

The Cancellation And Consequential Rules

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THE CANCELLATION AND CONSEQUENTIAL RULES (CASE ANALYSIS OF DIRECT RELIGIOUS COURT CURRENCY NUMBER: 146 / PDT.G / 2012 ABOUT GRANTS)

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Abstract: The purpose of this study is to examine and analyze the provisions of the cancellation of grants under Islamic law, due to the law on the grant property petitioned for cancellation through decision No.146/PDT.G/2012 and the verdict No.146/PDT.G/2012/PA.Sel. Has been in accordance with the provisions of Islamic Law in Indonesia. This type of legal research is normative legal research. The methods used are Legislation approach, conceptual approach and case approach. Based on the result of the research: (1) The provision of grant cancellation based on the law, if grant awarding exceeds 1/3 of the grant property in accordance with Article 210 paragraph (1) *Compilation of Islamic Law*; (2) The legal consequences of the grant property petitioned for cancellation through the article number: 146 / PDT.G / 2012 / PA.Sel. To the parties that is the property of the grant being applied for a revocation to the grantor. While the third party is the grant property must be returned to the heir to be calculated first; (3) The Decision of the Selong Religious Court Judge by Number: 146 / PDT.G / 2012 is in accordance with the provisions of applicable Islamic law, where the grantor grants all of his wealth so that it exceeds one-third of the section in accordance with verdict 210 of the *Compilation of Islamic Law*.

Keywords: verdict, cancellation, grant

I. INTRODUCTION

In every society there can also be a distinction between the behaviors desired by legal principles. The existence of a state that cannot be avoided, resulting in a tension because there are differences in interests. Therefore the law needs to develop in order to resolve the existing conflict.¹

The question of inheritance in Indonesia can be solved according to Western Heritage Law which refers to *Burgerlijk Wetboek* Dutch heritage, then Islamic *Waris* Law which refers to the word of Allah SWT and *Sunnah Rasul* Muhammad SAW is believed to apply universally in

¹ Soerjono Soekanto, *Principles of Sociology of Law*, Raja Grafindo Persada, Jakarta, 2002, p. 19.

all parts of the world and added with *Ijtihad Alim Ulama* cultures and local laws in Indonesia serve as guidelines for the Muslim population, and the latter is the customary law of the Common Inheritance which is adopted as the legal system in Indonesia because Indonesia is a plural state and has many different customs.²

Like inheritance law, to date there are still more than one law governing the grant in Indonesia. This means that the grant is governed by Islamic law, civil law originating from BW, or customary law.³

Grants are different from inheritance. The grant occurs when the grantor is still alive at the time of execution, whereas inheritance occurs because of someone who dies by abandoning the wealth. Grant giving can only be made to existing objects. If the grant is made to new objects in the future, then the grant becomes null and void.⁴

In the withdrawal of grant property, under Islamic law and Civil Code, grants cannot be withdrawn, but the Civil Code provides exceptions in certain cases grants may be withdrawn or abolished by grants. Similarly, according to customary law, grants cannot be withdrawn unless the grant is contrary to customary law.⁵

A withdrawal of a grant may be a claim in the Court. In the settlement of a case of grant cancellation or grant recall in the Court is based on the law of the parties to the dispute. The disputing parties that are Muslims are conducted in Religious Courts based on Islamic law and those who are non-Muslim in the District Court under the civil law of the West (Civil Code), but not apart from the customary law in their area.

This is in accordance with article 49 of the Religious Judicature Law which states that the Religious Courts have the duty and authority to examine, decide upon and settle cases in the first instance between Muslims in the areas of: marriage, inheritance, wills, and grants done under Islamic law, as well as waqf and alms.

Based on the above description, the author would like to raise about the Decision of Religious Court Selong Number: 146 / PDT.G / 2012 whose case is based on grant that has been done by Mr. Irah alias Amaq Sulkiah (Death) during his life to one of his grandchildren namely Mr. Septiawan Pratama Son who is the son of Mr. Muksin (the late) and Mrs. Siti Aisah a plot of land area of 60 acres of pipil number 125 plot number 1 class II, and the land yard area of 1.3 acres along with permanent house building size 7x5 m2, which the object of the grant shall not be distributed by such inheritance and grant without the consent or consent of all heirs.

The existence of a grant without the consent of all the heirs and objects of grant that have not been shared with the inheritance then Mrs Sonah as the plaintiff who is the fourth wife of the late Tuan Irah alias Amaq Sulkiah (grantmaker) filed a lawsuit for the grant of his grandson Septiawan Pratama Putra (grantee) through the Selong Religious Court.

Formulation of problem used; 1) What is the provision for the cancellation of grants under Islamic law? 2) What is the legal effect on the grant property applied for cancellation through decision number 146/Pdt.G/2012 regarding grant? 3) What is the decision of Religious

²Abdul Khalid Purnaputra, "Inkorting Testament to Fulfill Legitimate Portie Heir By Burgerlijk Wetboek", (Thesis, Notary Program, Faculty of Law, University of Hasanuddin Makassar, 2015), p. 1

³ Eman Suparman, *Waris Indonesia Law: In Perspective of Islamic Law, Adat, and BW*. Fourth Print, PT. Refika Aditama, Bandung, 2014, p. 93

⁴ R. Subekti, *Various Agreements*, Citra Aditya Bakti, Bandung, 1995, p. 95.

⁵ Eman Suparman, *Op.Cit*, p. 94

Court No. 146/Pdt.G/201 /PA.Sel. Has been in accordance with the provisions of Islamic Law in Indonesia?

Based on the formulation of the problem I raised, the purpose of this research is; 1) To review and analyze the provisions for cancellation of grants under Islamic law. 2) To review and analyze the legal effects on the grant property petitioned for cancellation through decision number 146/Pdt.G/2012. 3) To examine and analyze religious court decision number 146/Pdt.G/2012/PA.Sel is in conformity with the provisions of Islamic Law in Indonesia.

This thesis research uses Normative Law research. This study uses Legislation approach, conceptual approach and case approach. Technique of collecting legal materials that is using literature study technique (study document) by using qualitative analysis as legal material analysis.

II. RESULT AND DISCUSSION

2.1 Conditions of Cancellation of Grants Under Islamic Law

Grant language is a gift (*athiyah*), whereas according to the term "contract that makes ownership without a substitute while still alive and voluntary."⁶ In *syara* 'itself mentions grant has a meaning akad the principal issue of giving someone's property to others when he lives, without any reward. If a person gives his property to others for use but is not granted to him the right of ownership then the property is called a loan.⁷

Grants according to Islamic law allow a person to give or give away some of his or her wealth while still alive to others.⁸ Giving during life is commonly known as grants. In Islamic law the gift of a person through a grant is limited to one-third of the property of the grant.

The following pillars of grant:⁹

1. There is consent and a denial showing the transfer of one's (granting) property to another (who receives the grant). The form of the consent may be in the words of the grant itself, with the words of the gift, or with other words that imply the giving. Against *Kabul* (acceptance of grant), the scholars differed. Imam Maliki and Imam Shafi'i declared that there should be a statement receiving (*Kabul*) from the person receiving the prize, because *Kabul* is included in harmony. As for a group of scholars Hanafi School, *Kabul* not including the pillars of grants. Thus, the form (s) of the grant is sufficient with the consent (granting statement) only.
2. There are those who grant and who will receive the grant. For that reason, it is required that the submitted is truly the property of the perfect grant and the grant must be a capable person to act according to the law.
3. There is a treasure to be granted, provided that the property is the property of a complete donation (not mixed with the property of others) and is a treasure that is useful and recognized by religion.

In addition to the pillars of grants there are also grant requirements:¹⁰

⁶ Racmat Syafi'i, *Fiqh Muamalah*, Pusaka Setia, Bandung, 2001, p. 242

⁷ Aulia Muthiah, *Islamic Law Dynamics Regarding Family Law*, Pustaka Baru Press, Yogyakarta, 2017, p. 225

⁸ Asaf A.A. Fayzee, *Principles of Islamic Law II*, Tintamas, Jakarta, 1961, p. 1

⁹ Wikipedia, *islamic encyclopedia*, <https://digilib.uinsby.ac.id>, posted on June 1, 2017

¹⁰ Chairiumam Pasribu, Suhrawadi K. Lubis, *The Law of the Covenant In Islam*, Sinar Grafika, Jakarta, 1994, p. 113

1. Conditions for grant / grantor

- a) The *shrinker* is the one who possesses perfectly something upon the granted property.
- b) The *shrinker* is a *murshid*, who has been able to account for his actions in the event of a matter of matter relating to the court of the property.
- c) The sharper is not under the guardianship of others, so the grant must be a person capable of acting according to the law (adult, *balig* and sensible).
- d) A person does the grant in having irises and *ikhtiyar* attempted in performing actions on the basis of his choice not because he is unconscious or other circumstances. The Compilation of Islamic Law in Article 210 paragraph (1) requires that grant holders be at least 21 years of age.

2. Conditions for grantee

That the grantee should be the one who actually existed at the time the grant was made. The real meaning is that the person (the grantee) is born. And it is not questioned whether he is a child, lacking intelligence, maturity. In this case everyone can receive a grant, regardless of physical condition and mental state. Thus giving a grant to a baby still in the womb is illegal.

3. Terms for granted objects

- a) The object actually exists clearly, in the sense that there is actually time for the grant to take place.
- b) It has value, holy and useful
- c) It may be possessed of the substance, its circulation received and its ownership transferable
- d) The granted item can be separated and handed over to the grantee.

4. Terms of Lafaz Grant (Ijab Kabul)

The Ijab Kabul or handover should be based on a free agreement of the parties, without any element of coercion, oversight, or fraud. Declaration of consent may be executed either orally or in writing.¹¹

The provisions on the withdrawal of grants in the **Compilation of Islamic Law** section 212 states that grants cannot be withdrawn unless the parent grants to their children. Under the aforementioned paragraph the grant which has been granted shall not be withdrawn because the thing which has been delivered shall be the property of the receiving person. However, the article can also be attributed to article 211 which states that grants from parents to their children can be counted as inheritance, meaning that grants given to the child can be withdrawn because although the child is not granted but the child still obtains an inheritance when his parents have passed away. This can make grants be withdrawn from their children.

Cancellation or withdrawal of a grant is a forbidden act. A grant cannot be revoked and therefore cannot be canceled, but there are certain things that can make the grant can be canceled, namely:

1. If the grant conditions cannot be fulfilled by the grantee

As the recipient of the grant requirement that must be fulfilled which must be present at the time of grant, meaning that the grantee should not have grown and sensible but is born in the world, if the baby in the womb is not allowed to receive the grant.

¹¹ Abdul Ghafur Anshari, *The Law of the Islamic Covenant in Indonesia*, Gadjah Mada University Press, Yogyakarta, 2010, p. 176.

2. If the grantee dies first than the grantor
In this case the grantor is entitled to withdraw the goods he has granted. This applies only to the grantor only, not to the heirs.
3. If the person granted is guilty by committing or committing a crime or an assassination attempt
The grantee if proven to commit a crime against the grantor for some reason then no one may receive a grant from the grantor.
4. If the grant is falling poor and the grantee refuses to give him a living
If a person who has been given a grant such as a child has wronged his/her parents, i.e. not allowing his/her parents to live in his/her home, where the house is a grant from his/her parents then the grant can be withdrawn.¹²

In addition, in the *Compilation of Islamic Law* adheres to the principle that grants should only be done 1/3 of the property they have. If a grant awarded by a grant monger exceeding one third of his / her assets, the grant may be canceled because it does not comply with the provisions of granting and breaches the rules set forth in *article 210 of the Compilation of Islamic Law*.

2.2 *Legal Effects Against Grant Property Invoked Cancellation in Decision Number: 146/PDT.G/2012 about Grant*

2.2.1 *Against the Parties*

The consequences of law are the consequences that arise because of an act, in accordance with the rules that apply. For example, a competent two-party agreement can lead to an agreement. Legal consequences may also occur due to a lawsuit for the cancellation of a legal act, for example a lawsuit for the cancellation of a grant will result in a legal effect on the grant property.¹³

The legal consequences of the grant being petitioned for cancellation in a Court in the event of a claim of revocation of a grant object in excess of the *legitime portie* which has a permanent legal force shall the ownership of the property return to its *legitem* or remain in the possession of the grantee depending on the decision of the judge by considering the statements of the parties to the dispute, the witnesses and the evidence presented by the parties.

The grant property granted in the past by the grantee in the event of a lawsuit in the Court with the petition for grant to be canceled, the grant property shall again become the grant's right. When viewed in terms of Islamic law, a grant awarded by the grantee to the grantee of the grant property cannot be withdrawn, except the grant given by the parent to the child.

The legal consequences of the grant property being petitioned for cancellation in court for a permanent legal ruling will then have ownership of the property returning to the grantor. In other words, all granted property will be the property of the donor. For example, if a person grants a plot of land or a house, then with a verdict of grant cancellation by a court that has permanent legal force then the land or house will return to the grantor and become his property again.¹⁴

¹² Interview with Mr. H. Moh. Muhibuddin, S.Ag., SH., MSI. Judge at the Selong Religious Court on May 23, 2017

¹³ Wikipedia, *Due to the Law of Grant*, http://hukumpedia.com/index.php?title=Akibat_hukum, posted on June 2, 2017.

¹⁴ Interview with Mr. H. Moh. Muhibuddin, S.Ag., SH., MSI. Judge at the Selong Religious Court on May 31, 2017.

2.2.2 *Against Third Parties*

The third party is a party who has obtained the transfer of grant property, either through sale and purchase, testament, or by grant back by the previous grantee to the grantee then.

Third parties who have obtained the grant property of the grant petitioned for cancellation at the Court are acts that can be said to be detrimental to the heirs of the grantor, as a result of which the grant is made deductible.

Reduction of grant as a result of the act of harming the *legitime portie*, the proceeds shall be returned and counted from the day the death of the testator if the claim for abatement is filed within a year after that day, if not so, from the day the claim is filed.¹⁵

The abolition of a gift because it harms the *legitime portie* has the force applicable on the condition of the right of the person given from the beginning, is useless and because he cannot surrender a better right to an object other than that owned to another, the abolition of his rights will also result in the deletion their rights (third parties).¹⁶

So that the legal consequences for third parties in the event of grant cancellation of a third party can not be prosecuted by the heirs if the heirs ask for compensation. However, if the heirs do not claim compensation, the grant must be returned by a third party to the heirs to be reconsidered.

2.3 *Judgment of the Selong Religious Court Number: 146 / PDT.G / 2012 / PA.Sel. About Grants Seen From Provisions of Islamic Law In Indonesia*

In the case of a grant cancellation lawsuit that occurred in the Selong Religious Court with the number of cases 146 / PDT.G / 2012 / PA.Sel. with the result of its decision to grant the plaintiff's claim, which granted is the grant of the grant given by Alm. Irah alias Amaq Sulkiah to one of his grandson / defendant 1 namely Septiawan Pratama Putra during his life. Where according to the plaintiff the object of the grant is a joint property because it is obtained by the grantor during the marriage with the plaintiff, which the object of the grant is also not shared inheritance as well as grant without the knowledge of the heirs of Alm. Irah alias Amaq Sulkiah. But the grant (Alm Irah alias Amaq Sulkiah) grants his property (the object of the dispute) to one of his grandchildren without deliberation. In addition the object of the grant is the only treasure of the donor grant is Alm. Irah alias Amaq Sulkiah.

However, the plaintiff's argument is denied by the defendant 4 who is the attorney of the defendants 1, 5, and 6 Mr. Ahmad Jayadi bin H. Jayadi, which is that the object of the dispute is indeed granted by Alm. Irah alias Amaq Sulkiah who is the grandfather of the defendant 1 and the object of the dispute is indeed controlled by Septiawan Pratama Putra at this time, but it is all based on the grant of the deceased grandfather whose grant letter has been signed by him witnessed by the plaintiff himself is his grandmother Sonah alias Inaq Muksin . From the plaintiff's statement, the plaintiff reasoned that the grant was not distributed inheritance and the grant exceeded one-third of the grant's property. Based on the Compilation of Islamic Law article 210 grant should not be more than one-third of the grant's property, it becomes the judge's consideration in deciding the case of grant cancellation.

In addition the plaintiff's statement that the object of the grant is a joint treasure between Alm. Irah alias Amaq Sulkiah with Sonah alias Inaq Muksin is not justified by the Panel of

¹⁵ R. Soetojo Prawirohamodjo, *The Law of Inheritance of Codification of the Third Print*, Airlangga University Press, Surabaya, 2011, p. 162.

¹⁶ *Ibid.*

Judges although the statements of witnesses of the plaintiffs say the object of the grant was purchased while married to Sonah / plaintiff 1, besides the plaintiff's witness did not mention when Irah married Sonah because there is no marriage book while Sonah is the fourth wife or the last wife Irah. From the year of marriage associated with the year of purchase of land which is the object of the dispute / object of the grant then it can be seen whether the land is a joint treasure or treasure. Therefore the witnesses cannot mention purchased when married with Sonah and there is no proof of marriage then the object of the dispute / object of the grant is a treasure of Irah alias Amaq Sulkiah.

Based on the Selian Religious Courts Decision Number 146 / PDT.G / 2012 / PA.Sel, which granted the grant of the grant proposed by the plaintiff (Sonah), the object of the grant is returned to the grantor to share inheritance and grantee (Septiawan Pratama Son) shall return it because the grant is not inheritance and the grantee receives no more than 1/3 of the grant in accordance with the applicable provisions. Since the grantmaker has passed away when the case is brought to court, the grant property returns to the heir of Irah alias Amaq Sulkiah, where the Judge has assigned heirs / successors to the succession of the late Irah alias Amaq Sulkiah. Then the treasure of the grant is divided in accordance with the division of the inheritance of Islam.

Judgment of Selong Religious Court Judge by Case Number 146 / PDT.G / 2012 / PA.Sel. With the outcome of its decision to annul the grant against Septiawan Pratama Putra which exceeds one-third of the shares in accordance with applicable provisions based on the theory of justice.

III. CONCLUSION AND RECOMMENDATION

3.1 Conclusion

Based on the description that the authors describe, it can be concluded as follows:

- a. In Islamic law a grant cannot be withdrawn unless the parent grants to the child. This is in accordance with the provisions of the Compilation of Islamic Law section 212. But there are certain things that make the grant can be canceled or withdrawn, one of which is if the grant is more than one third of the grant's property. This is in accordance with the provisions of Article 210 paragraph (1) of the Compilation of Islamic Law, whereby the grant if it exceeds the third of the grant's property, the grant may be canceled or withdrawn.
- b. The legal consequences of the grant property petitioned for cancellation through verdict number: 146 / PDT.G / 2012 / PA.Sel. To the parties, namely the object of the dispute or the property of the grant in the form of yard and paddy fields which are applied for a revocation of the grantor. Because in the case of the grant of the grant in the Selong Religious Court, the grantor has died, the grant property applied for the cancellation is returned to the heirs because the property has not been distributed inheritance and the grant exceeds one third of the grant's property. While the legal consequences of third parties in case of cancellation of grants that have been decided by the court ie the grant property must be returned to the heirs to be calculated first.
- c. On the Judgment of the Selong Religious Court Judge by Case Number 146/PDT.G/201 /PA.Sel. with the outcome of its verdict canceling the grant against Septiawan Pratama Putra in accordance with the provisions of applicable Islamic law, where the cancellation of grant is due to the grant property not yet distributed by the grantor and the donor has granted all of his wealth so that the grant exceeds one-third of the section in accordance with the provisions of the article 210 Compilations of Islamic Law.

3.2 Recommendation

Based on the conclusions of this study the authors can provide suggestions as follows:

- a. Should in the grant to the heirs and non-heirs must be in accordance with existing regulations so that in the future there is no claim by the party who feel harmed? So as to prevent the occurrence of a grant cancellation filed in court.
- b. For the community it is necessary to grant in advance to conform to the prescribed rules of law, whereby the legal consequences in the event of errors in the grant may result in juridical defects that are null and void.
- c. For the parties in particular, in the case of the cancellation of the grant shall receive the result of the decision of the Panel of Judges, in which the Panel of Judges has adjudicated the matter in accordance with the applicable rules.

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