

## LEGAL CONSEQUENCES OF THE REVOCATION OF LAND AND HOUSE GRANTS BY A MOTHER TO HER BIOLOGICAL CHILD UNDER THE COMPILATION OF ISLAMIC LAW

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### Abstract

This study analyzed the case of grants in decision number 4301 / Pdt.G/2023 / Pa.Jr, which involves a mother who donates all of her property in the form of land and a house to one child without the consent of the other children. A grant is a voluntary transfer of property from one person to another without coercion and generally irrevocable. In this context, however, the grant is canceled because there is no consent from the other heirs who should have the same rights to the property. Revocation of a grant refers to the act of canceling the status of a grant that has previously been granted, which in this case occurs due to a violation of the procedure established in the law. Under Articles 210 and 212 of the compilation of Islamic law, grants made without the consent of all heirs are considered invalid. As a result, the deed of Grant registered in the name of the donee is considered null and void, so the grant is considered an inheritance that must be divided equally among all legal heirs, in accordance with Article 213 of the compilation of Islamic law. This study emphasizes the importance of complying with legal procedures in grants to prevent disputes. The cancellation of this grant also shows the relevance of the need for the consent of all heirs in the grant process so that it does not contradict the provisions of the applicable law.

**Keywords:** Grant, Grant Cancellation, Compilation of Islamic Law, Inheritance, Legal Consequences

## INTRODUCTION

Grants, as a means of transferring property in everyday life, play a significant role in human social relations. They are often given to express affection or assist family, friends, or those in need. In Islam, granting gifts is encouraged, provided that the giver is alive at the time of giving. However, even though grants are voluntary, they cannot be easily revoked. This understanding is particularly crucial in familial contexts, such as grants from parents to children, as improper procedures can lead to disputes.

Legal complications arising from the cancellation of the grant, as illustrated in Decision Number 4301/Pdt.G/2023/Pa.Jr. from the Jember Religious Court, underscore the significance of grant arrangements within the Islamic legal system. This case highlighted the issue of grants that neglect the rights of other children, who should equally share in parental property. It emphasizes the challenges of applying the principle of justice and the necessity of involving all heirs in property transfers. Furthermore, Article 210, paragraph (1) of the Compilation of Islamic Law stipulates that granting property to one child without the consent of the others may constitute a violation of established provisions.

The cancellation of the grant becomes relevant in this context because it reminds us that although the grant is a voluntary act, it must be carried out taking into account the rights that exist within the family. In this case, the conditions of the grant must be met to avoid abuse or injustice that could harm one of the parties, be it the recipient or the other heirs. This issue is especially relevant in today's society, where disputes over inheritance or grants often lead to long family conflicts. Therefore, an understanding of the legal provisions in the grant and their correct application are essential to prevent disputes from occurring to the detriment of the parties involved.

The results of this study provide an overview of the importance of paying attention to the legal aspects of grants, especially in the context of the family. The cancellation of the grant in this case shows that non-compliance with legal procedures can have far-reaching consequences, with legal consequences leading to the return of property rights to the grantor and the cancellation of the certificate in the name of the donee. This shows that the legal regulation in the grant is not just a formality, but has the purpose of protecting the rights of all parties involved, as well as maintaining justice in the transfer of property within the family.

## RESEARCH METHOD

This research employs a normative juridical method, utilizing legal, conceptual, and case approaches. The legal approach examines the relevant regulations concerning the cancellation of grants made by mothers to their biological children that exceed one-third of the property, aiming to understand both the practical and academic applications of the applicable law. A conceptual approach is employed to explore the legal principles, concepts, and theories underlying the cancellation of land and house grants in this context. The normative juridical method was selected for its focus on analyzing the legal norms present in legislation and their practical application. This approach ensures transparency regarding the legal foundations for grant cancellation and elucidates the accuracy and relevance of the research findings within the framework of applicable law.

## RESULTS AND DISCUSSION

### Analysis of Judicial Considerations (*Ratio Decidendi*) in the Decision of the Religious Court of Jember No. 4301/Pdt.G/2023/Pa.Jr

#### A. Introduction

In the lawsuit for the annulment of a grant (*hibah*) No. 4301/Pdt.G/2023/Pa.Jr, the Plaintiff and Co-Defendants, as heirs, have rights over the land and house in dispute. However, the Plaintiff cannot arbitrarily annul the grant without a lawful legal process, as the annulment of a grant can only be carried out through mutual agreement between the grantor and the grantee. Therefore, the Plaintiff's action of filing a lawsuit in the Religious Court of Jember to annul the grant of the land and house follows the appropriate legal procedures.

Based on the arguments presented by the Plaintiff, the Defendant did not respond and was only present during the on-site examination. The Plaintiff strengthened their claim by submitting documentary evidence and presenting two witnesses. The Panel of Judges opined that since the Defendant did not respond to the Plaintiff's lawsuit, according to the legal fiction principle and Article 174 of the Indonesian Regulation on Civil Procedure (HIR), the Defendant was deemed to have acknowledged and affirmed the Plaintiff's arguments, which were supported by the submitted evidence.

#### B. Legal considerations in Decision No. 4301 / Pdt.G/2023 / Pa.Jr

Analysis of Decision No. 4301 / Pdt.G/2023 / Pa.Jr aims to assess the extent to which the decision is under the provisions of the grant according to Islamic law, in particular those provided for in the compilation of Islamic law (KHI). In this case, the plaintiff filed a lawsuit for the cancellation of the grant because the grant did not meet the formal or material requirements established by the KHI.

Article 210 paragraph (2) KHI defines a grant as a voluntary transfer of ownership without

compensation from one individual to another living individual. This article is also in line with Article 171 letter (g) which mentions grants as voluntary and unconditional gifts. However, in this case, the plaintiff handed over all his property to the defendant, which violated Article 210 paragraph (1) KHI. The article limits the grant to a maximum of 1/3 of one's property unless there is consent from other heirs. The grant in question was made without the consent of the other heirs and before the estate was divided according to Islamic inheritance law.

The decision of the Jember religious court that granted the plaintiff's lawsuit can be considered appropriate because the evidence submitted by the plaintiff has met legal requirements both formal and material. Deed Of Grant No. 56 / District. Sumberbaru/2009 and all legal consequences are canceled, because it contradicts the provisions of articles 210, 211, 212, and 213 KHI governing the granting of grants legally following the principles of Islamic inheritance.

### C. Legal Violations by the PPATS in the Validity of the Grant

PPATS (land deed making officials) are responsible for ensuring the validity of grants in accordance with Islamic law (KHI) and making valid deeds. In this case, PPATS is wrong because the grant made exceeds the limit of 1/3 of the property, does not involve the consent of other heirs, and there may be an element of coercion in the grant process. A similar problem occurred in the Religious Court of Gresik where a mistake in writing the certificate number caused the deed to be declared invalid. This is similar to this case under study, where PPATS erred in ensuring grants in accordance with Islamic law (KHI), such as exceeding the limit of 1/3 of the estate and without the consent of other heirs. Both of these cases show negligence in the verification of documents that caused the deed of grant to be legally problematic. Therefore, it is necessary to enforce the law against PPATS and legal counseling to prevent similar mistakes in the future.

Article 210, paragraph (1) of the Compilation of Islamic Law (KHI) stipulates that an individual who is at least 21 years old, mentally competent, and acting voluntarily may donate a maximum of one-third of their property. In this case, the grant made by the plaintiff to the defendant exceeded this permissible limit, as it involved the entirety of the plaintiff's property, thereby violating this provision. Furthermore, the property located in the hamlet of Wedusan, recorded in the name of Sri Wahyuni, was not distributed to the other heirs, which should have been included in their inheritance.

The granting of this property involved coercion, as the defendant persuaded the plaintiff with the promise that the granted property would remain in common ownership, including that of the other children. This situation contradicts the fundamental requirement that grants must be made voluntarily and without coercion, as stipulated in Article 211 of the Compilation of Islamic Law (KHI). According to this article, a grant from a parent to a child can be considered part of the inheritance. Consequently, any grant exceeding the legal share of the other heirs must be adjusted accordingly.

In addition, Article 212 of the KHI states that grants cannot be revoked, except for grants made by parents to their children. However, in this case, the grant is made entirely to the defendant, resulting in losses for the rest of the children, who were supposed to get a share by inheritance law. Therefore, the panel of judges decided to cancel the grant listed in the deed of Grant No. 56 / District. Sumberbaru/2009, because the grant is unknown and not approved by the other heirs.

Article 213 of the KHI also states that grants granted while the grantor is in terminal condition must obtain the consent of the heirs. Although there is no evidence that the plaintiff is in terminal condition, the grant given unilaterally to the defendant without the consent of the other heirs is still considered invalid. Revocation of the grant in this case is possible because the granting of the grant is carried out without the knowledge and consent of other heirs, which contradicts the basic principles of inheritance and grants in Islamic law.

Overall, this decision is in line with the provisions contained in the KHI, which emphasizes the importance of meeting the formal and material requirements in granting grants and the need for their approval in grants involving all assets. In this context, further analysis of the application of Islamic legal principles and comparison with similar grant cases will enrich the understanding of Grant practice in the Indonesian legal system.

### D. Legal Consequences for the Parties Following the Decision No. 4301/Pdt.G/2023/Pa.Jr

The cancellation of the grant in this ruling resulted in the return of the property to the benefactor. If the grant object has been registered in the name of the donee, the land certificate held by the defendant becomes invalid and must be revoked. Article 210 of the Compilation of Islamic Law (KHI) stipulates that, grants may only constitute a maximum of one-third of the grantor's total property to safeguard the rights of other heirs. In this case, the grant made by the plaintiff to the defendant exceeded this limit and did not involve the consent of the other heirs, clearly violating Article 210 of the KHI.

Additionally, Article 212 of the KHI states that a parent's grant to a child can be cancelled; however, this provision does not extend to grants made to other parties. The grant executed by the plaintiff, which encompassed all of his property without the consent of the other children, contravenes Article 210 of

the KHI and infringes upon the rights of the heirs. Consequently, the deed of grant is deemed invalid, and the certificate registered in the name of the defendant should be regarded as null and void. This decree aims to protect the rights of heirs who are entitled to their rightful share of the inheritance under Islamic law.

#### IV. CONCLUSION

Consideration of the judge on Decision number 4301 / Pdt.G/2023 / Pa.Jr. granted the plaintiff's lawsuit because the grant violated Article 210 of the KHI, exceeded the limit of 1/3 of the property, was carried out by force, and without the consent of other heirs. PPATS are also negligent in verifying consent.

As a result, the object of the dispute was returned to the plaintiff and the deed of Grant on behalf of the defendant was cancelled, confirming the importance of compliance with Islamic law in penghimanan. Further research is advised to explore grant practices in Islamic law, the role of PPATS in verifying grants, and comparisons between Islamic law and positive law in Indonesia, in order to find solutions to improve the protection of heirs' rights and ensure the validity of grants.

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