

SOCIO-ECONOMIC ASPECTS OF URBAN GRANT CANCELLATION: Examining Religious Court's Decision on Grant Cancellation

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Abstract: This study aimed to look at socio-economic aspects of grant cancellation in urban communities by analyzing the considerations of the Medan Religious Court judge. This research was a normative legal research by analyzing decision No: 887/Pdt.G/2009/PA. Mdn and decision No. 249/Pdt.G/2010/PA. Mdn uses the theory of *masalah*. The results of this study showed that the judge, in giving the decision to cancel the grant, does not consider socio-economic aspects; the judge looks more at formal considerations only. The social aspect that occurred in the year of the acquisition of property was not taken into consideration by the judge; this was very detrimental for those who acquired property before 1974 and also for those who did not have sufficient access to information regarding formal requirements. On the other hand, the judge also did not consider how long the property was managed; some assets had been managed for years and had high economic value. Of course, this can be detrimental to those who have acquired the property for many years and have managed it. However, due to limited knowledge of formal requirements, the property can be manipulated into dispute. Even though socially, the property has been owned for many years and used by the community.

Keywords: socio-economic; grant cancellation; urban; Religious Court

Abstrak: Penelitian ini bertujuan untuk melihat aspek sosio-ekonomi pembatalan hibah di masyarakat perkotaan dengan menganalisis pertimbangan hakim Pengadilan Agama Medan. Penelitian ini merupakan penelitian hukum normatif dengan menganalisis putusan No: 887/Pdt.G/2009/PA.Mdn dan putusan No. 249/Pdt.G/2010/PA.Mdn menggunakan teori *masalah*. Hasil penelitian ini menunjukkan bahwa hakim dalam memberikan putusan pembatalan hibah tidak mempertimbangkan aspek sosia-ekonomi; hakim lebih melihat pertimbangan formal saja. Aspek sosial yang terjadi pada tahun perolehan hibah tidak dipertimbangkan oleh hakim; Ini sangat merugikan bagi mereka yang memperoleh hibah sebelum tahun 1974 dan juga bagi mereka yang tidak memiliki akses yang cukup terhadap informasi mengenai persyaratan formal. Di sisi lain, hakim juga tidak mempertimbangkan berapa lama hibah itu dikelola. Beberapa aset telah dikelola selama bertahun-tahun dan memiliki nilai ekonomi tinggi. Tentu saja, ini dapat merugikan mereka yang telah memperoleh hibah selama bertahun-tahun dan telah mengelolanya. Namun, karena pengetahuan yang terbatas tentang persyaratan formal, hibah sering dimanipulasi menjadi sengketa. Padahal secara sosial, hibah tersebut telah dimiliki selama bertahun-tahun dan digunakan oleh masyarakat.

Kata kunci: sosio-ekonomi; pembatalan hibah; perkotaan; Pengadilan Agama

Introduction

The judge of the Religious Court, in granting the lawsuit for the cancellation of the grant, has provided various explanations and considerations in his decision. In general, a lawsuit is filed by the plaintiff after the grantor dies, while the object of the grant is often disputed because its high economic value is not due to the wrong

use of the grant.¹ Unfortunately, the cancellation action injures the grantor's goodwill in providing benefits in the public interest. Some plaintiffs often dispute the existence of the object of the

¹ B T Ardianto, *Pembatalan Akta Notaris Tentang Pernyataan Pemindahan Dan Penyerahan Hak Milik Atas Tanah Dan Kuasa Di Pengadilan Negeri*, (repository.uin-suska.ac.id, 2020), <http://repository.uin-suska.ac.id/24964/>.

grant as inheritance, even though the land grant has been used for the benefit of the people and has economic value for the grantee and the local community.

In the decision of the Medan Religious Court with case No. 249/pdt. G/2010/ PA.Mdn, the judge decided to grant the plaintiff's claim to withdraw or cancel the grant due to non-fulfillment of the formal requirements for the grant letter that was not signed before a Notary. On this basis, the judge ruled that the grant transaction made on September 14, 2002, was invalid and the grant letter registered (watermarking) at the Notary's office (March 21, 2004) was not legally enforceable. The legal consequences of this judge's decision are the transfer of ownership of the grant property and the cancellation of the deed of grant made by the previous notaries. The Religious Court should explain that the withdrawal of grants by parents of their children should be based on the spirit of benefit so as not to adversely affect the grantee who is withdrawn from the grant.² Even though the grant has developed and built various facilities, which cost a lot of money and energy, in some places, there are even public facilities such as schools. Therefore, it is necessary to reconstruct the judge's consideration of the cancellation of the grant, the judge not only looks at the formal requirements but also the socio-economic implications in canceling the grant in order to realize justice for all parties.

To avoid repeated research, researchers tried to trace some of the results of research related to grant distribution. Both are sourced from the internet, books, scientific journal articles, and other literature. This will be presented several studies that have been televised by previous researchers, including research conducted by Oktaviana Adhani on "the validity of grant cancellation due to grantors falling into poverty"

in 2020.³ The results of this study show that grants of joint property given to immature children and represented by their mothers are valid. However, the provisions of the civil code state that grants can be canceled the word "revocable" means that the grants given are not void under the law but must be canceled by filing a lawsuit/application to the Court. Then research conducted by Alyatama Budify, et al in 2020. He discussed the "cancellation of the deed of grant in the Pematangsiantar District Court in the absence of decision number 33/pdt.g/2019/pn. PMS".⁴ The results of this study show that grantors have several rights in accordance with articles 1669, 1671, and article 1672 of the Civil Code. Not only that, the grantor can also withdraw the grant if the grantee does not heed everything stated in the deed of grant (article 1688 of the Civil Code). The legal impact on the grantee is to return the object of the grant in its original condition before the agreement was made. Regarding the decision number 33/pdt.g/2019/pn.pms it is in accordance with the relevant applicable regulations. Finally, a study conducted by Dhofir Catur Bashori and Miftahul Ichsan relating to the "cancellation of grants by religious courts" in 2021.⁵ The results of this study show that the cancellation of the grant based on the decision of the Situbondo Religious Court is in accordance with applicable regulations, while the judge's legal basis in deciding the case is that the grant transfer process carried out does not meet the requirements of the grantor.

It can be concluded that the above study discusses grant cancellation in general but does not examine in depth the socio-economic impact of judges' considerations using *maslahah* theory. Based on this, according to researchers, no one has specifically discussed the socio-economic implications of grant cancellation in the judge's

² Wirda Nasution, "Penarikan Kembali Hibah Dan Akibat Hukumnya Ditinjau Dari Hukum Islam (Studi Kasus Putusan Pengadilan Agama Medan No. 249/PDT.G/2010/PA.Mdn)," (Institusi Universitas Sumatera Utara (RI-USU), 2016), <http://repositori.usu.ac.id/handle/123456789/44100>.

³ Oktaviana & Bagiyo Atmaja Adhani, "Keabsahan Pembatalan Hibah Akibat Pemberi Hibah Jatuh Miskin," *Jurnal Komunikasi Hukum (JKH)*, vol. 06, no. 01 (2020), pp. 95–103.

⁴ A Budify, J A L Manurung, and ..., "Pembatalan Akta Hibah Di Pengadilan Negeri Pematangsiantar: Kajian Putusan Nomor 33/Pdt. G/2019/PN. Pms," *SIGn Jurnal* (2020), <https://jurnal.penerbitsign.com/index.php/sjh/article/view/77>.

⁵ Dhofir Catur & Miftahul Ichsan Bashori, "Pembatalan Hibah Oleh Pengadilan Agama," *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam*, vol. 05, no. 01 (2021), p. 6.

decision. Based on the problems stated above, researchers consider it important to conduct scientific-based research. One of the orientations is to be able to study and analyze socio-economic implications in legal considerations decided by the panel of judges, especially regarding the decisions of the Religious Court regarding disputes over the cancellation of grants that have been granted.

Method

This research was a normative legal research, which discusses the Medan Religious Court ruling related to the issue of grant cancellation. The approach used is a statutory approach (statute approach), and the legal material used is decision No: 887 / Pdt.G / 2009 / PA. Mdn and decision No. 249/Pdt.G/2010/PA.Mdn. From these two decisions, researchers collected materials related to the socio-economic conditions of the object of grant cancellation and judges' considerations related to socio-economics in making grant cancellation decisions. Then it will be analyzed using the theory of *masalah*.⁶

Results and Discussion

Judge's Consideration Regarding Socio-Economic Object of Grant Cancellation

Case No: 887/Pdt.G/2009/PA.Mdn

To further facilitate our understanding of the matter, here we describe the chronology of grant events contained in the ruling:

Year 1955	Year 1964	Year 1972	Year 1974	Year 2009
Islamic religious marriage between Plaintiff and Defendant I.	Plaintiff and Defendant I bought the land (object of dispute).	Plaintiff and Defendant I divorced Islamically. Since 1972 the property has been controlled by Defendant I.	Defendant I is married to Defendant II.	The object of the dispute was granted to the son of defendant I from the result of his second marriage, (defendants III, IV and V).

Source: Medan Religious Court

The marriage of defendant I and plaintiff is a marriage of Islamic religion only, and even then it is recognized by the parties namely defendant I and plaintiff. The marriage in Islam or, called serial marriage or marriage under the hands, is carried out according to Islamic law.⁷ Article 2 of Law No. 1 of 1974 regulates the provisions regarding the legal requirements for a marriage in addition to being carried out according to the laws of each religion and belief, must also be recorded according to the applicable laws and regulations. The marriage is still valid because it was performed before the establishment of the Marriage Law. So the confession of each party alone can prove that they have been married, so it can be calculated since when the joint property began. In addition, there is another letter of evidence provided by the plaintiff to corroborate the statement that they are married, namely from the attachment to the decision of the case: Copy of ID card a.n. Nurmiah (illegible) marked: P.1 and Copy of Family Card No.1684/0069/005/KM/1984 dated February 18, 1986 issued by Lurah Indra Kasih hereinafter marked P.2.

In 1964 Defendant I together with the Plaintiff admitted to having purchased a plot of land of +1,240 which was the object of dispute in this case. Based on the evidence submitted by the prosecutor in the form of a photocopy of Land Certificate No.29098/A/IV/24 dated December 26, 1973 issued by the Head Regent of Level II Regency of Deli Serdang, hereinafter marked: P.4. Then when defendant I decided to remarry defendant II and then had children from his second marriage, on his own initiative defendant I gave the land/object of dispute to his children from his second marriage, with proof Photocopy of Deed of Grant No. 24 dated June 19, 2009 issued by Co Uton Utomo SH Notary in Medan then marked P.8. Defendant I gave the joint property without the plaintiff's knowledge or consent. However, in Defendant I's admission that the plaintiff and defendant I had agreed to

⁶ M Maharani, *Tinjauan Masalah Mursalahah Terhadap Pasal 210 Khi Tentang 1/3 Hibah*, (e-theses.iaincurup.ac.id, 2019), <http://e-theses.iaincurup.ac.id/id/eprint/478>.

⁷ Sukiati; Muhammad Hidayat; Muhamad Hasan Sebyar, "Analyzing the Practice of Hibah in Lieu of Inheritance among the Indonesian Muslim Community," *Al-Ulum Jurnal Pemikiran dan Penelitian ke Islaman*, vol. 23, no. 01 (2023), pp. 132–152.

divide the two lands orally, whereas in the trial the oral agreement was not strong as evidence because the plaintiff refused to ever agree with defendant I.

Regarding the process of resolving the cancellation of grants through the court, it is not easy to do because in the trial process, it requires evidence. Determining the burden of proof is not an easy problem because there is no single article that expressly regulates the division of the burden of proof. In practice, the panel of judges requires accuracy and wisdom to determine which party needs to be given the burden of proof first and next, therefore, it is necessary to record a legal act. Apart from this, the purpose of proving itself, both in science and in the field of law, in essence, always provides a basis for the certainty of something that is proved. In particular, the purpose of juridical evidence is to give confidence to the judge about the existence of certain events as well as to give a verdict based on evidence.⁸

That is why defendant I is very difficult to prove his words because Defendant I cannot prove that the land belongs to him which is part of the common property. In 1964 and Defendant I and the Plaintiff had entered into an unwritten agreement on the division of the common property. The land was part of Defendant I, but Defendant I could not prove this seeing the social conditions at that time, there was no regulation on this grant, even if there was this matter was not well socialized to the community. The land has been managed since 1972 and has buildings on it and has its economic value. Supposedly, if the property is joint, this lawsuit would have been filed long ago.

Analysis of the decision on the grant cancellation case above shows that in deciding the dispute over the cancellation of the grant, the panel of judges pays attention to the rights of the parties to the disputed object of the grant and looks at the evidence of evidence and the

absence of evidence. As a legal consideration, the panel of judges certainly uses Islamic inheritance law applicable in Indonesia or positive law in Indonesia, so it is expected to decide fairly. However, for the benefit of the people, in this judgment, more parties are taken over the grant property.

Plaintiff with Defendant I, then the act of Defendant I who has granted part of the disputed property to Defendant III, Defendant IV and Defendant V, is an unlawful act (*Onrechmatige daad*) and invalid because the property granted is not the right of Defendant I (*vide* Article 210 paragraph (2) of the Compilation of Islamic Law), on the basis of which the Plaintiff's claim for cancellation of the grant should be granted. Similarly, even according to Islam, *Fuqaha* disagrees about the permissibility of giving away common property that cannot be divided. According to Malik, Shafi'i, Ahmad, and Abu Tsaur, such grants are legitimate.

According to article 35, paragraph (1) of Law No. 1 of 1974 concerning marriage, joint barta is property obtained during marriage. The scope or limitation of joint property is regulated in paragraph (2), namely the property of each husband and wife and the property obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise. Therefore, the property granted by defendant I is proven to be joint property where Article 36 paragraph 1 of Law No. 1 of 1974 states that legal action with joint property must be through the consent of husband and wife.⁹ Considering that because of the status of the defendant's property it is still joint property.

The legal action of Defendant I granting land (object of dispute) to Defendant III, Defendant IV, and Defendant V in 2009 is unlawful because the land was purchased during his first marriage with the plaintiff, or called joint property. Plaintiff and

⁸ B K Satyo, *Aspek Hukum Penyelesaian Sengketa Tanah Hibah Yang Telah Didirikan Bangunan Karena Alat Bukti Lemah, (Studi Kasus Di Madrasah ...* (repository.unissula.ac.id, 2023), <http://repository.unissula.ac.id/32439/>.

⁹ A K Almeyda, *Terhadap Harta Bersama Berdasarkan Undang-Undang Perkawinan Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam (Studi Putusan Di Pengadilan Agama ...* (search.proquest.com, 2021), <https://search.proquest.com/openview/5ff0a9a386db63ce031b84d2a828b666/1?pq-origsite=gscholar%5C&cbl=2026366%5C&diss=y>.

Defendant I actually did not change the position of the property (land/object of dispute) as joint property of Plaintiff and Defendant I, because the land/object of dispute was acquired in 1964 or when plaintiff and defendant I were still in marriage. In addition, the joint property of the case is a property that has not been divided, therefore, the property is not absolutely the property of Defendant I, even though the land is in the name of Defendant I. Because the status of the defendant's property is still the joint property of the Plaintiff with Defendant I, the act of Defendant I, who has given part of the disputed property to Defendant III, Defendant IV and Defendant V is unlawful and invalid, because the property granted is not the right of Defendant I.¹⁰

According to Abu Haneefa, it is illegitimate. Fuqaha held that the receipt of common property was as valid as the acceptance of sale and purchase, while Abu Haneefa held that the receipt of the grant was not valid except separately and separately like a pawn. However, because the property claimed here is divisible land, the land is legal to be divided. In the KHI, joint property is regulated in more detail; article 1 letter f of the KHI states: Property in marriage or *shirkah* is property obtained either alone or together with husband and wife during the marriage bond in the future referred to as joint property without question registered in anyone's name. It also says in Article 92 of the KHI about the prohibition of a husband or wife without mutual consent to sell or transfer joint property.¹¹

The Plaintiff, the Tribunal considered it inappropriate because the property a quo status belongs jointly to the Plaintiff with Defendant I, so the Plaintiff should have asked for the property a quo to be returned to the Plaintiff and Defendant I, but since this has not been

done by the Plaintiff, the Plaintiff's claim on this subject should be declared inadmissible (*Niet Ontvangkelijke Verklaard*).

Case No. 249/Pdt.G/2010/PA.Mdn

The basis for the consideration of the judge of the Medan Religious Court in the decision of case No. 249/pdt. G/2010/PA.Mdn, which granted the plaintiff to withdraw or cancel his grant, i.e., non-fulfilment of the formal requirement for the grant letter not signed before a Notary. On this basis, the judge ruled that the grant transaction made on September 14, 2002, was invalid, and the grant letter registered (watermarking) at the Notary's office (March 21, 2004) was not legally enforceable. The judge also referred to the provision that parents have the right to withdraw grants from their children while the child is still alive (Article 212 KHI and Article 714 KHES). Meanwhile, the legal consequences of this judge's decision are the transfer of ownership of grant assets and the cancellation of the deed of grant made by the previous notaries. In Islamic law, the withdrawal of a haram grant is made unless the withdrawal of the grant is by the parents of the child. The legal consequences of the withdrawal of the grant are the cancellation of the previously made contract and the return of ownership of the property to the grantor.¹² Islamic law pays great attention to the aspect of benefit in the use and withdrawal of grant property; the aim is to avoid the grantee from damage and bad so that the withdrawn grant property can be used for good and preserve the property from bad. Based on this research, it can be suggested that grantors and grantees understand the formal provisions of grant contracts. The Religious Court should explain the disputed object of the grant in its decision. The withdrawal of grants by parents of their children should be based on the spirit of benefit so as not to have a negative impact on the grantee who withdraws the grant.

¹⁰ T wilman Hakim, *Hibah Waris Tanpa Persetujuan Salah Satu Ahli Waris (Studi Kasus Putusan Pengadilan Negeri Cirebon Nomor. 18/Pdt. G/2017/Pn. Cbn)* (search.proquest.com, 2022), <https://search.proquest.com/openview/ac2aa084d21a80a6cc5546f321bfb66f/1?pq-origsite=gscholar%5C&cbl=2026366%5C&diss=y>.

¹¹ U Nushfah, *Pandangan Hukum Islam Terhadap Penarikan Kembali Harta Seseorang Pasca Perceraian Di Desa Pekalongan Winong Pati*, (repository.iainkudus.ac.id, 2017), <http://repository.iainkudus.ac.id/id/eprint/993>.

¹² A Machzumi, *Pembatalan Akta Hibah Pasca Terbitnya Sertipikat Hak Milik (Analisis Putusan Pengadilan Negeri Depok No. 14/PDT. G/2007/PN. DPK)*, (repository.narotama.ac.id, 2019), <http://repository.narotama.ac.id/1109/>.

Property derived from grants is an important issue in human life because it often causes conflicts, especially when it comes to a treaty and its revocation. This study analyzes the grant arrangements in Islamic law, judges' considerations, and the legal consequences of the Medan Religious Court Decision Number 249/pdt. G/2010/PA.Mdn and the revocation of grants and their use for everything contrary to the welfare of the people in view of Islamic law. This research uses normative juridical and descriptive analytic methods. Data collection was carried out by conducting literature studies and field studies in the form of documentation and interviews with judges and notaries regarding the decisions of the Medan Religious Court.

In conclusion, grants in Islamic law are clearly regulated in the Quran and Hadith¹³. Grants in Indonesia are regulated in KHI (Compilation of Islamic Law) KHES (Compilation of Sharia Economic Law), including the principle of validity of grants (Article 10 KHI and Article 685 KHES). While the judge of the Medan Religious Court in decision Number 249 / pdt. G/2010/PA.Mdn agreed to the plaintiff to revoke or cancel his grant because a Notary Notary did not sign the Grant certificate, so the Judge ruled that the grant transaction signed on September 14, 2002 was invalid and the Grant Grant Letter that had been registered (waarmerking) at the NI Notary Office (March 21, 2004) had no legal force. The judge also referred to the provision that parents have the right to withdraw grants that have been given to their children while the child is still alive (Article 212 KHI and Article 714 KHES). The legal consequences of the judge's decision are the transfer of title to the grant property and the cancellation of the deed of grant signed by the Notary before. In Islamic law, the withdrawal of a grant is haram unless it is made by the parents of the child.¹⁴ The

legal consequences of withdrawing the grant are the cancellation of the previous contract and the transfer of property to the grantor. Islamic law pays great attention to the welfare aspect in the utilization and withdrawal of grant property. The goal is that the grantee avoids adverse effects so that his withdrawal can be used for benefit and avoid evil. The party giving and receiving the grant property is advised to understand the formal provisions in the grant contract. The Religious Court should have explained the disputed object of the grant in its ruling. Grants withdrawn by parents from their children should be based on the spirit of welfare so as not to adversely affect the revoked grantee.

Wealth is an important issue in human life that often causes conflict when the property is given to family members and other people. One of them is giving in the form of grants. Starting from the grant items given and transferred ownership to the issue of the validity of the grant agreement and the return grant. This study examines grant arrangements in Islamic Law, the basis for judges' considerations and the legal consequences of the Medan Religious Court decision No. 249/pdt. G/2010/PA.Mdn, as well as the reflection of Islamic Law on redefining grants and their uses for things that are contrary to human benefit. This research is a normative juridical that is descriptive analytical. Data collection techniques were carried out through literature research, field research in the form of documentation and interviews with judges and notaries about the Medan Religious Court decision No. 249 / pdt. G/2010/PA/Mdn. The results of the study concluded that grant arrangements in Islamic Law had been regulated in the Quran and Hadith.

Grant arrangements in Indonesia have also been regulated in the Compilation of Islamic Law and the Compilation of Sharia Economic Law (KHES), including the pillars and conditions of grant validity (Article 210 KHI and Article 685 KHES). Meanwhile, the basis for the consideration of the judge of the Medan Religious Court in

¹³ S M Hutagalung, *Praktik Peradilan Perdata, Kepailitan Dan Alternatif Penyelesaian Sengketa Edisi Kedua* (books.google.com, 2022), <https://books.google.com/books?hl=en&lr=%5C&id=eZVfEAAQBAJ%5C&oi=fnd%5C&pg=PP1%5C&dq=pembatalan+hibah+di+pengadilan+agama+medan%5C&ots=dTcLWqrmp e%5C&sig=ZfQouZjtG9mxZowmCun6pb6j9IU>.

¹⁴ M A Almunazar, M Manfarisyah, "Analisis Yuridis Pemberian Dan Pembatalan Akta Hibah Tanah Nomor

590.4/23/2007 Menurut Hukum Perdata Dan Kompilasi Hukum Islam," *Suloh: Jurnal Fakultas* (2019), <https://ojs.unimal.ac.id/suloh/article/view/2032>.

the decision of case No. 249/pdt.G/2010/PA.Mdn, which granted the plaintiff to withdraw or cancel his grant, namely the non-fulfilment of the formal requirement for the grant letter that was not read before a Notary Public. On this basis, the judge ruled that the grant transaction made on September 14, 2002 was invalid and the grant letter registered (waarmerking) at the Notary's office (March 21, 2004) was not legally enforceable. The judge also referred to the provision that parents have the right to withdraw grants from their children while the child is still alive (Article 212 KHI and Article 714 KHES). Meanwhile, the legal consequences of this judge's decision are the transfer of ownership of grant assets and the cancellation of the deed of grant made by the Notary before. In Islamic law, the withdrawal of a haram grant is made, unless the withdrawal of the grant is by the parents of the child. The legal consequences of relinquishing grants are the cancellation of previously made contracts and the return of ownership of property to the grantor. Islamic law pays great attention to the aspect of benefit in the use and translation of grant property, aiming to avoid the grantee from damage and bad, so that the withdrawn grant property can be used for good and preserve the property from bad. Based on this research, it can be suggested that grantors and grantees understand the formal provisions of grant contracts. The Religious Court should explain the disputed object of the grant in its decision.

Analysis of Socio-Economic Problems in Grant Cancellation Decisions

One form of ownership that is very important to the community is land ownership. The method that is often used in the transfer of land rights is through grants. Basically, it gives grants to others voluntarily, meaning without any counter achievements on the part of the grantor. Implementation of grant giving while the grantor is still alive¹⁵ Based on the Compilation

of Islamic Law (KHI), article 171 letter g states that a grant is "the gift of a person to another voluntarily without expecting anything in return and carried out interchangeably while both are alive." According to the Civil Code, article 1666 affirms that "a grant is a gift of a person to another person free of charge, and cannot be withdrawn at will, while the object granted is an object that moves or is not in its execution while the grantor is still alive." Based on the explanation of the article, it means that parental grants to children are allowed but must meet several conditions, including the amount of property that can be granted. In the event that the permissible limit is not to exceed one-third of his property (based on article 210 KHI). Nevertheless, it seems that the grant is irrevocable even in the event that the grant is given to a person who has a fraternal relationship or as husband and wife. However, the revocable grant is only the grant given by parents to their children in accordance with Article 212 of the IHL.

The majority of scholars argue that if the object of the grant is still controlled by the child or merged with the property of his parents, it can still be revoked, but if it has been mixed with his property or with the property of others, it cannot be revoked¹⁶. However, there is still the possibility of the grantor withdrawing a grant that has been given to someone for various reasons and certain circumstances. However, it is only limited to the withdrawal of grants from parents to children. With regard to the legal action aspect of granting, it seems that the community greatly facilitates the transition so that the community tends to do so without making a grant deed as evidence. By law, grants do not cause new problems if no one sues. Because a grant is someone's gift that is final, and no one can interfere with it. The problem

616/Pdt," *Premise Law Journal* (2016), <https://www.neliti.com/publications/161723/analisis-yuridis-terhadap-penerima-hibah-yang-melebihi-ketentuan-dalam-fiqih-dan>.

¹⁶ R R Fiodita, *Pandangan Hukum Islam Terhadap Penyitaan Barang Yang Sudah Diberikan (Studi Kasus Afiliator Tranding Indra Kenz Dan Doni Salmanan)*, (eprints.uinsaizu.ac.id, 2023), [https://eprints.uinsaizu.ac.id/19121/1/Fiodita Risky Ramadhani_Pandangan Hukum Islam Terhadap Penyitaan Barang Yang Sudah Diberikan.Pdf](https://eprints.uinsaizu.ac.id/19121/1/Fiodita%20Risky%20Ramadhani_Pandangan%20Hukum%20Islam%20Terhadap%20Penyitaan%20Barang%20Yang%20Sudah%20Diberikan.Pdf).

¹⁵ I Indamayasari, "Yuridis Terhadap Penerima Hibah Yang Melebihi Ketentuan Dalam Fiqih Dan Kompilasi Hukum Islam (Studi Kasus Putusan Pengadilan Agama Medan Nomor

is that the judge never looks at the extent to which the grant has been administered and to what extent it has been mixed with the grantee's estate, so that the judge's decision seems only to look formal but does not see the socio-economic conditions and impacts caused in society.

Regarding the process of resolving the cancellation of grants through the court, it is not easy to do because the trial process requires evidence. Determining the burden of proof is not an easy problem because there is no single article that expressly regulates the division of the burden of proof. In practice, the panel of judges requires accuracy and discretion to determine which party needs to be given the burden of proof first and next; therefore, it is necessary to record a legal act.

Apart from this, the purpose of proving itself, both in science and in the field of law, in essence, always provides a basis for the certainty of something that is proved. In particular, the purpose of juridical evidence is to give confidence to the judge about the existence of certain events as well as to give a verdict based on evidence.

Later, a lawsuit for revocation of the grant was filed when the grantor had passed away. Moreover, in its development, the value of objects donated continues to increase in economic value. No wonder in the future the object of the grant is often questioned by filing a lawsuit for cancellation to the court. However, what is unfortunate is that the plaintiff in the grant cancellation case did not respect the good intentions of the grantor in order to provide value for the benefit of the public interest. Ironically, the heirs even questioned the property that had been granted for the benefit of the people. This study inserts a discussion related to the cancellation of grants reviewed based on Islamic law and positive law, which intends to provide an overview of the provisions contained in the compilation of Islamic law and the Civil Code because grants regulated in the Civil Code cannot be separated from the influence of Islamic law. Although it is based on the influence of Islamic law, it is different in value from Islamic law because in the Civil Code,

grants are classified as free agreements that do not contain elements of help.

It was obtained from the research that the view of the judge of the Malang City Religious Court regarding article 968 of the Civil Code did not ask for this as stated in the Compilation of Sharia Economic Law (KHES) article 713, which reads: "A property granted must be certain and known". Moreover, in the perspective of Islamic law, it is also not permissible or invalid to grant a will to goods that do not clearly exist or do not yet exist. In the provisions regarding the grant of wills are contained in article 992 of the Civil Code, which reads: "A will, whether in whole or in part, may not be revoked, except by a special notarial deed, containing a statement of inheritance of all or part of the former will". Therefore, the view of the judge of the Malang City Religious Court regarding this article is invalid.

Jumhur Ulama argues that a person may give 1/3 of his property even if he is sick. They equate the process of granting a grant with a will with the terms of a grant that has fulfilled its conditions. This opinion of jumhur fuqaha is based on a hadith of the Prophet (peace be upon him) from Ibn Husen about a man who wanted to free six *sahaya* servants before his death; then he freed 1/3 of his servants and kept the rest. The 1/3 provision for giving property to others in Islamic jurisprudence is not explained. In the classical books, there is no provision 1/3. However, in contemporary books of jurisprudence, there is a provision of one-third. Even then it is not clearly explained, it is only a universal description associated with general property. There are two kinds of opinions: To make a grant by will, the reason being that the will relates to property and is a voluntary gift, so the amount of the grant equal to the will cannot exceed 1/3. A number of scholars support this opinion. Prioritizing the benefit of property, giving away property in whole or exceeding 1/3 has an impact on the benefit of grantors, including their heirs, both in economic life and their rights, which can have negative consequences on the survival of the next life. Grant 1/3 in Islamic jurisprudence resulting from the opinion of the scholar in the KHI is stated in writing and clearly in the KHI article

210 paragraph 1 so that the provision is the same as the will. That the grant is as much as 1/3.¹⁷

Some of the judge's considerations have reflected the benefit in terms of maintaining and safeguarding the property so that there is no harm to the Plaintiff and the Defendant, especially those who received the grant. Because the purpose of the proclamation of the law is to bring benefit and keep away *mudharat* as the rule of jurisprudence, which is to reject *mafsadah* (damage), takes precedence over taking benefit. Based on the judge's consideration, it can be understood that the panel of judges is eager to apply legal certainty in every decision; Gustav Radbruch argues that in law there must be at least three basic values (*Grundwerte*) so that all three become parameters when we talk about law. The three are legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*) and expediency (*Zweckmaszigkeit*). But in reality, these three are not always harmonious in their relationship, but more often of a tense nature. Legal certainty is sometimes not in line with justice and so on. So, when making decisions, one of the judge's tasks is to manage the three basic values. This demand means that judges don't just have to depart from one of the basic values. Here again, it is seen how complicated the work of the judge is so that the decision-making activity by the judge is an art (art) rather than logic.

The philosophy of the meaning of justice is actually to realize real justice. However, in fact, because the practice in the courts is generally based on the school of positivism that affirms procedures and views the law as a mere rule, what is achieved is procedural justice, not substantive justice. So, it is logical to say, if the desired procedural justice is in accordance with the laws and regulations, then the judge can be said to have internalized procedural justice for the parties.

This must be a reference for judges in taking every consideration and legal basis for deciding

cases, including in cases of cancellation of grants by parents to children. If the judge takes or cites laws or regulations other than those mentioned in Article 7 Paragraph (1) of Law Number 15 of 2019, amendments to Law Number 12 of 2011.

The concept of *maslahah* accepts the cancellation of the grant, whereby the Plaintiff is by the parents of the child. Whereas it is clearly stipulated in Article 212 of the Compilation of Islamic Law and Article 714 of the Compilation of Sharia Economic Law paragraph (2), which says that "If a parent gives a grant to his children, then he has the right to withdraw the grant as long as the child is still alive" in the context of this case the grantees or the children of the plaintiff (defendant II to defendant VI) are still alive and also the plaintiff's wife (defendant I) As parents who are also grantors (*wahib*) are still alive, basically if you look at the legal considerations by the judge in deciding the case of cancellation of this grant, it tends to put forward the proposition of refusal to withdraw the grant. So, on this side, it seems that the judge ignored other rules that are more relevant to this case so that it causes substantive and invisible legal justice.

Substantive legal justice affirms a just system or order assuming that the system is not the happiness of each individual but the greatest happiness of the greatest possible number of individuals in a group sense, that is, the satisfaction of certain needs, which are considered necessary to be met by the ruler or regulators such as clothing, food and shelter needs. However, which human needs should come first? This can be answered using rational knowledge, which is a value consideration determined by emotional factors and, therefore, subjective.¹⁸ Furthermore, the appellate and cassation panel of judges may decide to make the grant property remain the property of the grantee (defendant) by guiding the National Meeting of October 31, 2012, by giving only 1/2 of the object of the grant because, in this case, only the plaintiff wants to cancel the grant. The panel of judges in this case must not

¹⁷ Mahfuza Rozaldy, "Pemberian Wasiat Melebihi Ketentuan Ditinjau Dari Kompilasi Hukum Islam (KHI) (Studi Kasus Putusan Nomor 0027/Pdt. G/2017/PTA. Pbr)," *ZJurnal ZHukum ZAdigama*, *Jurnal Hukum Adigama* 05, no. 01 (2022): 46–64.

¹⁸ A H Rahman, "Dinamika Putusan Pengadilan Dalam Penyelesaian Sengketa Kewarisan," *AHKAM* (2023), <https://ejournal.yasin-alsys.org/index.php/ahkam/article/view/986>.

forget the rights of parents or plaintiffs who want to revoke the grant that has been given to the defendant. The panel of judges in deciding their cases is required to accommodate the purpose of the law, namely justice, certainty and legal expediency. In this case, the author considers that the decision of the appellate panel of judges is lacking in fulfilling the elements of the purpose of the law based on the purpose of substantive justice of the law, according to Hans Kelsen. In enforcing the law, there must be a compromise of these three elements, which must receive equal attention. Radbruch teaches that in the event of a clash or tension between the three objectives because they cannot be accommodated all, then the use of the three basic values of the law must use the principle of priority. The first priority is always "justice," then "expediency," and finally, "legal certainty".¹⁹

In practice in the judiciary, it is very difficult for a judge to absorb all three principles into one ruling. When faced with this situation, the judge must choose one of three principles on which to decide the case, and it is impossible to include all three principles in one decision. When a judge takes a decision that is closer to the principle of legal certainty, then the judge automatically moves away from the point of justice. On the other hand, if a judge takes a decision closer to justice, then the judge will naturally move away from the point of legal certainty²⁰. So, the connection in the decision to cancel the parental grant is if the judge emphasizes considerations and decisions that lead to the fulfilment of the principle of justice, then based on this opinion, the judge can indirectly be said to move away from the principle of legal certainty. However, basically, *mashlahah*, in accordance with the provisions of sharia, must be accepted and taken into account in its legal determination. On the other hand, any *Mashlahah* that contradicts Shariah must be rejected because *mashlahah* is something that returns to the burden of life and the perfection

of life and the satisfaction of the necessities of life, both biological and intellectual needs, to achieve the perfection of human life.

Conclusion

With regard to the social aspect, it seems that the community greatly facilitates transactions so that people tend to transfer property rights verbally. Legally, grants like this don't pose a problem if no one demands. Because a grant is a person's gift that is final, and no one can interfere with it. The problem is that the judge never looks at the extent to which the grant has been rendered and to what extent it has been mixed with the grantee's estate; or in other words the judge does not look at the socio-economic aspect. So that the judge's decision seems to only look at formal aspects but not look at socioeconomic conditions in society. The process of resolving the cancellation of grants through the court, is not easy to do because the trial process requires evidence. Moreover, in the past, the culture of handing over grants was carried out verbally. However, the purpose of proof is essentially to provide a basis for certainty of something to give confidence to the judge about the existence of certain events, and to give a verdict based on evidence. Judges must conduct an assessment of socio-economic aspects before deciding on the cancellation of grants. Some of the judge's considerations have reflected the benefits in terms of preserving the property so that there is no harm to Plaintiffs and Defendants, especially those who receive grants. Since the purpose of the proclamation of law is to bring benefits and keep *mudharat* away because the jurisprudential rule of rejecting *mafsadah* (damage) takes precedence over taking benefits, but in addition to juridical considerations, it is also necessary to emphasize non-juridical considerations such as through aspect socio-economic.

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¹⁹ Yunanto, "Menerjemahkan Keadilan Dalam Putusan Hakim," *Jurnal Hukum Progresif* 07, no. 02 (2019).

²⁰ Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, (Jakarta: Sinar Grafika, 2010).

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