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THE JUDGE'S CONSIDERATIONS AGAINST CANCELLATIONOF TESTAMENT GRANTS TOWARDS HERITAGE DISPUTES (Case Study Number 944/Pdt.G/2017/PA.Stb)

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Abstract: *Inheritance law if the owner of the property is dead, therefore a person who is still alive is not allowed to share his assets with his heirs (children, husband / wife, parents) on the basis of inheritance, Islamic inheritance law is not known for the concept of appointment or appointment of existing heirs. only a gift from one person to another is valid if the one who gave died. Giving under special circumstances like this is known as a testament. Testament is regulated in Article 195 paragraph 1, 2 and 3 Compilation of Islamic Law, in paragraph 1, testament is carried out orally in front of two witnesses or written in front of two witnesses or before a Notary, Paragraph 2 testament is only allowed as much as one third of the inheritance unless if all the heirs are aware of it, Paragraph 3 The testament to the heir only applies if it is approved by all heirs. The legal arrangements for testaments are regulated in articles 194 to 209 Compilation of Islamic Law, where the provisions of testaments set out therein include the right to testament, types of testaments, cancellation of testaments and things that are not permitted in testaments, while grants are regulated in articles 210 to 214 Compilation of Islamic Law which contains provisions regarding the grant. Islamic inheritance disputes are settled in a religious court. The cancellation of the testament based on decision number 944/Pdt.G/2017/PA.Stb does not fulfill the conditions of the testament until the cancellation of the testament based on consideration of facts and legal considerations found during the trial, Written evidence and witness evidence is clear that the testaments in the above case prove to be formal flaw and not legally enforceable, so the proof of testaments has no evidentiary value and has no binding legal force.*

Key Worda: *Testament Grants, Inheritance, Judge's Consideration.*

1. INTRODUCTION:

Article 874 of the Civil Code states that all inheritance of a deceased heir belongs to his heirs, unless the heir has legally determined with a testament. Making a testament is a legal act, one determines what happens to one's property after death. Inheritance property often creates various legal and social problems, therefore it requires an orderly and orderly arrangement and settlement in accordance with the prevailing statutory.Article 930 of the Civil Code states that in the only deed, two or more persons are not allowed to declare their testament, either to gift a third person, or on the basis of a joint or reciprocal statement. Statements in the testament have two characteristics, namely that they can be revoked and apply in connection with a person's death. For the determination of the volition which has these two characteristics the form of the testament is an absolute condition. The manufacture of a testament is bound by a certain form and manner if neglected can cause the testament to be canceled.In accordance with the provisions of Article 875 of the Civil Code, a testament made before a notary can be canceled if it turns out that the manufacturing procedure is not carried out in accordance with the terms and conditions that apply to the testament grant. The testament must be to other people and not the heirs. Indonesian positive law in Article 195 paragraph (3) states that a will to an heir is valid if approved by all heirs. From the provisions of Article 195 paragraph (3), it can be understood that the applicable law in Indonesia is to allow wills to the heirs if they have the approval of the other heirs.[1]

The Supreme Court of the Republic of Indonesia, from the above provisions refers to the provisions of Article 211 Compilation of Islamic Law, explains that grants and testaments to heirs can be considered as inheritance.[2] The term "can" in this article juridically means that the heir who receives the property which has been inherited or has been granted by the heir does not have full guarantee that he will receive a double of the inheritance of the heir. Because if among the heirs who have given approval at the time the testament or grant is made, the object of the testament or gift is counted as an inheritance, this article provides the widest possible opportunity. But what is guaranteed is that although the object of the will or grant is counted as an inheritance, the object will no longer fall into the part of other heirs. The object of the grant can be in the form of moving objects or immovable objects. Many society members have made grants, especially land grants. Grants are classified in a one-sided agreement, this is

different from a testament grant. According to Herlien Budiono, the grant occurred at the time of the parties' life, while the legacy of the will only took effect after the donor of the testament passed away and the object granted the testament was handed over by the executor of the will with the right to bezit or by all the heirs of the beneficiary of the testament grant to the legate.The land issue is a very complex problem, one of which is related to the issue of transferring rights to land originating from inheritance and grants. The transfer of land rights derived from inheritance according to customary law can be initiated whether the heir has not died or has died so that it is different from Islamic inheritance law and the Civil Code, inheritance can occur at the time of the death of the heir to the heir.[3] The case for cancellation of the testament grant based on the case contained in Decision Number 6944/Pdt.G/2017/PA.Stb. The case in this decision is where the heir during his life states that his inheritance is divided according to Islamic law, when the heir wants to share the inheritance of the heir, suddenly the defendant in this case states that the inheritance has been granted but the will made on paper seal in 2002 without the approval of the other heirs, namely the Plaintiff and no witnesses and has exceeded 1/3 of the inheritance of the heir.

Therefore, the Plaintiff is of the opinion that the granting of the three parcels of land and everything on it is not in accordance with the provisions of Article 195 paragraph 1, 2 and 3 of the Islamic Law Compilation, namely Paragraph 1 testament carried out orally in front of two witnesses or in writing in front of two witnesses. or before a notary, paragraph 2 testament only be allowed as much as one third of the inheritance property unless all heirs know it, paragraph 3 testament to the heirs only applies if approved by all heirs Since the testator of the three plots of land as stated is contrary to the provisions of Article 195 Paragraph 1,2 and 3 of the Compilation of Islamic Law, in this case a testament grant cancellation is requested in case of case Number: 944 / Pdt.G / 2017 / PA.Stb.

2. CONCEPTUAL FRAMEWORK:

a. Judge's Consideration:
Consideration of a judge's decision is a stage in the decision-making process carried out by the panel of judges in considering the facts revealed from the beginning to the end of the proceeding of the case. The legal considerations also include articles from the legal regulations which form the basis of judges in deciding the case.[4]

b. Grant Cancellation
Article 1688 of the Civil Code regarding grant withdrawal and cancellation, in the form of 3 things, namely:[5]
1) Because the conditions under which the gift was not fulfilled were not fulfilled
2) If the recipient of the grant has been guilty of committing or helping to commit a crime which aims to take the soul of the grantee or some other crime against the grantor
3) If he refuses to provide support to the benefactor, after this person falls into poverty
4) The abolition of a grant is carried out by declaring his will to the recipient of the grant accompanied by the reclaiming of the goods that have been donated and if this is not fulfilled voluntarily, then the claim of the goods is submitted to the court.

c. Testament
Testament is a deed which contains a statement by a person about what he wants to happen after he dies, to his inheritance.

d. Inheritance Dispute
Each heir has the right to file a lawsuit in order to fight for his inheritance rights, whether on the basis of the same rights, either without the basis of any right to control all or part of the inheritance, just as against those who are evil who have stopped their control.

3. THEORITICAL FRAMEWORK:

a. Legal Certainty Theory
Bachsan Mustofa explained that legal certainty has three meanings, namely: first, certainty regarding the legal regulations governing certain abstract government issues. Second, certainty regarding the legal position of the subject and its legal object in the implementation of state administrative law regulations. Third, preventing the possibility of arbitrary actions (eigenrechting) from any party as well as government actions.

b. Legal Protection Theory
According to Satjipto Raharjo, defining legal protection is providing protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law.[6]

4. LITERATURE REVIEW:

A grant is a contract or agreement that states the transfer of one's property to another while he is still alive without expecting the slightest replacement. Testament is a statement or what someone says to another person that he gives that other person certain assets or frees that person's debt or gives benefits to something that belongs to him after he dies. The testament given should not harm or neglect the immediate family (heir). The existence of a limit on the maximum number of testaments must be seen as an effort to protect the rights of relatives so that they are not displaced in the future due to the giving of too large a testament.[7] The requirements for a testament are regulated in Article 195 of the Compilation of Islamic Law, namely:

a. A testament shall be made orally in front of two witnesses, or in writing in front of two witnesses, or before a notary.
b. A testament is only allowed at the maximum of one third of the estate unless all heirs agree.
c. The testament to the heir is valid if it is approved by all heirs.
d. A statement of consent is made orally in front of two witnesses or in writing in front of two witnesses before a Notary.

Cancellation of a will may occur if:

a. The testament will be canceled if the candidate receiving the will based on the judge's decision which has legal force is still punished because:
   1) Blamed for murdering or attempting to kill or severely maltreating an estate.
   2) Blamed for defamation has filed a complaint that the testator has committed a crime punishable by five years in prison or a harsher sentence.
   3) To be blamed for violence or threats to prevent the will from making or revoking or amending the will in the interest of the candidate receiving the will.
   4) Blame for embezzling or destroying or falsifying the will.
b. The testament will be canceled if the person appointed to receive the will:
   1) Did not know the existence of the testament until he died before the death of the testator.
   2) Aware of the testament but he refuses to accept it.
   3) c. knowing the existence of the testament but never declaring to accept or reject it until he dies before the death of the testator.
c. The testament will be canceled if the goods being told are destroyed.

In order to realize a decision that has the value of justice, legal certainty and benefit to the parties in a case, the judge in considering his decision must fulfill two main points, namely:

- Factual Consideration:

  Judges obtaining factual considerations in examining a case must pay attention to the case or event that is disputed by the parties. Judges in examination also need proof and look at the facts that occurred in the trial. The results of this evidence will be used as material for consideration in deciding cases.

  Proof is the most important stage in the examination at trial. Evidence aims to obtain certainty that an event/fact being submitted actually occurred, in order to obtain a verdict of a judge that is correct and fair. The judge cannot issue a decision before it becomes clear to him that the event/fact actually happened, that is, its truth is proven, so that there is a legal relationship between the parties.[8] In addition, in essence the judges' considerations should also contain the following matters:[9]
  1) The subject matter and things that are recognized or arguments that are not refuted.
  2) There is a juridical analysis of the decision in all aspects concerning all facts / matters that are proven in the trial.
  3) The existence of all parts of the Plaintiff's petitum must be considered / tried one by one so that the judge can draw conclusions about whether the claim is proven / not and whether the claim is granted / not in the verdict.

- Legal Considerations

  In considering law, basically the professional work of judges rests on the creativity of the judge in interpreting laws and carrying out other methods of legal discovery. Therefore, every religious court judge must be skilled and courageous to carry out judicial activities. The competence of judicial activsm includes a series of knowledge, skills and personality characteristics that encourage judges to explore and discover unwritten legal values that live in society in accordance with legal principles and rules.[10]

5. METHOD:

This research uses normative legal research. Normative legal research is library law research.In this normative study, the approaches used are:

a. Statutory Approach, is carried out by examining the statutory regulations from the highest norm to the lowest,
b. Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.

6. DISCUSSION:

The implementation of grants that have been made is not in accordance with the prevailing statutory, or is outside the existing legal provisions. This means that there is an unprocedural, which is either against the Compilation of Islamic Laws or against the applicable law relating to the grant. This can cause legal uncertainty both to the object of the grant and to the subject of the grant itself. The case for cancellation of the testament based on the case contained in Decision Number 944/Pdt.G/2017/PA.Stb. The case started when the late Ainun Jariyah will be divided by the heirs, namely his brothers and sisters in Faraidh. Ainun Jariyah did not have any biological children, so the heir was the late Ainun Jariyah is his sibling.However, in the process of distributing the inheritance, Defendants I and II stated that the three plots of land had been granted by the late Ainun Jariyah to Defendants I and II while showing the legacy of the will on November 14, 2004. This was even though one month before Ainun Jariyah passed away, to Plaintiffs I and II at that time Ainun Jariyah still stated that his inheritance should be divided according to Islamic law and advised that there should be no disturbance between his siblings. On the other party's claim to the three plots of land belonging to Ainun Jariyah, the Ainun Jariyah family filed a lawsuit at the Padang Religious Court. The Plaintiffs expressly state that the basis for the request for the Cancellation of the testament grant submitted by the Plaintiffs in the *A quo case* is based on the reason that the Plaintiffs did not know beforehand about the testament grant from the late Ainun Jariyah to the Defendants and only found out about the testament grant that was dated November 14, 2004, when the heirs were about to distribute the inheritance bundles of the late Ainun Jariyah, as well as the number of inheritance bundles granted by Ainun Jariyah to the Defendants exceeded what was stipulated in Article 195 paragraph (2) Compilation of Islamic Law. The panel of judges has found facts that have been contested, namely proving whether the events or facts submitted by the parties are valid proof of evidence, according to the law of proof described in the sit-in case and the trial minutes as follows:

a. A plot of land covering an area of 1.974,42 m^2 which is located in Hamlet VIII Damai, Kebun Kelapa Village, Secanggang District, Langkat Regency, the land is controlled by Defendant I with the argument that Ainun Jariyah has granted him a deed in the form of a will, dated November 14 2004, but the making of the testament is unknown and not approved by other heirs and also does not meet the formal requirements of the deed under hand.
b. A plot of land covering an area of 601,42 m^2 along with a permanent housing unit on it located in Hamlet VIII Damai, Kebun Kelapa Village, Secanggang District, Langkat Regency, the land was controlled by Defendant II with the argument that Ainun Jariyah had granted him an underhand deed in the form of a letter testament grant, dated November 14, 2004, however, the making of the testament grant is unknown and not approved by other heirs and also does not meet the formal requirements of the deed under hand.
c. A plot of land covering an area of 2.109,7 m^2 located in Hamlet VIII Damai was formerly known as Dusun III Lorong Damai, Kebun Kelapa Village, Secanggang District, Langkat Regency, the land was controlled by Defendant II with the argument that Ainun Jariyah had granted him an underhand deed in the form of testament grant, dated November 14, 2004, however, the making of the testament grant is unknown and not approved by other heirs and also does not meet the formal requirements of the deed under hand.

In an attempt to find the law of a case that is being examined in court, the Panel of Judges Based on the above facts related to the evidence and consideration of the evidence, it must be declared proven that the deed under hand in the form of wills from the three wills is declared to be flawed. formal and has no binding legal force based on the provisions of article 195 paragraph 1 and 2 and article 210 paragraph 1 Compilation of Islamic Law.

7. ANALYSIS:

The rule of law in Indonesia does not recognize the existence of a testament grant and what is known is a grant or a testament, each of which has its own legal consequences or consequences, as well as separate procedures. So it can be concluded that a testament grant is a gift from someone to another with respect to his property and the enforcement will take effect only when the giver dies, by giving the giver the right to revoke the gift before he dies. When linked the description of the matters of the testament grant with the testament dated November 14, 2004 from the late Ainun Jariyah to the defendants, it is clear that up to the death of the late Ainun Jariyah, the person concerned had never canceled and or withdrawn the will he made. for the defendants, therefore, the testament grant dated November 14, 2004 is a will which has a strong legal basis to serve as an excuse for the transfer of rights to the assets

of the late Ainun Jariyah to the defendants as described in the testament grant dated 14 November 2004. Referring to Article 195 paragraph 2 of the Compilation of Islamic Law as argued by the plaintiffs to declare the testament grant dated November 14, 2004 is invalid because it exceeds the maximum amount of assets that can be inherited, which is 1/3 of the total inheritance, then the plaintiffs are clearly wrong in counting the entire legacy bundle of the late Ainun Jariyah or perhaps the plaintiffs deliberately made up a lie to deceive the Panel of Judges who examined, tried and decided the *A quo* case by not describing all of the inheritance of the late Ainun Jariyah, because if we describe the entire legacy of the late Ainun Jariyah, then It is clear that the amount of assets given to the defendants is less than 1/3 of the total assets left by the late Ainun Jariyah. Based on all the descriptions above, there is actually not one reason that can be used as an excuse by the plaintiffs to request the cancellation of the will given by the late Ainun Jariyah to the Defendants, because the amount granted by the late Ainun Jariyah to the defendants was less than 1/3 of the total assets in his possession as regulated in Article 195 paragraph (2) Compilation of Islamic Law, and during his lifetime the late Ainun Jariyah never canceled the testament grant he gave to the defendants, as well as the other bundles of inheritance of the late Ainun Jariyah. by all the heirs of the late Ainun Jariyah according to Islamic rules (Faraidh) without any legal problem arising at the time of the distribution. Referring to Article 195 paragraph 2 of the Compilation of Islamic Law as argued by the Plaintiffs to declare that the testament grant dated November 14, 2004 is invalid because it exceeds the maximum amount of assets that can be inherited, namely 1/3 of the total assets of the inheritor, then the plaintiffs are clearly wrong counting the entire legacy bundle of the late Ainun Jariyah or perhaps the plaintiffs deliberately made a lie to deceive the Panel of Judges who examined, tried and decided the A quo case by not describing all of the inheritance of the late Ainun Jariyah, because when describing all the assets of the late Ainun Jariyah's inheritance, it is clear that the amount of assets granted to the defendants is less than 1/3 of the total assets left by the late Ainun Jariyah, which can be seen with the following calculation: property in the form of land left by the late Ainun Jariyah was 20,712m^2 and 1/3 of this amount was 6,094 m^2, while those granted were only 4,912m^2. Based on the theory of legal protection, the judge in considering the decision to cancel a will grant must provide and realize the values of justice, certainty, order and peace so that one party is not harmed and can enjoy all the rights protected by law, therefore the proof stage becomes the judge's consideration. which must be considered in order to determine legal provisions that are in accordance with the facts in the trial which make legal certainty after the case is decided.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

a. The cancellation of a testament grant based on decision number 944/Pdt.G/2017/PA.Stb does not fulfill the conditions of a testament grant where the testament grant not be fulfilled in front of two witnesses or before a notary and a will grant is not approved by the heirs regulated by the Law Compilation Islam, therefore the party who feels aggrieved asks for a cancellation because it is not fulfilling the terms of the will.
b. Judges' considerations regarding cancellation of testament grant in inheritance disputes based on decision number: 944/Pdt.G/2017/PA.Sbt based on considerations of facts and legal considerations found during the trial, where written evidence and witness evidence are clear that the testament grant in the case above is proven to be formally flawed and has no legal force, so that the proof of the testament grant has no evidentiary value and has no binding legal force.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

a. The Supreme Court should immediately issue a Supreme Court circular, to provide further interpretation and expansion of legal material or additional legal arrangements for grants and testament considering that the compilation of Islamic law still lacks legal rules regarding grants and testament as well as rules of inheritance law and still needs explanation more concretely so that there will be less of the inherited tract concerned with grants and testament.
b. It is hoped that in making the testament grant deed of will grant giver and will grant recipient meet the formal requirements stipulated in the Islamic Law Compilation so as not to harm him in the future, the inheritance dispute against the testament grant have clear legal provisions in the settlement of inheritance disputes against the testament grant, but there needs to be socialization to the community both from the making and cancellation of testament grant.
c. Judges in considering cancellation of testament grant in inheritance disputes, judges must be more careful, careful in concluding written evidence and witness evidence in order to achieve justice and the absence of both parties who are harmed.

REFERENCES:

1. M. Anshary, *Hukum Kewarisan Islam dalam Teori dan Praktik*, Pustaka Pelajar, Yogyakarta, 2013, page 19.
2. Mahkamah Agung RI, *Pedoman Teknis Administrasi Dan Teknis Peradilan Agama*, Book II, Edition 2009, page 239.
3. Herrlien Budiono, *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*, PT Citra Aditya Bakti, Bandung,2012, page 356.
4. Damang, *Definisi Pertimbangan Hukum*, http://www.damang.web.id
5. R. Subekti, *Kitab Undang-UndangHukum Perdata*, PT Pradnya Paramita, Jakarta, 2008, page 440.
6. Satjipto Rahardjo,*Ilmu hukum*, Citra Aditya Bakti, 5th Printing, Bandung, 2000, page53.
7. Helmi Karim, Fiqh Muamalah, Jakarta: PT Raja Grafindo Persada, 1993, page 97-99.
8. Mukti Arto, *Praktek Perkara Perdata pada Pengadilan Agama*, Pustaka Pelajar, Yogyakarta, 2004, page 141-142 [9-10]
9. Muhammad Noor, *Penemuan Hukum dalam Teori, Karena Hakim bukan Corong Undang-Undang*, Majalah Peradilan Agama Edition 2, September-November, 2013, page 5.