

IMPLEMENTATION OF ARTICLE 1666 OF THE CIVIL CODE ON HOUSE DISPUTES GRANTED BY A PERSON TO A NON-HEIR

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ABSTRACT

The definition of a grant is contained in Article 1666 of the Penal Code, which is an agreement by which a grantor gives up an item free of charge, without being able to withdraw it, for the benefit of a person who accepts the delivery of the goods. This study aims to find out and analyze about giving grants to someone who is not an heir. As well as knowing and analyzing about dispute resolution about granting grants to someone who is not an heir. This research belongs to the normative type of research. So it can be seen that the granting of a grant to a person who is not an heir is permissible, with the requirement that there is the consent of the heirs and cannot be more than 1/3 of the existing estate. In addition, the settlement of disputes regarding the granting of grants to a person who is not the heir is the heir may sue again for the grant if in the grant the grant exceeds 1/3 of the estate, other than because it does not first fulfill the *legitime portie* to the heirs.

Keywords: *Disputes, Grants, Heirs*

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INTRODUCTION

The definition of a grant is contained in Article 1666 of the Penal Code, which is an agreement by which a grantor delivers an item free of charge, without being able to withdraw it, for the benefit of a person who accepts the delivery of the goods (Harahap, 2019).

The law only recognizes gifts between living persons.

To that end, the grant is irrevocable and irrevocable by the parent, except in the following cases as contained in Article 1688 of the Penal Code:

1. If the conditions of the grant are not met by the grantee;
2. If the grantee is guilty of committing or participating in attempted murder or other crime against the benefactor;
3. If the benefactor falls into moderate poverty the grantee refuses to provide for him.

Moreover, under Articles 916a to 929 of the Penal Code for the benefit of inheritance, objects that have been granted may be "recalculated" in value into the total estate as if they had not been granted (Kumala, 2016).

This provision relates to the *legitime portie*, namely that lest the grant once granted by the testator, reduce the absolute share that the heir should have (PULUNGAN, 2015).

Grants are regulated in the Civil Code (hyperdata) and Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) (Putri et al., 2019).

Article 1666 of the Civil Code states as follows: "A gift is an agreement by which a grantor delivers an item free of charge, without being able to withdraw it, for the benefit of a person who accepts the delivery of the goods (DIPA-BOPTAN, n.d.). The law only recognizes gifts between living people."

While the definition of a grant, according to Article 171 letter g of the Compilation of Islamic Law (KHI), is the giving of an object voluntarily and without remuneration from a person to another living person to have (Dalimunthe, 2020).

Parental grants to children are allowed, but keep in mind that the size of property that can be given must not exceed 1/3 part as in Article 210 of the KHI which reads:

"A person who is at least 21 years old, sensible and without coercion may give as much as 1/3 of his property to another person or institution and in the presence of two witnesses"

Based on the provisions of Article 210 of the KHI which states that the size of the property that may be granted must not exceed 1/3 part of the grantor's property.

If it is deceased then the grant can be counted as an inheritance as mentioned in Article 211 of the KHI which reads: "A grant from a parent to his child can be counted as an inheritance".

The definition of 'can' in the article does not mean imperative (necessarily), but is one of the alternatives that can be pursued to resolve inheritance disputes (Klenk & Meehan, 2015).

As long as the heirs do not question the grants already received by some of the heirs, then the unfunded estate can be distributed to all the heirs according to their respective portions (Drucker, 2013).

But if there are some heirs who question the grant given to some other heirs, then the grant can be counted as an estate, by calculating the grant that has been received with the portion of the inheritance that should have been received, if the grant that has been received is still less than the portion of the inheritance then it remains only to add to the shortfall, And if it exceeds the portion of the inheritance then the excess grant can be withdrawn to be handed over to the heirs who are deficient in the portion. Therefore this discussion will discuss grants given to a person who is not from his heirs (Yamamoto & Esteban, 2010).

METHOD

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, 2007).

According to Marzuki (2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in legislation or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Asikin, 2004).

RESULTS AND DISCUSSION

Grant to a person who is not an heir

In the process of transferring land rights (grants) from pensioners who do not have heirs to the father's neighbors, they must go through procedures in accordance with the provisions of the applicable law.

The provisions of the Grant are stipulated in Article 1666 of the Civil Code (BW), that a grant is a grant given by a person to another person free of charge and irrevocably, on movable or immovable goods (by deed of the Land Deed Making Officer – "PPAT") while the grantor is still alive.

In this case what is given is Land (immovable goods). Then the process must be carried out in front of PPAT / PPATS.

The following are conveyed the terms of the grant as referred to:

The grantor must be an adult, that is, legally capable, except in the rights stipulated in the seventh chapter of the book to one of the Civil Code (Article 1677 of the Civil Code)

A grant must be made with a Notarial deed originally kept by a notary (Article 1682 of the Civil Code).

A grant binds the grantor or publishes an effect starting from the grant with the express words received by the grantee (Article 1683 of the Civil Code).

Grants to immature persons who are under parental power must be accepted by the person exercising parental power (Article 1685 of the Civil Code).

After the enactment of Government Regulation Number 24 of 1997 concerning Land Registration, every grant of land and buildings must be carried out by deed of Land Deed Making Officer (PPAT).

Based on the provisions of Article 38 paragraph (1) of Government Regulation 24/1997, the making of the deed is attended by the parties who carry out the legal act concerned and witnessed by at least 2 (two) witnesses who are qualified to act as witnesses in the legal act.

It is further explained in Article 40 of PP 24/1997, no later than 7 (seven) working days from the date of signing of the deed concerned.

PPAT is required to submit the deed it made along with the relevant documents to the Land Office for registration and PPAT must submit written notice of the submission of the deed to the Land Office to the parties concerned.

In order to prevent future prosecutions, in practice it is always required to be a Letter of Consent from the grantor's biological child(s). Thus, the granting of grants should pay attention to the consent of the heirs and not violate their absolute rights.

Absolute rights are part of the inheritance established by law for each heir (see Section 913 BW). If such proceedings have been carried out and do not violate the absolute rights of the heirs, then the land is legally transferred ownership to the neighbor (Haddad, 2003).

In indigenous peoples in particular, often the distribution of inheritance/grants is not carried out in front of authorized officials with proper procedures, only verbally. This kind of transfer of rights makes it difficult to prove if one day there is a land dispute.

Dispute resolution on the granting of a grant to a person who is not an heir

According to schyut, a conflict or dispute is a situation in which two or more parties pursue goals that one another cannot be aligned with and they with the power of effort try to consciously oppose the goals of the other party.

Every dispute needs to be resolved so that the problem can be resolved quickly and does not cause things that are not wanted later (Vincent et al., 1994).

And so that harmony between communities can be well established so that a safe, peaceful, and peaceful society can be achieved.

In terms of dispute resolution, there are two types of settlements that can be taken, namely dispute resolution in court and outside the court, namely:

Dispute resolution through the courts

Dispute resolution through the courts is guided by civil procedural law which regulates the requirements that must be met in order for a dispute to be filed and the efforts that can be made.

Broadly speaking, Indonesian society generally resolves disputes by deliberation, but along with the times, Indonesian society has slowly begun to be influenced by western culture which resolves disputes through the courts.

Because they consider dispute resolution through the courts to provide more certainty for the parties to the dispute so that the parties are easy to implement and carry out court decisions.

Out-of-court dispute resolution

Out-of-court dispute resolution is dispute resolution carried out based on the agreement of the parties and the dispute resolution procedure is left entirely to the parties to the dispute which can be done in various ways such as negotiation, mediation, arbitration, and conciliation (Sembiring & SH, 2011).

The definition of a grant is contained in Article 1666 of the Penal Code, which is an agreement by which a grantor gives up an item free of charge, without being able to withdraw it, for the benefit of a person who accepts the delivery of the goods.

The law only recognizes gifts between living persons

To that end, the grant is irrevocable and irrevocable by the parent, except in the following cases as contained in Article 1688 of the Penal Code:

If the conditions of the grant are not met by the grantee;

If the grantee is guilty of committing or participating in attempted murder or other crime against the benefactor;

If the benefactor falls into moderate poverty the grantee refuses to provide for him.

Moreover, under Articles 916a to 929 of the Penal Code for the benefit of inheritance, objects that have been granted may be "recalculated" in value into the total estate as if they had not been granted.

This provision relates to the legitime portie, namely that lest the grant once awarded by the heir, reduce the absolute share that the heir should have.

Under Article 920 of the Penal Code, the heirs may make a claim for deduction against the grant in the event that the absolute share that the heirs should have received is not met.

If the object has been in the power of a third party, the heirs still have the right to make demands for the reduction or return of the object (Article 929 paragraph (1) of the Criminal Code).

The right to advance this claim will fall after the lapse of 3 (three) years from the time the heirs receive the inheritance (Article 929 paragraph (4) of the Penal Code).

The heirs may therefore make a claim for reduction or return of the property which has been granted to one of the heirs in the event that the legitime portie (absolute share) of the heirs is not fulfilled.

One example, in this case, can be seen in the Supreme Court decision No. 841K/Pdt/2003.

In the case, the judge finally sentenced to return the grant for the fulfillment of the legitime portie first to the heirs. The ruling was later upheld at the cassation level.

That under Article 1086 of the Penal Code, if the grantee is an heir in a straight line down, then what has been received as a grant from the testator, must be re-entered into the estate.

Unless expressly provided exempt from such entry obligations. Whereas if the grantee is an heir not an heir of a straight line down, then the income is not necessary, unless the heir expressly instructs the grantee to make income.

CONCLUSION

Based on the above explanation, it can be concluded that the granting of a grant to a person who is not an heir is allowed, with the requirement that there is the consent of the heirs and that cannot be more than 1/3 of the existing estate.

In addition, in the settlement of disputes regarding the granting of grants to a person who is not the heir may sue again for the grant if the grant exceeds 1/3 of the estate, other than because it does not first fulfill the legitime portie to the heirs.

In addition, the Author takes an example of a case in number 63/Rev.P/2015/PA-RAP. Where the Petitioner on behalf of H.AN et al As the Petitioner against Melisa as the Petitioner.

The petitioner's basis for submitting an application to the Rantauprapat Religious Court is as follows :

The petitioner et al are the heirs of Alm. Hj. N, who during his lifetime had only an adopted son named M.

Alm. Hj.N has given all his property to an adopted son named M in the form of :

1 Permanent house

2 Cars

1 Motorcycle

4 Rental houses are located behind the main house

All the glassware and some jewellery that have all been renamed in the Notary Office in the name of M.

By the Judgment of the Religious Court, it was decided that the entire amount of property was divided between the Petitioner and the Respondent on the ground that the Respondent was not the heir of his adoptive Mother.

According to article 1666 of the Civil Code, the grant may not be withdrawn, however, if the grant is given to non-heirs or other persons no more than 1/3 of the total property.

The heirs in the case are the siblings of Alm. Hj. N for having a blood connection. Therefore, grants should not be awarded more than 1/3.

Based on the judge's ruling, the Author agreed that it was the heir of Alm. Hj. N objected and in this case, the grant was granted despite having changed its name to M. Then the grant could be canceled on the ground that M was not the heir or not another person of the right of the title of property of Alm. Hj. N.

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