

LEGAL CONSEQUENCES OF GRANTING GRANTS OF ALL PROPERTY TO ADOPTED CHILDREN ACCORDING TO THE COMPILATION OF ISLAMIC LAW

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Abstract: *A grant is an agreement whereby the grantor during his or her lifetime gives property to someone free of charge or voluntarily without being withdrawn. We also often find various polemics or problems that arise because of it, such as people who give all their property to their adopted children because they are worried that in the future their adopted children will not get an inheritance from them because of the position of the adopted child who is not an heir. Grants according to Islamic law can be made both in writing and orally. It has even been stipulated in Islamic law that gifts in the form of immovable property can be done orally without the use of a written document. The legal consequences arising from the granting of all property to adopted children according to the Compilation of Islamic Law are null and void, because they have violated the provisions of Article 210 paragraph (1), namely that a person who is at least 21 years old of sound mind without coercion can donate a maximum of $\frac{1}{3}$ (third) of his property to another person or institution in the presence of two witnesses.*

Keywords: *Grants, Property, Adopted Children, Compilation of Islamic Law*

Introduction

Marriage is a contract or agreement, but it does not mean that this agreement has the same meaning as the ordinary agreement regulated in Book III of the Civil Code (Erwinsyahbana, 2004). The difference is that in an ordinary agreement, the parties who promise are free to determine the content and form of the agreement, whereas in marriage, the parties cannot determine the content and form of the agreement other than what has been stipulated by the applicable law.

Adoption of a child does not have legal consequences in terms of blood relations, guardian-mewali relationships and inheritance-inheritance relationships with adoptive parents. He remains the heir of his biological parents and the child continues to use the name of his biological father. Thus, adopted children do not inherit the inheritance of their adoptive parents. To protect the rights of their adopted children, the adoptive parents can donate their property as long as it does not interfere with the absolute share of the other heirs.

The existence of wealth is a necessity in human life. Without wealth, humans will not be able to meet their life needs, which are classified as primary, secondary, and tertiary (Naimi, 2012). Giving property to an adopted child before death is an alternative to be able to fulfill the rights of an adopted child, because the adopted child is not an heir according to Islamic law, so the adopted child cannot inherit the property from the adoptive parents as an heir (Muhammad, 2011).

In the Compilation of Islamic Law, it is explained in detail that the granting of grants to others is also limited to a maximum of $\frac{1}{3}$ (one-third) of the wealth. The grant of the law is *mandub*, it

is recommended in accordance with the hadith narrated by Aisyah r.a where the Prophet PBUH said: "Give gifts to each other, you will surely love each other". Article 210 of the Compilation of Islamic Law emphasizes that the granting of grants must comply with the maximum provisions of $\frac{1}{3}$ (one-third) of the grantor's entire property. If it can be proven that the grant does not exceed $\frac{1}{3}$ (one-third) of the property, then the grant can still be implemented.

Literature Review

There are several things that will be discussed in this study, namely:

Grant be an agreement with which the grantor during his life is free of charge and irrevocable handing over an item for the needs of the grantee who received the handover (Soimin, 2010).

Foster child is a child whose rights are transferred from the legal power of the guardian into the environment of his adoptive parents (Amalia, 2016).

Compilation of Islamic Law is aThe collection of Islamic law material written article by article, totaling 229 articles, consists of three groups of legal material, namely marriage law (170 articles), inheritance law (44 articles), and waqf law (14 articles) plus one concluding provision article (Mardani, 2014).

Method

In normative law research, the data required is secondary data. The secondary data has a very wide scope, including personal letters, books, to official documents issued by the government (Muhammad A. K., 2004). There are several approaches to legal research with this approach, the researcher will get information from various aspects about the issue that is being tried to find answers (Peter Mahmud Marzuki, 2007). Good writing requires precision and precision that focuses on this research, the author seeks to collect, compile and implement existing data and examine it clearly and specifically.

This research is a legal research with a legislative approach (*Statute approach*). The data used are secondary data obtained from literature in the form of laws and regulations, books, and other literature that are related to the problems in this study. All secondary data collected are then grouped and analyzed qualitatively to obtain answers to the problems that have been determined. The results of data analysis are described and described in a descriptive analytical manner.

Result and Discussion

1. Foster child

Viewed in terms of the development of national law, the formulation of the definition of child adoption formally applies to all child adoption in Indonesia without distinction between population groups, nor without distinction *domestic adoption* or *Inter-country adoption* that are poured in Government Regulations Number 54 of 2007 about the Implementation of Child Adoption. According to Government Regulations Number 54 of 2007 regarding the Implementation of Child Adoption Article 1 point 2 that child adoption is a legal act that transfers a child from the environment of parental control, legal guardian or other person responsible for the care, education and upbringing of the child in the family environment of the adoptive parents. Adoption of a child is thus a legal act of transferring a child from an environment (originally) to the family environment of his adoptive parents (Pandika, Child Adoption Law, 2012).

The requirements for the adopted child are not yet 18 (eighteen) years old, are abandoned or abandoned children, are in the care of the family or in a Child Care Institution, and require special protection. Meanwhile, the general requirements for prospective adoptive parents are:

- a. Physically and spiritually healthy;
- b. Minimum age of 30 (thirty) years and maximum of 55 (fifty-five) years;
- c. Religion is the same as the religion of the prospective adoptive child;
- d. Behave well and have never been punished for committing a crime;
- e. Married status for at least 5 (five) years;
- f. Not being a same-sex couple;
- g. Do not or have no children or have only one child;
- h. In a state of economic and social capability;
- i. Obtain the child's consent and written consent from the child's parent or guardian;
- j. Make a written statement that the adoption of the child is in the best interests of the child, the welfare and protection of the child;
- k. The existence of social reports from social workers of the local Provincial Social Agency;
- l. Have taken care of prospective adoptive children for at least 6 (six) months since the parenting permit was granted;
- m. Obtain the permission of the Minister and/or Head of the Provincial Social Agency.

Adopted children in Islam are called *at-tabanny*. Islam encourages a Muslim to raise the children of others who are incapable, poor, abandoned, etc., but should not cut off the child's relationship and rights from his or her biological parents. The maintenance must be based solely on the guidance of Allah Subahana Wata'ala.

2. Grants According to the Compilation of Islamic Law

In terms of obligations, husbands and wives in the family have the same obligations. The husband supports the family, the wife takes care of the husband. Children have a clear nasab (lineage) for the husband (Kurniawati, 2019). According to Article 171 of the Compilation of Islamic Law, a grant is the voluntary and unrewarding giving of an object from a person to another living person for possession.

An absolute grant is the "giving" of rights in the form of property and others. According to the term *sharia'* is giving the right to own an object with without any condition having to be given in return and the gift is done while the giver is still alive; giving the right to possess a material substance without expecting a reward/replacement, the gift of which is solely intended for the person who is given; the gift is only sunnah which is done with *ijab* and *kabul* while the giver is still alive (Ramulyo, 1994).

Grants according to Islamic law can be made both in writing and orally. It has even been stipulated in Islamic law that gifts in the form of immovable property can be done orally without the use of a written document. However, if sufficient evidence is found about the transfer of ownership rights, then the grant is carried out in written form.

The provisions of the grant are regulated in the Compilation of Islamic Law which is regulated in Article 210 paragraph (1) and paragraph (2), Article 211, Article 212, Article 213, and Article 214. In accordance with the provisions of the grant stipulated in Articles 210-214 of the Compilation of Islamic Law, then: (K, 1996)

1. The donor is at least 21 years old, of good sense, without coercion;
2. Property that is donated at most $\frac{1}{3}$ (one-third) of its property to another person or institution in the presence of two witnesses to be owned;
3. The property to be donated must be the right of the grantor;
4. Grants from parents to their children can be counted as inheritance;

5. The grant is irrevocable, except for the grant of the parent to the child;
6. Grants given when the grantor is ill close to death, must have the approval of his heirs;
7. Indonesian citizens who are in a foreign country may make a grant letter before the local Consulate or Embassy of the Republic of Indonesia as long as its contents do not conflict with the provisions of these articles.

3. Hibah Over All Property

Parental power over children is one of the concepts in family law that is intended to regulate the relationship between parents and children. (Harisman, Atikah Rahmi, 2021). Legally, the adoption of a child in the first form does not have a transfer of fate and is mutually inherited. Adopted children remain part of the mahram of their original family with all the legal consequences. If the adopted child intends to carry out a marriage, then the guardian remains the biological father. The adoption of children in the second form has occurred a transfer of fate and mutual inheritance. If he intends to carry out a marriage, then the guardian is his adoptive father (Yaswirman, 2011).

The granting of all property as stated by Sayid Sabiq, that according to the number of scholars a person can/may give all that he has to others. However, Muhammad Ibnul Hasan in the Hanafi school of *Pentahqiq* argue that it is not permissible to give away all property even if it is good. They consider such a person (to give away all his wealth) as a fool (lacking in sanity), and a person who is ignorant must be limited in his actions. By itself, his act of giving away all the property is considered null and void, because he is not qualified to make the alms.

Likewise, if it is associated with the benefit of the family and its heirs, because in Islamic law it is ordered that each individual protect himself and his family from the torment of the fire of the state, by itself there is an obligation to prosper the family. And if his act of giving away all his wealth causes his relatives and heirs to be in a state of lack of property (poverty), then he will plunge his family into the gate of disbelief, because the poor man is one of the causes of disbelief.

4. Legal Consequences of Granting All Property Grants to Adopted Children

According to Government Regulation Number 54 of 2007 concerning the Implementation of Child Adoption Article 1 point 2, child adoption is a legal act that diverts a child from the environment of parental power, legal guardian or other person responsible for the care, education and upbringing of the child in the family environment of the adoptive parent. Child adoption is thus a legal act of transferring a child from an environment (originally) to the family environment of his adoptive parents (Pandika, 2012).

The adoption of a child in Islamic shari'a is permissible and even recommended as long as the motivation for the adoption of the child is for the benefit and welfare of the child and does not contradict Islamic law. The application for adoption of children by Indonesian Citizens (WNI) who are Muslims against the children of Indonesian Citizens (WNI) who are Muslims is the authority of the Religious Court.

The withdrawal of a grant is an unlawful act, even if the grant occurs between two brothers or between a married couple. The definition of irrevocable is that a grant that has been given by the grantor cannot be withdrawn or revoked from the grantee (S, 2011). However, even if it is possible to withdraw an item that has been donated (according to some opinions, except for grants given to children), the withdrawal can also be made if the grant given is in exchange for and retribution for the grant given. The grants that can be withdrawn are only grants made or given by parents to their children (Article 212 of the Compilation of Islamic Law).

The right of adopted children to inherit the inheritance of the adoptive father often results in the restriction of the inheritance rights of the adoptive father. This often causes envy from the adoptive father's original family towards the adopted child. The willingness of people to release children from their nasab relationship means the loss of a sense of parental responsibility for the child.

According to Eman Suparman quoted by Nita Nilan Sri Rezeky Pulungan, giving all wealth to someone else is indeed the right of the heir as the owner of the property. However, the law requires that the property that the heir is granted must be property that is available to the heir only and that the property must not be granted to the heir. Certain parts of the inheritor's property that are included in the available part are called free shares. Only for free or available portions, the law gives the heir the freedom to make any stipulations he wants, for example granting or granting wills. The purpose of the legislator in determining this portion is to prevent and protect the heirs from the tendency of the heir to benefit others. That's why the law prohibits the heir from making a decree that results in a reduction in the absolute share of the heirs.

The legal consequences arising from the granting of all property to an adopted child according to the Compilation of Islamic Law are null and void, because they have violated the provisions of Article 210 paragraph (1) of the Compilation of Islamic Law, namely that a person who is at least 21 years old, has common sense, without coercion can grant a maximum of $\frac{1}{3}$ (third) of his property to another person or institution in the presence of two witnesses.

Although the grant is the free will of the owner of the property to give to whomever he wants, freedom is always limited by the rights of the other party. In the grantor's property, there is an absolute right of the child as his or her heirs and this right is protected by law. Thus, the grantor cannot arbitrarily grant all his assets to anyone, because the freedom of the grantor is limited by laws and regulations that regulate the *legitieme portie* of the heirs *ab intestate*. So to prevent lawsuits in the future, the step that can be taken is to make a letter of consent from the grantor's biological children. With this agreement, it is interpreted that the heirs concerned have agreed and do not object if the absolute part is violated.

Conclusion

A grant in the provisions of Article 171 of the Compilation of Islamic Law is the voluntary and unremunerated gift of an object from a person to another living person to be possessed. The provisions of the grant are regulated in Articles 201-214 of the Compilation of Islamic Law.

The granting of all property as stated by Sayid Sabiq, that according to the number of scholars a person can/may give all that he has to others. However, Muhammad Ibnul Hasan in the Hanafi school of *Pentahqiq* argue that it is not permissible to give away all property even if it is good. They consider such a person (to give away all his wealth) as a fool (lacking in sanity), and a person who is ignorant must be limited in his actions. By itself, his act of giving away all the property is considered null and void, because he is not qualified to make a donation.

The legal consequences arising from the granting of all property to adopted children according to the Compilation of Islamic Law are null and void, because they have violated the provisions of Article 210 paragraph (1) of the Compilation of Islamic Law, namely that a person who is at least 21 years old, has common sense, and without coercion can give as much as possible $\frac{1}{3}$ (one-third) of his property to another person or institution in the presence of two witnesses.

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