



TRANSFER OF OWNERSHIP OF A GIFTED OBJECT WITHOUT HEIRS' CONSENT (CASE STUDY OF DECISION NO. 17/PDT.G/2021/PN.KLB)

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Abstract

Inheritance law in the Indonesian Civil Code governs the transfer of rights and obligations from a deceased person to their heirs. One of the common legal issues that arises is the execution of a gift without the consent of the heirs, which can lead to legal disputes. The case in Decision No. 17/Pdt.G/2021/PN Klb illustrates a conflict concerning a land grant that was executed without considering the legitimate portion of the heirs. This study aims to analyze the validity of gifts within the framework of Indonesian civil law. The research employs a normative juridical method with a statutory approach and case study analysis. The findings indicate that a gift violating the provisions on the legitime portie may be annulled through litigation under Article 914 of the Indonesian Civil Code. Furthermore, the role of the Land Deed Making Officers is crucial in ensuring the validity of such transactions. Strengthening regulations and raising awareness regarding inheritance rights are necessary to prevent similar disputes in the future. Therefore, compliance with legal procedures and the protection of heirs' rights are essential to ensuring justice in inheritance distribution.

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I. INTRODUCTION

Under the system of the Indonesian Civil Code, the Code is divided into four books. Book I governs persons, Book II regulates property, Book III covers obligations, and Book IV addresses evidence and prescription (Simanjuntak, 2016). Book II of the Civil Code, which concerns property, also includes provisions on inheritance. L.J. van Apeldoorn states that property law consists of legal rules governing relationships that have monetary value (Apeldorn, 2015). herefore, the law of property not only regulates the legal aspects of objects but also encompasses inheritance matters. Inheritance law is incorporated into Book II of the Civil Code because the lawmakers consider inheritance rights to be an integral part of property rights, particularly concerning the "boedel" or estate of a deceased person. This perspective underscores that inheritance is not merely about the division of assets but also involves the regulation of rights over the wealth left behind by the deceased.

Upon a person's death, a legal event occurs, followed by legal consequences. One such consequence is that, upon the occurrence of death, the rights and obligations of the deceased (the heir) are transferred to their heirs (Nugroho, 2016). In Indonesia, inheritance issues have continued to rise annually, primarily due to the public's lack of knowledge regarding inheritance law, particularly in matters of distribution and transfer. However, there is no official data on the number of inheritance disputes occurring each year. Inheritance disputes often arise from the granting of gifts, particularly when such grants fail to meet the legal requirements and provisions stipulated by law. Specifically, gifts are sometimes executed without considering the division between the disposable portion and the reserved portion (Satrio, 2016). The disposable portion refers to the part of the estate that may be freely allocated to any party, while the reserved portion is the portion to which direct heirs are legally entitled and cannot be contested.

In this study, the author examines a case from Decision No. 17/Pdt.G/2021/PN Klb. The author will briefly explain the issues in the case. There are two plaintiffs, namely Aditya and Theresia (the biological children of Jo Eng Bie and Engelina Tan), and the defendants, Enny Anggrek and Igusti Indo (the wife and child of Suharto). The disputed object consists of land and the house built on it, which was granted by Engelina Tan (the plaintiffs' biological mother) to Suharto (one of the biological children of Engelina Tan and Jo Eng Bie) through a deed of gift. The disputed property was originally controlled by Jo Eng Bie's parents as early as 1930. In 1953, Jo Eng Bie constructed a house on the property. Jo Eng Bie passed away in 1984 while still holding Chinese citizenship. Engelina Tan was also a Chinese citizen; however, in 1996, she undertook an oath of name change to acquire Indonesian citizenship and subsequently obtained a Right of Use certificate over the property. Two years later, in 1998, she obtained a Right of Ownership certificate. In 2010, Engelina Tan executed a deed of gift in favor of one of her children, Suharto, before a Land Deed Making Officers and subsequently transferred the title before the National Land Agency. The heirs were unaware of this transfer, despite the fact that the gifted property was Engelina Tan's sole asset. Upon the deaths of Suharto and Engelina Tan, the disputed property came under the control of Suharto's wife and child (the defendants). The heirs of Engelina Tan (her children) only became aware of the deed of gift from BPN after both Engelina Tan and Suharto had passed away. They objected to the gift and subsequently filed a lawsuit seeking to annul the deed of gift, as the disputed object consists of the land and the building constructed on it.

Foreign nationals residing in Indonesia, whether for a limited period or permanently, are subject to specific regulations. Pursuant to Article 1 point 18 of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 on Population Administration, a "Limited Stay Permit" refers to a permit granted to foreign nationals to reside within the territory of the Republic of Indonesia for a specified period, in accordance with the provisions stipulated in the prevailing laws and regulations. Based on the provisions stipulated in Article 1, point 19, the definition of a

permanent stay permit is explained. The article states that a permanent stay permit is a permit granted to a foreign national to reside within the territory of the Republic of Indonesia while complying with all provisions set forth in the prevailing laws and regulations.

In other words, this permit allows foreign nationals to reside in Indonesia for a longer period without the need for periodic extensions of a temporary stay permit. However, foreign nationals residing in Indonesia, whether under a temporary stay permit or a permanent stay permit, do not have full ownership rights over property or land in Indonesia. This restriction is due to Indonesia's land law, which limits land ownership exclusively to Indonesian citizens. As an alternative solution, foreign nationals still have the opportunity to obtain a right of use over a property in accordance with the provisions outlined in the Basic Agrarian Law. The right of use grants foreign nationals the right to utilize or use land for a specific period and under certain conditions but does not confer permanent ownership rights. If a foreign national wishes to obtain full ownership rights over land in Indonesia, one of the available options is to change their citizenship status to Indonesian through the naturalization process.

The process of naturalization is legally regulated under Article 1 paragraph (3) of Law Number 12 of 2006 concerning Indonesian Citizenship. This provision stipulates that naturalization is a legal procedure that allows a foreign national to acquire Indonesian citizenship by submitting an application in accordance with the applicable legal provisions. Upon obtaining Indonesian citizenship, an individual is entitled to the same rights as other Indonesian citizens, including full ownership rights over land and property in Indonesia. The naturalization process cannot be completed instantly but requires compliance with various legal requirements stipulated in the legislation. A foreign national seeking Indonesian citizenship must fulfill several conditions, such as residing in Indonesia for a specified period, having a clear source of livelihood, and being willing to renounce their previous citizenship. Only after acquiring the status of an Indonesian citizen does the individual gain the legal right to own land with freehold title in Indonesia, as enjoyed by other Indonesian citizens. By changing their nationality from a foreign national to an Indonesian citizen, they become entitled to land ownership rights in Indonesia.

Land ownership is governed by agrarian law, which contains regulations concerning land and all rights over it. Article 16 (1) of the Basic Agrarian Law No. 5 of 1960 on Basic Regulations on Agrarian Principles states: "The land rights referred to in Article 4(1) include the right of cultivation, the right of building, the right of use, the right of lease, the right to clear land, and the right to collect forest products". Ownership rights constitute the strongest form of land rights, granting the owner full authority over the land, provided that its use does not contravene applicable laws and regulations (Sahnan, 2016). The right of use (*hak pakai*) is a legal right that grants an individual or entity the authority to use and benefit from land controlled directly by the state or privately owned land.

For state-owned land, the initial term of hak pakai is 25 years and may be extended for a maximum of 20 years. Upon expiration, it can be renewed for another term of up to 25 years. Similarly, for managed land, the initial term is a maximum of 25 years, extendable for up to 20 years, and renewable for an additional 25 years upon expiration. For privately owned land, right of use is granted for a period of 25 years and cannot be extended unless the landowner and the right of use holder agree to renew the right for another term. The right of use can be held by both Indonesian citizens and foreign nationals, unlike ownership rights, which is exclusively reserved for Indonesian citizens (Sahnan, 2016).

Ownership rights may be transferred through a gift as long as it does not conflict with the law. If a gift infringes upon the rightful heirs' absolute portion (*legitieme portie*), it will be considered part of the estate. If a gift exceeds the *legitieme portie* of the direct heirs but they do not contest it, the gift may be deemed valid. However, if the direct heirs object to the gift, it will be included in the estate, and they have the right to file a lawsuit for annulment through litigation in court. Regarding the previously discussed issue concerning a gift granted without obtaining the consent of the child as the heir, such a gift, in a legal context, may be considered part of the estate that must be taken into account in the distribution of inherited assets. Disagreements arising from a gift that is not approved by the heirs have the potential to result in legal disputes, which, in this case, can be resolved through litigation or court-based dispute resolution mechanisms.

Litigation serves as a legal avenue when the disputing parties fail to reach an agreement through non-litigation means, such as mediation or family deliberation. Under the Indonesian judicial system, the jurisdiction of courts in handling civil cases, including disputes related to gifts and inheritance, is governed by Law Number 2 of 1986 on General Judiciary. Article 6 of this law stipulates that the general judiciary consists of two main levels of adjudication: the District Court, which serves as the court of first instance, and the High Court, which serves as the appellate court.

Therefore, if an heir who believes their rights have been violated wishes to file a lawsuit, the legal process begins at the District Court, which has the authority to examine, adjudicate, and render judgments at the first-instance level. If any party involved in the dispute is dissatisfied with the decision rendered by the District Court, they have the right to pursue further legal remedies by filing an appeal with the High Court. The High Court is responsible for reviewing the decision issued by the District Court to ensure that it complies with applicable legal provisions and upholds the principles of justice for the disputing parties.

The reason the author conducted this research is that the transfer of the gifted object in this case caused harm to the direct heirs due to the gift deed made before the Land Deed Making Officers exceeding the *legitieme portie* of the heirs, who are the biological children of Enggelinat Tan. As a result, the heirs filed a lawsuit with the District Court to annul the gift. Based on this reasoning, the research is titled "The Transfer of Ownership of a Gifted Object Without the Heirs' Consent (Case

Study of Decision Number 17/Pdt.G/2021/PN Klb)." Considering the background above, this study examines the following research question: How is the transfer of ownership of a gifted object without the heirs' consent assessed based on Decision Number 17/Pdt.G/2021/PN Klb?

II. METHOD

This research adopts a normative legal method, focusing on the analysis of legal aspects based on primary legal sources, including statutes and court decisions (Matheus & Gunadi, 2024). The legal documents used in this study include the Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 2 of 1986 on General Judiciary, Law Number 24 of 2013 amending Law Number 23 of 2006 on Population Administration, Law Number 12 of 2006 on Indonesian Citizenship, the Indonesian Civil Code and District Court Decision Number 17/Pdt.G/2021/PN Klb. Additionally, this research also relies on secondary legal sources, such as journals, books, articles, and other references that support the primary legal materials (Marzuki, 2019).

III. RESEARCH FINDINGS AND DISCUSSION

An authentic deed possesses a binding nature and remains enforceable as long as it has not been modified or annulled by any of the parties involved in its creation. This means that unless there is a legal ruling invalidating the deed or a legitimate agreement between the relevant parties to amend it, the authentic deed retains its full legal force. In this context, if a Temporary Land Deed Making Officers who was authorized to execute the authentic deed has completed their term of office or no longer holds the position, it does not affect the validity of the deed that has been issued. In other words, even if the Temporary Land Deed Making Officers who executed the deed is no longer in office, the deed remains legally binding and continues to have full legal effect on the signatory parties. Therefore, a Temporary Land Deed Making Officers authorized to create authentic deeds must ensure that all applicable legal procedures have been properly followed in accordance with established standards. This is crucial because the accountability of a Land Deed Official for the deeds they execute remains attached to them for a lifetime (HS, 2016).

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In carrying out the process of granting a gift, several requirements must be fulfilled to ensure that the gift has legal force and does not give rise to legal disputes in the future. One of the primary requirements is an official statement from the prospective heirs declaring that they are aware of and consent to the gift being made. Additionally, in such a statement, the prospective heirs must also pledge not to file any claims or objections in the future regarding the granted gift. This statement aims to ensure that the gift is made without any element of coercion, fraud, or objections from parties with an interest in the gifted object. Apart from the consent of the prospective heirs, the landowner or grantor must also provide valid proof of ownership of the land or building being gifted. In this regard, the original land certificate must be presented to the Land Deed Making Officers as a form of validation and evidence that the land or building is legally owned by the grantor (HS, 2016).

In the process of granting a gift, all stipulated requirements must be fulfilled to ensure its strong legal validity. If one or more of these requirements are not met, the validity of the gift may be questioned or even legally challenged. One of the primary requirements is obtaining a written consent letter from the heirs, which, in practice, is not always easy to secure. This difficulty arises because some or all heirs may object to the gift, either because they feel their rights have been infringed or for other personal or legal reasons. Such objections from heirs can become a legal issue that may lead to disputes in the future. If a gift is granted without complying with all applicable legal provisions and is proven to harm heirs entitled to a compulsory portion, the disadvantaged heirs have the right to raise objections. In such cases, heirs who do not consent to the gift may file a petition for the annulment of the deed of gift in court (Anggoro, 2021).

In the process of granting a gift, there is a possibility that the value of the gift exceeds the compulsory portion (*legitieme portie*), which rightfully belongs to the entitled heirs. In such cases, the affected heirs have two options. First, they may accept the situation without objection, meaning they choose not to take legal action and instead acknowledge the gift as it stands. Second, if the heirs believe that their compulsory portion has been violated and they have not received the inheritance to which they are entitled, they have the right to file a lawsuit in court to seek justice and enforce their rights in accordance with the applicable legal provisions. The compulsory portion (*legitieme portie*) is granted exclusively to heirs in the direct ascending line, such as parents or grandparents of the deceased, as well as blood relatives in the direct descending line, such as children, grandchildren, or other descendants.

Furthermore, Article 1688 of the Indonesian Civil Code stipulates that a gift that has been granted cannot be revoked, except under certain conditions that legally justify its annulment. There

are three primary grounds on which a gift may be revoked. First, if the conditions stipulated in the gift are not fulfilled, such as the existence of a legal defect in the donation process. Second, if the recipient of the gift commits a serious offense against the donor, such as a criminal act intended to end the donor's life or any other act classified as a serious criminal offense. Third, if the recipient of the gift refuses to provide financial support to the donor when the donor experiences economic hardship or falls into poverty.

A deed of gift shall remain valid if the heirs do not object and accept the fact that the gift exceeds their compulsory portion. However, if any of the heirs object, they may pursue legal remedies to claim their rightful share as explained above by filing a lawsuit in court to examine and adjudicate the matter. The claimant must provide evidence to substantiate their claim, while the defendant may raise exceptions. Both the claimant and the defendant have equal standing before the court. This process ensures that the judge can deliver justice to the parties involved. Pursuant to Article 914 of the Indonesian Civil Code, the compulsory portion (*legitime portie*) of direct descendants is as follows: if the deceased has one child, the compulsory portion is one-half of the estate; if the deceased has two children, the compulsory portion is two-thirds of the estate; and if the deceased has three or more children, the compulsory portion is three-fourths of the estate.

In this case, it is assumed that the disputed object has a value of IDR 1,500,000,000. If Suharto, as the grant recipient, is still alive, there are eight heirs, namely Theresia Jo Carvallo, Yohanes Suharto Jo, Edwin Suharto Jo, Christina Suharto Jo, Josep Suharto Jo, Gibliyanto Suharto Jo, Aditya Suharto Jo, and Maria Suharto Jo. Pursuant to the applicable inheritance law, the compulsory portion and the remaining share of the donated property can be calculated as follows:

1. $1/8 \times 3/4 \times \text{IDR } 1,500,000,000 = \text{IDR } 140,625,000$

Each heir is entitled to a compulsory portion, which is calculated based on the direct lineage share of 1/8, multiplied by the compulsory portion as stipulated by law, namely 3/4, of the total value of the donated property, which is assumed to be IDR 1,500,000,000. Based on this calculation, the compulsory portion for each heir amounts to IDR 140,625,000, which must be received by each heir. When multiplied by the eight heirs, this amount reflects the total compulsory portion of the donated estate.

2. $1/4 \times \text{IDR } 1,500,000,000 = \text{IDR } 375,000,000$

The remaining portion that may be bequeathed to a third party amounts to IDR 375,000,000, which is derived from the difference between the total inherited estate (4/4) and the absolute share of the heirs (3/4), leaving 1/4 that may be granted to another party at the discretion of the donor. Accordingly, the maximum value that may be bequeathed to a third party shall not exceed IDR 375,000,000

In accordance with Article 914 of the Indonesian Civil Code, Enggelina Tan, who has more than three children, is required to account for the legitime portie (forced heirship portion) of each

child in the distribution of her estate. In this case, the forced heirship portion to which her children are entitled constitutes 3/4 of the total estate, while only the remaining 1/4—amounting to IDR 375,000,000—may be lawfully donated as a gift. However, Engelina Tan has granted her entire estate to Suharto, exceeding the legal limit for donations. Consequently, this gift violates Article 914 of the Indonesian Civil Code and is subject to annulment. The annulment of a gift deed may occur if errors were made during its execution or if it fails to meet the legal requirements. In this case, since the donation exceeds the permissible portion and infringes upon the rights of the forced heirs, the heirs have the right to seek annulment of the gift. As a result, the deed of gift, which contravenes legal provisions, may be deemed invalid and nullified *ipso jure* (by operation of law).

According to the provisions set forth in Article 3:40 of the *Dutch Civil Code*, as stated by Hijma & Snijders (Hijma & Snijders, 2010), a legal act shall be deemed null and void (*void ab initio*) if its substance or consequences are contrary to morality or public order. Furthermore, a legal act that violates mandatory statutory provisions shall also be null and void, except when the violated norm is intended to provide protection for one of the parties in a multilateral legal act. In such cases, annulment can only be pursued if it remains consistent with the underlying principles of the violated provision. This regulation further emphasizes that not all violations of statutory provisions automatically result in the nullification of a legal act unless the relevant law explicitly stipulates annulment as a consequence.

Referring to this legal principle, the validity of the grant made by Engelina Tan to Suharto is questionable, considering that the grant exceeds the forced share (*legitieme portie*) of the heirs, which is legally protected and cannot be reduced or nullified by any party. Moreover, the granted object in question constitutes Engelina Tan's sole asset, thereby potentially harming other heirs who have a rightful claim to a portion of the property. Given these circumstances, the deed of grant executed before the Land Deed Making Officers at that time may be deemed legally invalid and subject to annulment, as it contravenes applicable legal provisions and results in the disregard of the heirs' rights, which should be safeguarded under the law.

A Land Deed Making Officers has the authority to draft and issue authentic deeds as legally binding written evidence in various land transactions, including deeds of grant. In carrying out their duties, a Land Deed Making Officers must act professionally and responsibly, especially when errors in a deed result in harm to interested parties, such as heirs who suffer losses due to discrepancies between the deed's content and legal provisions or the intentions of the parties involved. In this regard, the liability of a Land Deed Making Officers is not limited to administrative aspects but may also extend to broader legal considerations, including liability for unlawful acts..

According to Munir Fuady, unlawful acts can be classified into three main categories (Fuady, 2010). First, unlawful acts resulting from intent, where an individual consciously and with a specific purpose commits an act that violates the law and causes harm to another party. Second, unlawful acts

that may occur even in the absence of fault or negligence, but are instead based on the failure to fulfill the principle of welfare or the existence of a legally recognized violation of another person's rights or interests. Third, unlawful acts caused by negligence, in which an individual fails to meet the required standard of care in a given action, thereby leading to legal consequences that harm another party. In the context of errors in drafting a deed of grant, if a Land Deed Making Officers is proven to have committed an error—either intentionally or due to negligence—that results in harm to any party, they may be held legally accountable in accordance with the principles of unlawful acts.

Intent in civil law refers to a situation in which an individual deliberately and consciously commits an act with a specific purpose, including causing harm to another party. In this context, the perpetrator is fully aware of and understands the consequences of their actions but still chooses to proceed. Conversely, negligence is a form of conduct where an individual does not have the intent or desire to cause harm, yet a detrimental outcome still occurs due to a lack of caution or failure to fulfill a legal obligation that should have been observed. In Indonesia's civil law system, particularly in the context of unlawful acts, there are three forms of liability regulated under the Indonesian Civil Code.

First, liability based on fault, as stipulated in Article 1365 of the Indonesian Civil Code, encompasses both intentional acts and negligent conduct that result in harm to another party. Second, liability specifically based on negligence, as regulated under Article 1366 of the Indonesian Civil Code, establishes that an individual may be held legally responsible when they fail to act as they should, thereby causing harm to others. Lastly, the concept of strict liability, as set forth in Article 1367 of the Indonesian Civil Code, does not require proof of fault. Instead, it is founded on the principle that a person can be held liable for acts or negligence committed by those under their responsibility, such as minors or employees within an employment relationship.

If a grant is annulled due to non-fulfillment of the required conditions, the property subject to the annulled grant shall revert to its original owner, namely the grantor. If the deed of grant is found to be in violation of statutory provisions, it shall be deemed null and void by operation of law (Wardhani, 2017). The annulment of a grant inherently implies the existence of an error. In determining the liability of the Land Deed Making Officers, a prior examination must be conducted to assess any errors committed in the execution of their duties in drafting the deed of grant. According to the Kamus Besar Bahasa Indonesia, an error is defined as something that is incorrect or deviates from the proper course. The liability of the Land Deed Making Officers arises if they are proven to have violated applicable regulations. It must first be established whether the deed was not executed in accordance with the legal requirements for its creation and whether such an error resulted in harm to any party. If the parties involved can provide evidence of the Land Deed Making Officers' error, such evidence may serve as the basis for holding the Land Deed Making Officers accountable.

The liability of the Land Deed Making Officers for negligence and errors in the deed they draft constitutes civil liability, particularly concerning the material truth of the deed, as stipulated in

Article 1365 of the Indonesian Civil Code. The elements of an unlawful act include the existence of a fault and the resulting damage or loss. An act may be deemed unlawful if it violates another party's rights, contradicts morality and propriety, or breaches the legal obligations of the perpetrator. In this case, the Land Deed Making Officers made an error by drafting a deed of grant without obtaining the consent of the other heirs, thereby transferring the entire estate to the grantee. Consequently, the Land Deed Making Officers may be held liable, and the aggrieved party has the right to file a lawsuit for the annulment of the grant before the court.

An act may be classified as an unlawful act if it meets several criteria, including when the act violates the rights of another individual, contradicts moral norms, deviates from the principles of propriety within society, and is inconsistent with the legal obligations that must be adhered to by the perpetrator. In the case under discussion, a Land Deed Making Officers made an error in drafting a deed by legalizing a grant without obtaining the consent of other heirs who have a legal interest in the inherited property. In such a situation, the Land Deed Making Officers may be held legally accountable for the error in drafting the grant deed. Any party that suffers losses as a result of this mistake has the right to file a lawsuit before the court to annul the grant deed that has been created, thereby enabling the restoration of their rights through a legally binding court decision.

IV. CONCLUSION

It is essential for the parties involved and the authorized official responsible for drafting an authentic deed to comply with the applicable requirements in the execution of a grant deed to prevent any party from being disadvantaged by the grant. If any party suffers a loss due to the grant, particularly those who hold an absolute right, they may file a lawsuit before the court to assert their rightful claim. A final and binding court decision may annul the grant. If the grant is annulled, the granted object shall revert to its original state, returning to the grantor.

On the other hand, both the parties and the Land Deed Making Officers must adhere to the applicable requirements and procedures in executing a grant to ensure that no party is harmed. Therefore, careful consideration must be given to the potential consequences of executing the grant. The parties and the Land Deed Making Officers must take prudent steps in carrying out the grant to minimize the risk of annulment in the future due to non-compliance with the legal requirements. Before proceeding with a grant, it is crucial to determine whether the granted object includes any absolute rights belonging to other heirs. If such absolute rights exist, they should first be allocated accordingly among the heirs, and only the remaining portion, which is free of any absolute rights, may be granted to any chosen recipient.

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