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PROOF OF GRANT THAT VIOLATES LEGITIEME PORTIE ACCORDING TO CIVIL CODE

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ABSTRACT

Grant as mentioned in Article 1666 of the Civil Code, is "Something of agreement with which the donor in his lifetime, with Free and irrevocably, surrender an object for the needs of the recipient of the grant receiving the surrender . But in practice, the grantor often gives his assets more than his wealth, or exceeds the port specified by the Law, so that inheritance disputes arise by heirs. To prove a grant made by the testator had violated legitieme portie or not is to determine the overall number boedel inheritance, then will be calculated legitieme portie it . This paper will discuss proof of legitimie portie grant violations committed by the testator and efforts to protect the rights of heirs in the grant so that they do not violate the Civil Code. This paper is conducted using normative juridical research methods or library law research, the method or method used in legal research conducted by examining existing library materials. Prove that a grant made by the testator had violated legitieme portie is to determine the overall number boedel inheritance, and then counted legitieme portie it, after it was discovered the magnitude of legitieme portie then be seen how much the remaining estate after the grant implemented .

Keywords : Proof, Legitieme Portie, Grant.

INTRODUCTION

Civil law in the Civil Code, including in the field or the field of civil law. branches of civil law that have the same basic nature, among others, are regulated and there is no element of coercion. But specifically for civil inheritance law, which is located in the field of civil law, it turns out there is an element of coercion in it. for example the provision of granting absolute rights (legitimate portie) to certain heirs, on a number of inheritance or prohibiting provisions. heirs have made provisions such as granting a certain portion of his inheritance, then the recipient of the grant has the obligation to return the assets that have been granted to him into the inheritance to fulfill the absolute portion (legitimate portie) of the heirs who have the absolute rights, by observing Article 1086 of the Law Law on Civil Law, regarding grants that are required to be imported.[1] Grant according to the Civil Code is an agreement made by the donor when he was still alive to give an item for free to the recipient of the grant. "Grants are legal actions carried out on the sincere will of the grantor. In other words, the initiative for granting comes from the grantor and not the grant recipient."[2]

[1] Amanat, Anisitus, *Membagi Warisan Berdasarkan Article-Article Hukum Perdata BW*, (Jakarta: Raja Grafindo Persada), p. 1.

[2] *Ibid,* p. 75.

Whereas according to Article 1683 of the Civil Code, grants must be made with a notarial deed.[3] In the deed of grant, the grantor may require the recipient of the grant to re-enter the value of the grant he has received into the inheritance / inheritance of the grantor. This is called mandatory *inbreng* . It is also possible that in the deed of grants the grantor does not oblige or exempt the recipient of the grant from the import obligation for the value of the grant received. This is called not required *inbreng* . In some cases the withdrawal of a grant requires the approval of the Grantee or the court's approval.

Civil inheritance law is very closely related to family law, so in studying inheritance law it is also necessary to study the relevant inheritance legal system such as the family system, inheritance system, the form of inheritance and how to obtain inheritance. The family system in civil inheritance law is a family system that is bilateral or parental, in this system the descendants are tracked from both the husband and wife. The inheritance system regulated in civil inheritance law is an individual system, heirs inherit individually or individually, and heirs are not differentiated both women and men inheritance rights are the same.[4]

With various kinds, types of inheritance in Indoneisa, the grant became one of the problems are very frequent question on inheritance law Indonesia, donated something wealth to others is the right heir as the owner of such property, but the law requires that the assets donated the testator must have available assets for the testator only and must not give assets that are not available to the testator. A certain portion of the assets of an heir including an available part is called a free portion. Only against the free part of the or part of the legislation is available only to give freedom to the testator to make provisions he wished, for example, donated (menghibah-wasiatkan). The purpose of lawmakers in establishing *legitieme portie* is to prevent and protect the heirs from the tendency of the heir to benefit others. That is why for the part that is not available or the absolute part (*legitieme portie*), the law prohibits the testator from making provisions that result in a reduction in the absolute number of parts.[5]

Based on the provisions of civil law, people who are first summoned by the Law to receive inheritance are children and husband or wife, specifically for the portion of children who are heirs who cannot be disturbed is *legitieme portie* or an absolute part.[6] R. Santoso Pudjosubroto explained that "inheritance disputes arise when a person dies, then there are assets left

[3] Soimin, Soedharyo, *Hukum Orang dan Keluarga (Perspektif Hukum Perdata Barat/BW, Hukum Islam, dan Hukum Adat)*, Cet,2, (Jakarta: Sinar Grafika, 2004), p. 91.

[4] Ali, Afandi, *Hukum Keluarga, Hukum Penelitian*, (Jakarta: Rineka Cipta), p. 7.

[5] Amanat, Anisitus, *Op,Cit.*, p. 194.

[6] HS, Salim., *Pengantar Hukum Perdata Tertulis (BW)*, (Jakarta: Sinar Grafika, 2008), p. 142.

behind, and then there are people who are entitled to receive the abandoned property, then again there is no agreement in the distribution of inheritance."[7]A grant will not cause problems for the treasure received from grants do not infringe the absolute heir who did legitimaris it . If the situation is not violated , the grantee is not obliged to return the assets he has received to the legitimate heirs. Ultimately p ermasalahan that often arise if the property turns received by grantee violate or offend section legitimaris heir, the donee is obliged to return all the property he has received from the grant due to meet the essential part of the legitimaris heir.

In essence that an agreement is reciprocal, where someone will be able to fulfill the achievements that will be reciprocal because he will receive these achievements from other parties. Sometimes because of other things the person can cancel what he has promised to do not fulfill his achievement. And so is this grant, even though the grants have been given to other people and this includes giving grants to their own children and authentic deeds have been made before the notary public but sometimes the donor will revoke or withdraw them. What is meant by revoking or withdrawing it in this case is the cancellation of the Grant.

Notary based on the national legal system, is a Public Official, that is, a State organ that represents and acts for and on behalf of the State in carrying out its duties in providing services to the general public in the field of civil law.[8] As a Public Official, a Notary is appointed by the State and equipped with general authority, authorized to exercise part of the State's power to make written and authentic evidence in the field of civil law. The public has assumed that a Notary Public is an official where a person can obtain reliable advice. Everything written and determined is true, he is a strong document maker in a legal process.[9]

In relation to the authority of a notary to make an authentic deed concerning deeds, agreements and also stipulations required by legislation and / or desired by the parties concerned and stated in the deed, there are known 2 (two) types of notary deeds, namely: the deed of partij (Partij Acte) or it is said to be a deed of the parties, that is, a deed made before a Notary based on the statement of the attorney and the deeds of the party facing the Notary and the statement or act will later be asked to the Notary to make a deed, for example a deed of grant, sale and purchase and lease, and secondly, a deed of relaas (Ambtelijke Acte) or official deed, which is a deed made by a Notary who is a notary public official who contains an authentic description of all events or events that were seen experienced,

[7] Suparman, Eman., *Intisari Hukum Waris Indonesia*, (Bandung: Mandar Maju, 1995), p. 4.

[8] Budiono, Herlien., *Pertanggungjawaban Notaris Berdasarkan Undang-Undang Nomor 30 Tahun 2004 (Dilema Notaris Diantara Negara, Masyarakat dan Pasar), Majalah Renvoi*, Jakarta, 3 September 2005, p. 32-33.

[9] Kie, Tan Thong., *Studi Notariat dan Serba-Serbi Praktek Notaris*, (Jakarta: Ichtiar Baru Van Hoeve, 2000), p. 7.

heard and witnessed by the Notary himself at the request of the interested parties, for example the minutes of the GMS in a company, or a deed under the hand that is indeed dis notary copy.

Because the Grant is part of the civil inheritance law, the civil inheritance law is closely related to family law, so in studying inheritance law it is also necessary to study the relevant inheritance legal system such as the family system, inheritance system, the form of inheritance and how to obtain inheritance. The family system in civil inheritance law is a family system that is bilateral or parental, in this system the descendants are tracked from both the husband and wife.[10] The inheritance system regulated in civil inheritance law is an individual system, heirs inherit individually or individually, and heirs are not differentiated both women and men inheritance rights are the same.[11]

However, in many cases it turns out that in practice the grantor has granted his assets to the recipient of the grant which indeed exceeds the available portion of the inheritance or it turns out that the grant received by the grantee is partly an absolute part (legitiemie portie) of legitimate heirs, resulting in inheritance disputes between One example of a case such as a grant that violates the absolute portion of a legitimate heir is in a dispute between the heirs of the late Wijaya and the late Rumptionah as evidenced in the Decision of the Supreme Court of the Republic of Indonesia Number 3243 K / Pdt / 1999 dated 19 September 2000, in which during his life the late Wijaya donated a 757 M2 residential house to one of his children named Casman Wijaya based on Grant No. 142 dated January 23, 1960, whereas besides Casman Wijaya the deceased Wijaya also had 3 other biological children namely Henie Susana, Hass anudin, Halim Wijaya. When the deceased Wijaya or the donor dies, in reality the inheritance's assets are controlled only by one of his heirs, namely Casman Wijaya, because that is the other heirs of the deceased Wijaya demanding the right of their absolute share, in the Supreme Court's decision the absolute portion of the heirs returned to all the heirs of the late Wijaya and canceled the deed of Grant Number 142 dated January 23, 1960. So the deed of grants through the Decision of the Supreme Court of the Republic of Indonesia Number 3243 K / Pdt / 1999 can be canceled, and can be used as Jurisprudence in making the decision to grant a dispute.

In this paper the problem is how to prove the violation of Legitimie Portie grants made by the testator by the heirs and also how to protect the rights of the heirs in the case of grants that violate Legitimie Portie.

METHODOLOGY

The type and nature of research that is used is a normative study. Normative research methods are researching doctrines (*doctrinal*

[10] Mertokusumo, Sudikno., *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2002), p. 147-148.

[11] Ali, Afandi., *Hukum Keluarga, Hukum Penelitian*, (Jakarta: Rineka Cipta, 2000), p. 7.

research), and theories (*theoretical research*) are the focus of analysis, use secondary data, examine positive legal norms, principles, legal principles, examine the regulations legislation and court decisions, the problem is related to relevant theories, and also examines the legal methods.[12]

This normative method examines the positive legal provisions and implementation of international syndicated loan agreements in practice. This study aims to ensure the results of the implementation of legislation governing syndicated loans *in concreto* legal events, especially regarding dispute resolution and the implementation of bank protection, are in conformity or not with existing laws and regulations.

The nature of this study is prescriptive. In principle, the nature of the research are three, namely descriptive, evaluative, and descriptive. Descriptive is describing or describing the subject or object of research and researchers do not justify (assess) the results of their research. Evaluative is to provide justification for the results of research that are only to evaluate whether the hypothesis of the proposed legal theory is accepted or rejected.

To obtain the data needed in research , the authors use the document study technique. Studies document done by way of studying and examining the various Laws and others such as:

a. Primary legal material consists of legal provisions that are basic norms or basic rules and regulations.
b. Secondary law, a material that provides an explanation and review-a review of the primary legal materials, such as books, papers, magazines, journals, Articles, free Article from the internet, and a letter to the newspaper, even personal documents or opinions of the experts the law that is relevant to the problem in this study.

DISCUSSION

Proof Abuse Grant Carried Legitimie portie Heir

The grant in Dutch is "S *Chenking"*.[13] Whereas according to the term referred to a grant, as stated in Article 1666 of the Civil Code: “An approval with which the hindle in his life is free and inadequate to hand over a thing to use the grantee of the grant receiving the submission the submission”.[14]

Giving is a free agreement in the words of the Free it is shown that there is only one party's prestige, while other parties do not have to give their achievements in return, then the agreement is said to be a one-sided agreement. It is customary that the person who undertakes to carry out a presentation because he wants to

[12] Soekanto, Soerjono., Mamudji, Sri., Penelitian Hukum Normatif, (Jakarta: Rajawali Pers, 2015).

[13] Sudarsono, *Kamus Hukum*, (Jakarta: Rineka Cipta, 1992), p. 426.

[14] Subekti, R., Tjitrosudibyo, R., *Kitab Undang-undang Hukum Perdata*, Cet ke-25, (Jakarta: Pradnya Paramita, 1992), p. 365.

receive the achievement . Gifts can only include goods that already exist, gifts from items that do not already belong to the donor are null (Article 1667 of the Civil Code). In this case the grant differs from the sale and purchase agreement, if in the sale and purchase the seller must protect the purchaser, then in the gifting of the gifter it is not necessary to protect the recipient of the grant, if in fact the gifted object is not the actual property of the donor, the donor is not obliged to protect the recipient of the grant . This is very understandable because the grant agreement is a Free agreement in which the grant ecipient will not be harmed by canceling a grant.

Basically the grant is valid and consequently applies to the parties if the grant recipient has explicitly received the gift (with a notarial deed). This is regulated in Article 1683 jo . Article 1682 Civil Code : "There is a hindup but expect included in Article 1687 can be done without a notarian deed that the normal script is necessary to be stored on the notary and if it is not done the mortgage is invalid."

An authentic deed is something that is done in this way by or in front of the public official who has the authority to make it, making sufficient evidence for both parties and their heirs and all those who have the right from it, namely about all matters mentioned in the letter and also about existing in the letter as a notification only, but such is only what is notified is directly related to the principal in the deed.[15]

A grant can be said to be void if it is made on condition that the recipient of the grant will pay off debts or other expenses, other than that explicitly stated in the gift certificate itself or in a list attached to it , regulated in Article 1670 of the Civil Code, as for the reasons Other reasons why grants can be canceled are also regulated in the Civil Code , including:

1. Grants concerning new objects will come later (Article 1667 paragraph (2) Civil Code).
2. Grants by which the donor promises that he remains in power to sell or give to others an object included in the gift is deemed invalid which is void only in relation to the object (Article 1668 Civil Code).
3. Grants in immovable property become null and void if they are not carried out with a notarial deed (Article 1682 Civil Code).

Although the grant is the free will of the owner of the property to be granted to whomever he wills. Thus, the grantor of the act acts actively giving up ownership of his property to the recipient of the grant. But it must be remembered freedom is always limited by the rights of other parties. In the property of the grantor, there is an absolute portion of the rights called *legitieme portie* anak as his heir , for example such as the legal wife, biological child of the donor and the

[15] Budiarto, Ali, *et,al., Kompilasi Peraturan Hukum Acara Perdata*, (Jakarta: Fakultas Hukum Universitas Trisakti, 2004), p. 19.

parent of the donor, and this right is protected by law. So that the grantor cannot arbitrarily give a grant of his property to anyone, because the freedom of the grantor is limited by the laws and regulations governing the legitieme of the heirs of *ab-intestato*.

As for the difference between grants and wills, that is, a will can be replaced and withdrawn by the willor, while the grant cannot be withdrawn. Therefore, if the giver the grant wants to give his gift to someone when he is dying, then the implementation of the grant must get the approval of the heirs. the recipient of the grant must be in the presence of two witnesses. The gifted object is the right of the grant holder and the maximum that can be granted is 1/3 of his wealth [16]

Efforts to Protect the Rights of Heirs in Grants

Efforts to protect the heirs in violation of Legitimie Potrtie, in terms of efforts to protect inheritance rights in grants, their references in family and inheritance law , family law and inheritance basically do not regulate in detail the use of inheritance to finance the family's daily life. What is regulated is that the husband is obliged to protect his wife and provide all the necessities of family life according to his ability, as regulated in Article 34 paragraph (1) Undang-Undang No. 1 Tahun 1974 tentang Perkawinan. It also stipulates that both parents are required to maintain and educate their children as well as Article 45 paragraph (1) Undang-Undang No. 1 Tahun 1974 tentang Perkawinan.

Savigny's thesis states that the law from the beginning of history has attached national features. As with language, customs, and constitutions all of which are peculiar to the people. The law does not arise by chance but is born from the inner consciousness of the people. Seen as a form of cultural tradition, history and express a sense of cultural unity of a nation. According to Savigny there is no law that transcends time and space. Laws are always contextual and historical.[17]

Although the grant is the free will of the owner of the property, to grant to anyone who wants it, so the grantor acts actively to hand over the gifted property to the recipient of the grant, but this freedom must remain limited with other parties, because the Civil Code itself states the conditions in the grant , The conditions that must be fulfilled in order for a valid grant are :

1. Conditions for the donor
   a. The gifted item belongs to the servant h
   b. Donor is not a person whose rights are restricted due to a reason.

[16]Badriyah Harun. *Panduan Praktis Pembagian Waris,* (Yogyakarta: Pustaka Yustisia, 2009), p. 71.

[17] Syaputra, Muhammad Yusrizal Adi., Nasution, Mirza., Settlement Of Indonesian Disorientation Of Democracy: Perspective Of Legal, *E3s Web Of Conferences 52, 00031* (2018) https://doi,org/10,1051/e3sconf/20185200031, *CSSPO 2018*.

c. Comforters are people who are capable of acting according to the law
d. Donors are not forced to give grants

2. Conditions of the grant recipient That the grant recipient must be the person who was actually at the time the grant was made. As is with absolutely no l ah person (donee) is born. And it does not matter whether he is a child, lacks sense, is an adult. In this case it means that anyone can receive a grant, regardless of his physical condition and mental state. Thus giving grants to infants that are still in the womb is illegal.

Cancellation of a deed of a grant can be done if, the deed of the grant must be made with an authentic deed by an authorized official, Cancellation of a grant made by the granter to withdraw the gift that has been given to his child only occurs if the elements referred to in the Civil Code are in Article 1688 Civil Code "A grant may not be withdrawn or written off because of it, but in matters as a quote:" Because it is not fulfilled the conditions by which the gift has been made. For example, it is not given based on an authentic deed, giving a gift in a state of illness or a minor, if the recipient has been guilty of committing or helping to commit a crime aimed at taking the soul of the donor or another crime against the attendant, if he refuses provide subsistence allowances to the beneficiary, when the grantor falls in poverty. From the provisions of Article 1688, it is clear that the reasons for canceling the grant given by the donor to the recipient of the grant. Withdrawal of this grant is done by stating his intention to the recipient of the grant, accompanied by the prosecution of items that have been given back.

In practice u ntuk prevent demands heir ab intestato, inheritance should be calculated boedel legacy and shared with legitimie portienya, d andi later to still prevent the penghibah abuse legitimie portie of treasure that will give, should the penghibah and heir make a move like the practice of a Notary Public in the making of a deed of donation that can be taken is by making an Approval Letter from the biological child of the Grant Giver. Thus, giving a grant even though it is the right of the grantor but must still consider the consent of the biological child giving the grant and not to violate the absolute rights of the child. With this agreement, it means that the heirs in question have indeed agreed if the absolute part is violated.

CONCLUSION

The right carried out by the heir has violated the *legitieme portie* is to determine the total number of inheritance *boedel* , then the *portie legitieme* is calculated , after discovering the amount of the *legie portie,* it is seen how much the remaining inheritance after the grant is carried out. If the remaining amount is enough to fulfill the *portie legitieme,* then the *portie legitieme is* fulfilled first, then the rest is divided according to the inheritance of the *ab-intestato* . If the remaining inheritance

is not enough, then first look whether *legitimates* have ever received a grant during the life of the testator or received *relief* based
on *testament* . From this it is known, whether the heirs are still entitled to receive the *legitieme of the portie* , if the *legitieme of the portie* has not been fulfilled, the heir has the right to demand deduction of the given wills / grants. In such case it is legal and permissible for an heir to give a gift to someone. But in this case the gift of a grant must be seen, whether in the gift should not violate the absolute rights that must be owned by an heir from the heir. Because an heir of the heir has an absolute part of the inheritance of an heir that cannot be reduced or divided.

For the cancellation of the grant deed is done by looking at the conditions of the fulfillment of the grant, whether the gift has been poured in a grant deed or not, if the gift is not done or stated in a deed, then as an heir, he can submit an objection and ask the court to cancel the grant the. This as referred to in Article 1682 of the Civil Code which states, there is no grant, except what is stated in Article 1687, can, on the threat of null and void, be carried out other than with a notarial deed, which was originally kept by the notary. Article 1687 of the Civil Code A hand-to-hand gift in the form of tangible movable property or receivables to be paid upon submission, does not require a notary deed and is valid if such gifts are simply handed over to the person who was given the grant himself or to someone else who received the grant for passed on to those given the grant. In order to be valid evidence, a grant deed must be made and signed by an authorized official and the parties involved in it. In addition, in making the deed of grant, it is necessary to pay attention to the object to be donated.

To prevent the claims of the heirs ab Intestato, the inheritance must be calculated boedel inheritance then it should be distributed with the legitimate portienya, and in the future to prevent the donor from violating the legitimie portie of the property to be donated, the donor and heirs make steps as in the practice of the Notary , in making a deed of grants the steps that can be taken are by making a Letter of Approval from the child of the Grant Giver. Thus, giving a grant even though it is the right of the grantor but must still consider the consent of the biological child giving the grant and not to violate the absolute rights of the child. Because an heir has a part of the inheritance inheritance which cannot be contested in the law must be a part because in the law has been determined how much will the heirs get and the heirs receive. With this agreement, it means that the heirs concerned have indeed agreed if the absolute part is violated. So that in the future there will be no loss or demand from the heirs.

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