



GRANTS BY PARENTS TO ONE CHILD WITHOUT A LETTER OF CONSENT FROM THE OTHER CHILD

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Abstract

This study analyzes the validity of a gift given by a parent to one of the children without asking for the consent of the other children. A gift is a common form of giving in society, especially in the context of family relationships. A gift is often a source of family disputes if it does not meet the applicable legal requirements. In practice, Land Deed Officers (PPAT) often ask for a letter of consent from other heirs when parents give a gift to one of the children. The method used in this study is normative juridical, with an analysis of primary, secondary, and tertiary legal materials. The results of the study indicate that a gift given without the consent of another child remains valid under Indonesian law, as long as it meets the applicable provisions and does not violate the *legitimate rights of the* other heirs. The validity of a gift deed that has been transferred to another name is also recognized, unless there is a court decision that cancels it. This study recommends that parents who give gifts maintain transparency with other children to avoid potential disputes in the future .

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I. INTRODUCTION

Indonesia is one of the countries that implements a grant system as an important mechanism in supporting various development sectors. Grants are known as a form of legal act that reflects generosity, affection, or appreciation without any reward. Grants certainly have an important position in the Indonesian civil law system, Article 1666 of the Civil Code (KUHPerdara) states that "A grant is an agreement by which the grantor, during his lifetime, freely and irrevocably, hands over something for the needs of the grantee who receives the transfer. The law does not recognize other grants other than grants between living people." Based on this article, a grant can be defined as an agreement in which an individual (the grantor) gives something to another person (the grantee) without wanting anything in return.

Grants in Islamic terminology can be interpreted as the direct and absolute transfer of ownership rights to an object while still alive, without any compensation, even if it comes from someone who has a higher position, or in other words, grants are voluntary transfers of ownership

rights while still alive (Abdul Aziz, 2010). Grants can include various forms of movable goods and fixed assets, such as land and property. In addition to being given to individuals, grants can also be allocated to organizations, institutions, or religious bodies. Grants are often given as a form of support or appreciation for an institution that aims to help certain individuals or communities. According to the Big Indonesian Dictionary (KBBI), grants refer to the act of giving voluntarily, which involves the transfer of rights or ownership of an asset to another person without any expectation of receiving a return (Teddy Prima, 2023).

Referring to Article 212 of the Compilation of Islamic Law (KHI), it is stated that "Grants cannot be withdrawn, except for grants from parents to their children". This article shows that in general the grantor does not have the right to withdraw goods that have been donated. However, in the context of parents and children, this article provides an opportunity for parents to be able to withdraw the grant given if necessary, which allows for changes in circumstances, urgent needs, or other situations that require adjustment. Grants in the form of land and buildings are usually stated in the form of a deed which is then called a land and building grant deed. The land and building deed is a crucial legal instrument, considering that land and buildings have quite significant economic and social value. However, to guarantee the validity of the deed of grant, there are several requirements that must be met so as not to cause disputes in the future.

Granting a grant results in the transfer of ownership rights to an object. If the object of the grant is land, then the transfer process must comply with the provisions stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration . This provision requires that every transfer of land rights, including through grants, must be carried out by making a deed through a Land Deed Making Officer (PPAT) (Hatta Isnaini, 2020). It is important to note that the transfer of land rights through grants must meet various formal and material requirements stipulated by law. The Land Deed Making Officer (PPAT) has a crucial role in the process of preparing a deed of grant to ensure that the documents made are legally valid and protect the interests of all parties. The role of the PPAT is regulated by the laws and regulations in force in Indonesia, especially regarding land ownership and transactions. This procedure is designed so that every land and building grant transaction can run transparently and legally, so that there are no legal loopholes that are exploited by parties who intend to commit fraud or abuse which of course can harm other parties.

In its application, the validity of land and building grant deeds is often the object of debate, especially in the context of compliance with applicable legal regulations. One of the main problems that often arises is related to the authority or legality of the party providing the grant and also the validity of the goods to be granted. According to the principles of civil law, the grantor must have legal ownership rights to the property being granted, because only with clear ownership can the grant process be considered valid in the eyes of the law. Without valid proof of ownership, the

grant can be considered legally flawed and has the potential to cause disputes between the parties. This is especially crucial when the property being granted, such as land or buildings, has great economic value or is located in a strategic area, which can attract the attention of other parties who may claim rights to the property. Granting a grant from a parent to a child is a form of legal act that often occurs in society, especially among families who have certain assets or property. In the context of a family, grants are often considered a form of parental affection for their children or as a means to regulate the distribution of assets before the testator dies.

Along with the development of the practice of grants in society, various legal issues have emerged that indicate disputes between parties who feel disadvantaged due to grants that do not meet applicable legal requirements. Cancellation of deed of grants is often in the spotlight in legal cases, especially among families facing disputes related to inheritance. Although grants are made with good intentions, for example to regulate the distribution of assets or provide a certain portion to a family member, this often triggers conflict when there are heirs who feel their rights have been violated. One example of a case related to the cancellation of a deed of grant is in Decision Number 165/Pdt.G/2023/PA.Pare., in which the plaintiff filed a lawsuit against the deed of grant which was considered to violate *legitime portie* or the portion that must be received by each heir according to civil law. This case illustrates how grant disputes can occur, especially when there are heirs who feel their rights have been ignored or violated. This decision shows the importance of transparency and correct procedures in the grant process, especially in terms of involving all heirs. When a gift is made without the consent or is considered unfair by the other heirs, this can trigger a dispute that ultimately goes to court, as happened in this case.

In practice, Land Deed Officers (PPAT) often request a letter of approval from other heirs if parents intend to give a gift to one of the children. This step is taken to ensure that the rights of other heirs, especially those related to *the legitime portie* or absolute share protected by law, are not violated. However, this raises the question that legally, does a gift from a parent to one of their children really require the approval of the other children? Then, what is the validity of a gift deed that has been made without the approval of another child, especially if the deed has been transferred to another name? Referring to the background that has been explained, the researcher is interested in conducting a study which is stated in the title **"Granting by Parents to One of the Children Without a Letter of Approval from the Other Child"**.

II. RESEARCH METHODS

Based on the title that has been determined and will be discussed in this study, the author uses a research method with a normative legal approach, which focuses on the study of existing legal norms, by analyzing library sources or secondary data (Soerjono Soekanto & Sri Mahmudji, 2003). Other data sources used as references in this study include three types of legal materials, namely:

(1) Primary legal materials

Primary legal materials are sources of law that have binding and authoritative force for the parties involved (Ahmad, 2024), which consist of various legal instruments that have the highest authority, such as laws passed by legislative institutions, court decisions that become jurisprudence, and other official legal documents that regulate various aspects of community and state life. In this study, the primary legal materials used as references consist of:

- a. Civil Code (KUHPerdata)
- b. Compilation of Islamic Law
- c. Government Regulation (PP) Number 37 of 1998 concerning Land Deed Making Officials
- d. Government Regulation Number 24 of 1997 concerning Land Registration

(2) Secondary legal materials

Secondary legal materials are legal materials consisting of literature such as previous research results, consisting of books, manuscripts, and scientific journals. Secondary legal materials do not have permanent legal force like primary legal materials, but these legal materials function as a support in understanding and interpreting applicable laws.

(3) Tertiary legal materials

Tertiary legal materials or what are usually non-legal materials are library materials including the Big Indonesian Dictionary, the Legal Dictionary, non-legal references or references outside the legal field that remain relevant to the research topic or theme .

III. RESEARCH RESULTS AND DISCUSSION

3.1. Grants According to the Perspective of Civil Law and Islamic Law

Indonesian civil law explicitly regulates grants as part of an obligation arising from a legal act. Provisions on grants are contained in Articles 1666 to 1693 of the Civil Code. A grant in civil law is a form of agreement from a living donor who then gives something to the recipient voluntarily without any compensation, and the transfer cannot be canceled except in certain situations regulated in Article 1688 of the Civil Code, such as if the recipient of the grant commits a crime or violation against the donor or when the grant violates the rights of other heirs. Referring to the opinion of R. Subekti, a grant is a gift (*schenking*) which is an agreement (*obligator*), in which one party gives goods to another party free of charge (*om niet*) and absolutely (*onnerroepelijk*). As an agreement, the gift is directly binding on both parties and cannot be canceled solely based on the will of the donor (Subekti, 1995). Meanwhile, Kansil defines a grant as an agreement in which the first party gives an item to another party as a form of kindness, and the other party accepts the kindness (Kansil, 2002).

Article 1666 of the Civil Code states that a gift can only be made by the grantor (grantor) while he/she is still alive, so based on this, the law only recognizes gifts that occur between people who are still alive, so that gifts do not apply in other contexts. Gifts are often made for the purpose

of distributing assets, providing support to children or close relatives, or as a form of appreciation for personal relationships. Gifts are usually made by the grantor while still alive, to avoid potential disputes or conflicts that may arise between the grantees if the gift is only given after the grantor has died. In addition, gifts are often given because of the grantor's concerns, for example because the mother of the children is a stepmother or stepmother, or because among the children there are adopted children whose membership as heirs may be disputed (Abdul Manan, 2008). Thus, giving a gift while the grantor is still alive is not only a wise step in maintaining peace among the grantees, but also reflects the grantor's concern for potential problems that may occur in the future.

The word grant originally comes from Arabic, namely *al-hibah*, which means giving (Abdul Rahman, 2010). Some also say that grants come from the word "*wahaba*," which means moving from one hand to another, or it can also be interpreted as an awareness to do good, similar to the term *hubub al-rih* (wind blowing). According to the term, a grant is a gift from someone while still alive to another person for free, without expecting anything in return except the pleasure of Allah SWT. Grants can be given to anyone, including those who are not related. The recipient of the grant is not obliged to give a reply to the giver, and the grant is considered valid after the *ijab kabul* (handover) has occurred. If the grant is only stated verbally without any handover of goods, then the grant is not considered valid. Based on the perspective of Islamic law, the provisions of grants have been ordered by Allah SWT as stated in the Qur'an and Sunnah, which has also been agreed upon by scholars (Zulkarnain, 2023). Objects that can be donated include movable objects such as easily moved vehicles, as well as immovable objects such as land, houses, and buildings. The grant agreement can also be made in writing or verbally, as regulated in Article 1687 of the Civil Code. However, for objects in the form of land and buildings, the grant agreement must be made in writing through a Deed of Grant (Mudakir Iskandar, 2019).

Written grants are ideally made in writing and stated in the form of an authentic deed, which is a common formal requirement, especially for grants of immovable objects such as land. Oral grants can be made, but in practice it is more difficult to prove in court if a dispute arises. Oral grants can be considered valid if they meet certain requirements, such as the presence of credible witnesses, but are still vulnerable to legal problems due to the lack of written evidence. Indonesian law requires that land and building grant agreements be made in written and official form, hereinafter referred to as Grant Deeds. This aims to provide legal certainty that protects the rights of the parties involved in the grant process, considering that immovable objects have a more significant economic value and have the potential to cause disputes in the future if not clearly regulated.

Book III of the Civil Code regulates the valid conditions for a gift, the rights and obligations of the parties, and the limitations that must be considered, in order to ensure that the implementation of the gift is in accordance with applicable legal regulations. A proper

understanding of the conditions for a gift will provide a more comprehensive picture of how the law regulates gifts to ensure certainty and justice for all parties involved. The conditions that must be met for a gift to be considered valid include:

- (1) The grant recipient must be an adult and have the capacity to take legal action.
- (2) The donor must have assets or goods that already exist and are ready to be donated.
- (3) The grantor and recipient of the grant may not be bound by marriage as husband and wife.
- (4) The grant recipient must be present at the time the grant process takes place.
- (5) The grantor must not promise that he will retain the right to use the gifted item, if he does so, the gift will be considered invalid.
- (6) A grant will be void if it is given with the provision that the recipient is required to pay off debts or other obligations that are not stated in the deed of grant or the attached list.
- (7) The grantor is permitted to set certain conditions regarding control over the donated goods.

Civil law and the Compilation of Islamic Law have a number of conceptual similarities, including in terms of gifts. Both legal systems view gifts with the same essence, namely (Nor Mohammad, 2020):

- (1) A grant is an agreement to give ownership of a property to another party.
- (2) The gift is made while the donor is still alive.
- (3) The assets donated must be in the form of objects, not debts.
- (4) The grant process is carried out without any compensation requirements.
- (5) Grants are made voluntarily, without any coercion.

Grants are often closely related to inheritance issues, especially in the context of the distribution of assets among family members. Grants and inheritance are two different contexts but are often related, grants are not only made to other people but can also be made between parents and their children, meaning that parents can make grants to their children while the parents are still alive. Referring to the provisions in Article 211 of the KHI, grants given by parents to their children can be counted as part of the inheritance to be divided according to the provisions of inheritance law. Based on these provisions, it is clear that grants and inheritance are not the same but are usually related to each other concerning property.

Parents give gifts to their children as part of their estate management to avoid future conflicts. By giving gifts during their lifetime, parents can ensure that their assets can be managed and used well by their children, while reducing the potential for disputes that may arise when the time comes to divide the inheritance after their death. Gifts from parents to their children are also often motivated by a desire to provide direct support, both financially and emotionally. For example, parents may give gifts to help their children buy a house, pay for their education, or

support an ongoing business. In this context, gifts are not just a transfer of assets, but also a form of parental attention and affection for their children.

Referring to the provisions of Article 210 paragraph (2) of the KHI, the assets to be donated must be the legal property of the party making the gift, so it is important to understand that only assets that are truly owned by the donor can be used as the object of the gift. This means that the donor must have legal ownership of the goods and not be in dispute or bound to another party. In other words, the donor is not allowed to donate goods that are not his or that are in the process of litigation. This provision aims to protect the recipient of the gift from being trapped in legal problems that may arise due to the illegal gift of goods. In addition to having various similarities in the context of gifts, civil law and Islamic law also have various differences. One of the differences lies in the regulation regarding the portion of the property that may be donated. In the Civil Code, the provision of gifts may not exceed the limit of *legitieme portie*, namely the portion of the property guaranteed for the heirs. If the heir only has one legitimate child, then the *legitieme portie* is half or half of the inheritance and if the heir has two legitimate children, then each child gets two-thirds of the share that should be received. Meanwhile, if the heir leaves three or more heirs, then the *legitieme portie portion* is set at three-quarters of the portion they should receive.

The provision is based on Article 914 of the Civil Code, which is an important basis in Indonesian inheritance law. This article is designed to protect the rights of heirs, especially in situations where the testator may make a gift to another party. With this regulation, it is hoped that the distribution of inherited assets will remain fair and in accordance with applicable legal provisions so that there is no inequality in the receipt of inheritance rights among legitimate heirs. According to the Compilation of Islamic Law, the maximum amount of assets that can be donated is one third of the total assets, which means that the portion for descendant heirs is greater than the assets that can be given to other parties. In accordance with Article 210 paragraph (1) of the KHI, a person who is at least 21 years old, has common sense, and is free from pressure, can donate up to one third of his assets to certain individuals or institutions. This donation process must be carried out in the presence of two witnesses.

3.2 Analysis of Granting of Gifts by Parents to One Child Without the Consent of the Other Child

Referring to Article 1 point 1 of Government Regulation (PP) Number 37 of 1998 concerning Land Deed Making Officials, it states that "Land Deed Making Officials, hereinafter referred to as PPAT, are public officials who are given the authority to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units". PPAT has a very important role in the land registration process, one of which is by preparing a deed that functions as valid legal evidence related to land rights. The deed is the basis for updating land

registration data as a result of legal actions that have been carried out. PPAT acts as a representative of the state who supervises and validates grant transactions, ensuring that all legal procedures have been followed and the rights of all parties are protected. Therefore, PPAT plays a very important role in the regulation and management of land rights in Indonesia. With the existence of PPAT, the process of transferring land rights can be carried out more transparently and accountably, and reduce the risk of disputes that can arise due to a lack of legal certainty.

In relation to grants of movable property, the deed of grant can be issued by a notary, while for grants of immovable property such as land and buildings, the deed must be made and issued by a PPAT. This provision is in accordance with Article 37 paragraph (1) of PP Number 24 of 1997 concerning Land Registration which refers to the rule that the transfer of land rights, including through grants, can only be registered if supported by a deed issued by a PPAT. Based on this, it is very important for all parties involved in the grant process to ensure that the transfer of land rights is carried out in accordance with applicable procedures, including the making of a deed by a PPAT. This registration process not only creates legal certainty for the party receiving the grant, but also protects the rights of the grantor. Without a valid deed, the grantee may face difficulties in claiming rights to the land or building in the future. Therefore, appropriate legal steps must be taken so that the grant can be carried out with transparency and clarity, so that all parties can feel safe and protected in the transactions carried out.

A deed of gift is a proof of ownership prepared before the Land Deed Making Officer (PPAT), which records the provisions regarding the transfer of rights from the party giving the gift to the party receiving the gift. In the document, the party giving the gift voluntarily surrenders the rights to the land and/or ownership rights to the apartment unit without receiving compensation and cannot be canceled (Salim, 2015). There are four important elements contained in the deed of gift, namely (Maya Sari, 2019):

- (1) There is written evidence
- (2) There is an intention to donate
- (3) The existence of a grant object
- (4) Grant conditions, which include giving without compensation and cannot be withdrawn.

The deed of gift prepared by the PPAT must comply with the provisions of Article 1320 of the Civil Code, which stipulates the requirements for the validity of an agreement. If the requirements in paragraphs 1 and 2 are not met, the agreement is null and void. Meanwhile, failure to fulfill the requirements in paragraphs 3 and 4 allows the agreement to be canceled. The contents of the deed must also comply with legal provisions and must not include prohibited acts or agreements. This article emphasizes that parties who are not competent to make agreements are

those who have not reached adulthood, are under guardianship, and other parties prohibited by law (Mulyoto, 2021).

The process of making a deed of gift by a PPAT begins with the submission of an application by the party who will make the gift. The PPAT will then verify documents related to land ownership, such as land certificates, and check the legal status of the land whether it is in dispute or not. After all documents have been verified, the PPAT will prepare a deed of gift that includes complete details regarding the granting of the gift, the identity of the grantor and recipient of the gift, and the object of the gift that is submitted. In addition, the deed of gift made by the PPAT has higher legal force than other documents because the deed is an authentic deed. This means that the deed is not only written evidence, but is also recognized by law as the main evidence in court if a dispute arises in the future. After the deed of gift is completed, the PPAT will submit the registration process to the Land Office to formalize the transfer of rights and record the recipient of the gift as the new owner of the land. It is also important to note that the PPAT has an obligation to provide an explanation to both parties regarding the legal consequences of the gift. For example, land that has been donated cannot be withdrawn except under certain conditions stipulated by law. The PPAT must ensure that the parties understand and agree with all the contents and consequences of the gift agreement before the deed is signed.

A grant made by a parent to one of their children before they die is a grant context related to inheritance. This has shown that the granting of a grant from a parent to a child must pay attention to inheritance law. According to Volmarr, inheritance law is the process of transferring assets along with their rights and obligations from the testator to the heirs (Salim HS, 2005). Prilo explained that inheritance law regulates various provisions related to assets left after the testator dies, including the transfer of ownership of the assets and their legal impacts. A grant given by a parent to one of their children must consider the right of *Legitime portie* or the legitimate portion of the inheritance. *Legitime portie* is a certain portion of the inheritance that must be received by the entitled heirs, in accordance with applicable laws. In Indonesia, inheritance law stipulates that every child has the right to a fair share of the parent's inheritance, including from grants given during life. Grants of land and buildings must be in accordance with applicable legal norms because failure to comply with the regulations can result in the cancellation of the grant or prolonged disputes between the interested parties. Donations are not only about the good intentions of the donor, but also require a thorough understanding of the relevant laws and provisions, which is important to ensure that the intention to donate the assets is achieved without causing legal complications.

The role of PPAT in land grants is not only limited to making formal documents, but also as a guardian of legal certainty in the process. The deed of grant made by PPAT provides legal protection for the grantee and ensures that all legal aspects have been fulfilled so that the transfer

of land rights runs legally and without dispute in the future. PPAT is required to act professionally because their work is high risk and often faced with potential problems. This requires a high level of accuracy and a strong understanding of the law, especially civil law which includes rules on individuals, families, agreements, and others. Given the importance of accuracy in carrying out these tasks, the slightest mistake can cause serious legal problems (Haldin Perdana, 2022). In terms of making a deed of grant, PPAT is very careful and carries out his duties carefully to avoid potential legal problems in the future. In practice, one of the steps often taken by PPAT is to ask for a letter of approval from other heirs when parents are going to make a grant to one of their children.

Based on this, the question arises whether a gift from a parent to one of their children really requires the consent of the other children? In the author's opinion, when parents are going to make a gift to one of their children, asking for a letter of consent from the other children is not an obligation, because this provision is also not regulated in the law. The laws and regulations in force in Indonesia do not explicitly require parents to obtain the consent of all parties or all children when they decide to give a gift to one of the children. So that it gives parents the freedom to make decisions regarding their property according to their wishes. Parents have the right to determine how their property will be allocated while they are still alive. Considering also that a gift is a legal act in which a person (the grantor) voluntarily surrenders the rights to property to another party (the recipient of the gift) without expecting compensation or recompense. The author is of the opinion that the decision to give a gift is entirely in the hands of the parents. Parents have the right to manage their property while they are still alive, including giving a gift to one of the children as long as it does not violate the right of *legitieme portie*. According to the author, the steps taken by the PPAT in requesting a letter of approval from other children in the case of a parental gift to one of the children, are merely a form of caution that is very necessary in terms of legal practice. Although legally there is no obligation that requires the PPAT to request such approval, this action aims to ensure that the gift process runs transparently, ensuring compliance with inheritance law which of course reduces the risk of potential disputes in the future.

This is done because if there is a violation of the *legitimate rights of the portie in the grant*, the consequences can be serious. The party who feels disadvantaged, namely the child who does not receive the grant or does not receive the proper portion, has the right to file a legal claim. In this situation, they can request the cancellation of the grant or appropriate compensation, which can cause disputes among family members in the form of a lawsuit filed with the court in which the Land Deed Making Officer (PPAT) can be a co-defendant. The author is of the opinion that a grant made by a parent to one child without the consent of the other child can be considered valid as long as it meets all applicable legal requirements such as the legal capacity of the grantor, a clear object of the grant, and without coercion, because the grant must be made of the free will of the

grantor without any coercion or pressure from any party. The validity of a deed of gift that has been made by a parent without a letter of consent from another child, especially if the deed has been transferred to another name, is still considered valid as long as there is no court decision canceling the deed of gift. This means that if there is a dispute arising regarding the grant, the party who feels aggrieved, such as an heir who does not agree with the grant, can file a lawsuit in court. In this case, the court will assess the validity of the deed of gift based on the evidence and arguments submitted by each party. If the court decides that the deed of gift is invalid or violates the rights of the heirs, then the deed can be canceled, even though the process of changing the name of the land or other property rights has been carried out. Conversely, if there is no lawsuit or court decision that cancels it, the deed of gift remains valid.

IV. CONCLUSION

a gift made by a parent to one of the children without the consent of the other child is still considered valid under Indonesian law. The applicable law in Indonesia does not require such consent, as long as the gift made does not violate the legitimate rights of *the grantor* and has met the legal requirements, such as the legal capacity of the grantor, clarity of the object of the gift, and the absence of coercion. Parents have the freedom to organize and manage their property while they are still alive, including making a gift to one of the children, on the condition that they continue to pay attention to the *legitimate rights* of the heirs. The validity of a deed of gift given by a parent to one of the children without the consent of the other child, especially if the deed has been transferred to another child's name, remains valid under the law, and the deed will remain valid and its validity will be recognized as long as there is no court decision that cancels the deed of gift. So that PPAT does not need to require and request a letter of consent from other children to parents who will provide a grant to one of their children, because this is not required by law, as long as it does not violate the provisions of *legitime portie*. Parents who wish to provide a grant to one of their children are advised to communicate openly with the other children. This can help reduce potential conflict and maintain family harmony.

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