) states that a grant is valid if it meets the grant's conditions. One of the terms of the grant is the terms of the grantor of the grant.

The conditions for granting the grant include: (1) Adult, mature and sensible. (2) The giver is the legal owner of the item given. (3) The giver is not under the supervision of another person or experiencing a case for some reason. (4) Not being pressured by several parties.

Based on the preceding, the grant made by the Grant Giver is valid according to civil law and Islamic law because the objects donated do not exceed 1/3 of the inheritance that has been left by the Grant Giver, and this also does not interfere with the Legitime Portie (absolute right) the heirs.

Conclusions and suggestions

A grant made by the donor is valid according to law, both civil law and Islamic law. This case is because the objects donated do not exceed 1/3 of the inheritance and do not interfere with the heirs' Legitime Portie (absolute rights). The actions of the heirs who object to the grant are baseless and seem far-fetched because the grant is under civil law and Islamic law, all the heirs should protect and respect the object that has been granted by the grantor because of the object of the grant is for the benefit of the people/society who will later become giving grants and the heirs.

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Regulation

Kitab Undang-Undang Hukum Perdata

Kompilasi Hukum Islam

Undang-undang No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-pokok Agraria

