

Judicial Considerations of the Syar'iyah Court Judge Tapaktuan about the Request for Grant Cancellation (Analysis of Decision No 0109/Pdt. G/2015/Ms.Ttn)

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ABSTRACT

Grants are the law regarding the free distribution of assets from one person to another. Ideally, the grant law event that took place perfectly is binding for both parties. Article 1666 of the Civil Code stipulates that a grant which has an authentic deed cannot be withdrawn for any reason. It's just that, in certain cases there are actually facts where the ongoing grants have left a polemic between the beneficiary heirs. One interesting issue that is the focus of this paper is the cancellation of the grant which was decided by the syar'iyah court of Tapaktuan with case register Number 0109/Pdt.G/2015/Ms.Ttn. The research method used in this paper is qualitative, with a type of juridical analysis. Data collected and developed from secondary data, in the form of decisions, laws, books, journals and other library materials. The results of the research analysis show that the judicial considerations of the Judge of the Syar'iyah Court of Tapaktuan in deciding the case for a grant cancellation in the decision Number 0109/Pdt.G/2015/Mahkamah Syar'iyah.Ttn generally refers to the provisions for making an authentic deed which the judge judges view as illegitimate and contrary to law. Judicial legal considerations tend to look at the positive legal side, and do not refer to the provisions of Islamic law.

KEYWORDS: Considerations, Requests, Cancellations, Grants, Syar'iyah Court of Tapaktuan

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I. INTRODUCTION

Grants are one of the important themes in civil law studies. He was placed in a position that is parallel to the themes of other material laws such as inheritance law, endowments and others. The legal theory of this grant was born as a counterpart to the transition of morality and a high sense of empathy from one community to another. The emergence of this grant legal theory may also be due to the relatively good level of community religiosity, the community also believes that giving someone wealth in the form of grants with the intention of helping contains values and good points.¹ Therefore, legal norms are required to deny the existence of the practice of grants, and vice versa it must be facilitated and well regulated in the material laws and regulations. In every legal dimension, both western law and Islamic law, the theory of grant law is recognized, even giving of wealth to others is considered good, and in many literatures it is stated that this grant contract is part of the *tabarru'* contract (charity contract) and *areta'awwun* (helping each other),² or in Dutch terms it is called *om niet*, which is a free agreement.³ *Om niet* contract is a free agreement, where one party will give an advantage to another party without receiving compensation.⁴ This indicates that the legal grants are legally recognized in the

¹Abdul Ghofur Anshori, *Filsafat Hukum Hibah dan Wasiat di Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2018), hlm. 3.

²Muhammad Syakir Sula, *Asuransi Syariah: Konsep & Sistem Operasional*, Cet. 5 (Jakarta: Gema Insani Press, 2011), hlm. 37: Gemala Dewi menyebutkan akad-akad yang termasuk dalam jalur akad *tabarru'* adalah wakaf, wasiat, *ibra*, wakalah, kafalah dan lainnya, termasuk di dalamnya hibah. Lihat Gemala Dewi, Wirnyaningsih, dan Yeni Salma Barlinti, *Hukum Perikatan di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2018), hlm. 140.

³Daeng Naja, *Seri Keterampilan Merancang Kontrak Bisnis: Contract Drafting*, Ed. Revisi, Cet. 2, (Jakarta: Citra Aditya Bakti, 2006), hlm. 43.

⁴Yusnedi Achmad, *Aspek Hukum dalam Ekonomi*, (Yogyakarta: Deepublish Budi Utama, 2019), hlm. 30.

practice of civil relations between one person and another which is carried out free of charge. Therefore, it is no exaggeration to say that grants are one solution that can be implemented and promoted in the community.

Conceptually, giving away assets cannot be implemented immediately. Grants have certain rules that must be fulfilled, otherwise the grant agreement is deemed null and void by law or in legal terms referred to *asniyetig van rechtswege*.⁵Cancel by law referred to results in an act for part or all of it for and legally considered to never exist (abolished) without the need for a judge's decision or the decision of a government agency.⁶This indicates that the grant is an act in the form of good but the process and also the implementation procedure must follow the rules and regulations.

Among the terms and conditions of the practice of the grant is that the gifted object is truly its own right. Grantees have the freedom to make grants, meaning that there is no coercion from any party. If the grant contract process has been completed, then the grant may not be withdrawn or canceled. The donor must be fully aware of the legal consequences of the grant, so he cannot cancel it personally.

Related to the prohibition on the cancellation of grants, it has been explicitly regulated in Article 1688 of the Civil Code, and in Article 212 of Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law and often abbreviated as Kompilasi Hukum Islam. In essence, the two articles say that those who have given their wealth to others are not justified to withdraw it. Article 1688 of the Civil Code in principle prohibits a donor from withdrawing his grant, unless it meets certain conditions. Among these grant recipients are proven guilty of committing crimes to the donor or helping to commit evil acts against the donor. In addition, the grant recipient does not want to help the donor when the donor is already in a difficult economic condition.⁷

Meanwhile, in Article 212 Kompilasi Hukum Islam, it is stated that grants may not be canceled, or cannot be withdrawn by the donor, except for the parents' grants to their children.⁸The provisions of Article 212 of the Kompilasi Hukum Islam narrow the scope of exclusion of grant cancellations, where only from parents to their children. If the grant is made between a person and another person who is not in a child's relationship with the father, and the process of the grant has taken place, and the assets have been transferred from the donor to the recipient, the donor can no longer withdraw the grant.

In fact, cases of grant cancellation or grant withdrawal have actually been found to be relatively large. In fact, these cases have received a legal decision from the Religious Court or the Syar'iyah Court. Interestingly, the court's decision regarding the grant cancellation request was granted by the judge, as clearly read in several judges' decisions, including the decision of the Syar'iyah Court of Tapaktuan Number 0109/Pdt.G/2015/Mahkamah Syar'iyah.Ttn.For this reason, in this article, we would like to review and analyze in depth the consideration of judges who grant grant cancellation requests that actually conflict with the legal norms contained in both the Civil Code and the Compilation of Islamic Law.

Irawaty and Martini conclude two definitions both in Article 171 Kompilasi Hukum Islam and in Article 1666 of the Civil Code. According to them, there are at least four points that are equally covered by the two definitions and are interrelated between one definition and another, namely (a) which is granted in the form of goods, (b) is given voluntarily, (c) cannot be revoked, and (d) grants are made between people who are still alive.⁹In essence, an action is said to be a grant if the action is in the form of a gift, where the gift is carried out free of charge and there is no reward, and the distribution is through the transfer of ownership when the donor is still alive.

Knowing the concept of grants in Indonesia's legal policy certainly cannot be separated from the legal regulations that govern it. This grant has been regulated in several regulations, including in the Civil Code and Compilation of Islamic Law as mentioned earlier, then also found in several other regulations, such as Government Regulation (PP) No. 48 of 2018 concerning Procedures for the Grant of Grants to Foreign Governments/Foreign Institutions, PP No. 2 of 2012 concerning Regional Grants, and several other regulations.

⁵Agus Yuda Hernoko, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak Komersial* Cet. 4, (Jakarta: Kencana Prenada Media Group, 2014), hlm. 299.

⁶Jonaedi Efendi, Ismu Gunadi Widodo, dan Fifit Fitri Lutfianingsih, *Kamus Islam Hukum Populer*, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 82.

⁷Meylita Stansya Rosalina Oping, "Pembatalan Hibah Menurut Pasal 1688 Kitab Undang-Undang Hukum Perdata". *Jurnal: "Lex Privatum"*. Volume V, No. 7, (Sep, 2017), hlm. 31.

⁸Abdul Manan, *Aneka Masalah Hukum Perdata Islam Indonesia*, Cet. 5, (Jakarta: Kencana Prenada Media Grup, 2017), hlm. 144: Bandingkan dengan Abd. Shomad, *Hukum Islam Penormaan Prinsip Syariah dalam Hukum Indonesia*, Cet. 3, (Jakarta: Kencana Prenada Media Group, 2017) hlm. 348.

⁹Irawaty dan Martini, *Buku Ajar Hukum Perdata dan Hukum Acara Pedata*(Jakarta: Jakad Media Publishing, 2019), hlm. 32.

However, in this session, only two legal grounds were presented, namely in the Civil Code and Kompilasi Hukum Islam.

According to Article 1667, a grant is required to be on an existing item, and is invalid if the grant is made on goods that do not yet exist. Article 1668 stipulates that the donor is not permitted to use goods which he has donated. Children are not permitted to give away their assets as stipulated in Article 1677. Regarding the procedure for gifting, it is stipulated in Article 1682, where the grant must be made through a notarial deed. The necessity for the notary deed can then be used as evidence in the form of an authentic deed issued by a notary public.

In the context of civil law, an authentic deed in the form of a notary is required for both parties to the contract, with the aim of making authentic evidence at any time when a dispute is possible.¹⁰ Authentic deed is meant here, that is, a deed made by or in front of an authorized official. In Article 1868 BW (*Burgerlijk Wetboek*), that an authentic deed is a deed made by or before an authorized Public Employee in the form according to the law in which the deed was made, in which this deed becomes the deed of the parties.¹¹ In the case of a grant, the Civil Code establishes the obligation to make an authentic deed in the form of a notarial deed and is made by an authorized official. This is with the aim of becoming evidence for the parties.

Based on the description above, this paper raises a problem statement, namely: how judicial considerations of the Syar'iyah Court Judge Tapaktuan in deciding the case for a request for grant cancellation in the decision Number 0109/Pdt.G/2015/Mahkamah Syar'iyah.Ttn?

II. LEGAL MATERIALS AND METHODS

The research method used in this study is qualitative, with juridical-type analysis. The data collected was developed from secondary data, in the form of decisions, laws, books, journals and other library materials. analyzed based on qualitative prescriptive by using legal materials such as primary legal materials, secondary legal materials and tertiary legal materials.

III. RESULTS AND DISCUSSION

1. Judicial Consideration of Syar'iyah Court Judge Tapaktuan regarding Application for Grant Cancellation in Decision Number 0109/Pdt.G/2015/Ms.Ttn

Case with ruling Number 0109/Pdt.G/2015/Ms.Ttn is a case of request for revocation of a grant which was terminated in 2015. The Judge of the Syar'iyah Court of Tapaktuan decided on the case for the cancellation of the grant by the heirs who felt disadvantaged. The plaintiffs namely Yuslinar binti Hasan (as Plaintiff I), Sukma Juwita (Plaintiff II), T. Raji Satria bin T. Ruslan (Plaintiff III), and Nyak Intan binti T. Muge (Plaintiff IV). Plaintiff I to Plaintiff IV are heirs of the late T. Ruslan bin H. T. The defendant, Abd. Rapur bin H. Usman (Defendant), Government of the Republic of Indonesia c/q National Land Agency of Southwest Aceh Regency (Co-Defendant I), and Government of the Republic of Indonesia c/q Regent of Southwest Aceh c/q Sub-district of Tangan-Tangan (Co-Defendant II).¹²

Initially, the late T. Ruslan bin H. T (heir of the plaintiffs) together with Awaluddin ND bought 1 (one) plot of land (garden) from M. Yunus Ceramics measuring 62x28 M with a Letter of Sale and Purchase (Seal) Number: 46/I-18/77 and above have built a rice refinery.¹³ Then, on August 26, 1978 the transfer of rights from Awaluddin ND to T. Ruslan bin H. T was transferred with the Deed of Transfer Number 37/I-18 to the land and building of the rice refinery that had been built, and since then it has been legally property of T. Ruslan bin HT.¹⁴

While still alive, T. Ruslan bin H. T managed the rice refinery together with the Defendant. Since then the Defendant has taken control of the land and the rice refinery business without calculating the results of operations with T. Ruslan. Without the knowledge of the Plaintiffs and permission of the heirs, the land and the

¹⁰Lihat misalnya di dalam, Achmad Ali dan Wiwi Heryani, *Asas-Asas Hukum Pembuktian Perdata*, (Jakarta: Kencana Prenada Media Group, 2012), hlm. 91: Lihat pula dalam, Sunarto, *Peran Aktif Hakim dalam Perkara Perdata*, Cet. 2, (Jakarta: Kencana Prenada Media Group, 2015), hlm. 170.

¹¹Achmad Ali, *Menguak Tabir Hukum*, Edisi Kedua, (Jakarta: Kencana Prenada Media Group, 2017), hlm. 166. Menyangkut akta autentik atau akta notaris ini, dapat dibaca dalam literatur misalnya dalam, Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, Cet. 8, Edisi Kedua, (Jakarta: Kencana Prenada Media Group, 2016), hlm. 253: Bandingkan dengan, A. Patra M. Zein & Daniel Hutagalung (ed), *Panduan Bantuan Hukum di Indonesia: Pedoman Anda Memahami dan Menyelesaikan Masalah Hukum*, (Jakarta: YLBH Indonesia, 2007), hlm. 135: PNH. Simanjuntak, *Hukum Perdata....*, hlm. 326.

¹²Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

¹³Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

¹⁴Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

rice refinery business have been granted from T. Ruslan to the Defendant with Grant Deed Number: 242/594.4/10.9/TTG 1990 which was signed by Co-Defendant II as PPAT (Land Deed Officials). Based on this, the grant that was carried out was considered contrary to the law, and constituted an act against the law, so a request for grant cancellation was submitted.¹⁵

With respect to the petition, Judge of the Syar'iyah Court of Tapaktuan granted the plaintiff's claim (heir's claim) to the grantee (defendant). In accordance with its main duty, the Syar'iyah Court legally has absolute authority to examine deciding and settling cases at the first level among people who are Muslim in the fields of wills, grants, including inheritance, marriage, endowments, sadakah.¹⁶ The judge canceled the grant received by the Defendant. In fact, in this case the grant property had an authentic deed and was signed by the government, namely the Camat of Tangan-tangan sub-district, Aceh Southwest District which incidentally in this case was named as defendant II.

Judicial Analysis of Judge Judge Syar'iyah Tapaktuan Court

Decision Number 0109/Pdt.G/2015/Ms.Ttn basically grants the applicant the request for grant cancellation. In its consideration, the judge of the Syar'iyah Court of Tapaktuan rested on several reasons why the request to cancel the grant was granted. Among other things, that in the process of the grants, it was evident that there was an element of coercion by the Defendant on T. Ruslan bin H. T. Lampoh as the donor. This is in accordance with the statement of the second witness (M. Saman bin Abdurrahman) and also the fifth witness (T. Musliadi bin H. T. Lampoh) submitted by the Plaintiffs to the trial. On that basis, in accordance with Article 210 paragraph (1) of the Compilation of Islamic Law, a grant made on the basis of coercion is invalid. Therefore, grants made by T. Ruslan bin H. T. Lampoh must be canceled.¹⁷

Another consideration is that it was proven that the grant carried out by T. Ruslan bin HT Lampoh to the object of the dispute in dispute in the case was invalid, because at that time it was proven T. Ruslan bin HT Lampoh had granted more than $\frac{1}{3}$ (one third) possessions at that time. In fact, he has given all his possessions to someone else, and none of T. Ruslan's heirs know of the grant.¹⁸

Based on the description above, it can be seen that the consideration of Tapaktuan Syar'iyah Court judges refers to judicial considerations. Juridical considerations concern the legal basis used by judges, namely Article 210 paragraph (1) Compilation of Islamic Law. The grantor has been proven to give away his fortune under compulsion. Article 210 paragraph (1) of the Compilation of Islamic Law also states that assets which are allowed to be donated are $\frac{1}{3}$ of the assets of the donors. However, the results of the trial prove that the donor has actually granted more than $\frac{1}{3}$ of his wealth, even all of the donor's assets. With regard to these reasons and considerations, the panel of judges of the Syar'iyah Tapaktuan Court concluded that the grant process carried out by T. Ruslan was flawed and null and void, for this reason the judge granted the request to cancel the grant.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Based on the previous description, it can be interpreted in a review of the conclusion that in granting the grant cancellation request, the judge of the Syar'iyah Court Tapaktuan uses Article 210 paragraph (1) Compilation of Islamic Law as its juridical consideration. The grant process that was sued by the plaintiff proved to violate Article 210 paragraph (1) Compilation of Islamic Law. In the trial, the judge found that the grant process was carried out containing an element of coercion, and the assets that were the object of the grant were unknown to the heirs, and the value was greater than the maximum limit of the grant, which was no more than $\frac{1}{3}$ of the property.

Recommendations

Regarding this issue, there are a number of recommendations made, including judges in emphasizing their arguments and considerations, ideally also referring to the provisions of Islamic law in addition to the provisions of positive law. This is necessary so that the justified consideration of the plaintiff and the defendant is legally in line with the authority of the Syar'iyah Court which handles Islamic civil cases. For the plaintiff or defendant, you should proceed peacefully. This is necessary to build good relations between the two parties.

¹⁵Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

¹⁶Lihat dalam Pasal 49 Undang-Undang No. 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama.

¹⁷Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

¹⁸Dimuat dalam Putusan Nomor 0109/Pdt.G/2015/Ms.Ttn.

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