Al-Bayyinah
Volume 6 No. 2. July-December 2022
ISSN: 1979-7486; EISSN: 2580-5088
DOI: 10.35673/al-bayyinah.v4i2.2235

The Power of Notary Grants as an Authentic Deal in the Settlement of Inherited Land Ownership Disputes

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Abstract

This study examines the power of a notarial grant deed as an authentic deed in the settlement of inherited land ownership disputes. This study aims to find out how the strength of a notary grant deed which has perfect evidentiary power is related to legal practices that occur in society where there are still many cases of cancellation of a notary grant deed by judges in court. This study is a normative legal research/doctrinal approach which is carried out by analyzing legislation or other legal materials related to the strength of a notary grant deed as an authentic deed in the settlement of inherited land ownership disputes. The results of this study illustrate that basically a notary grant deed has perfect evidentiary power which technically functions to provide guarantees of protection and legal certainty to grantors, grantees, heirs, and related parties. However, in reality the strength of proof of a notary grant deed in court is weak when there are deficiencies in its manufacture which cause the grant deed to be canceled by the judge. The weakness of the grant deed in the evidentiary process so far is because the data included in the deed is not comprehensive so that there are still legal loopholes that have the potential to cause disputes, both from the aspect of legal substance that has not been synchronized between various types of legislation, the role of the legal structure (Notary/PPAT) which has not been maximized in seeing the motivation and prerequisites of the applicant, and the legal culture factor of the community who does not yet have an adequate understanding of the legal mechanism for implementing grants.

Penelitian ini mengkaji bagaimana kekuatan akta hibah notaris sebagai akta otentik dalam penyelesaian sengketa kepemilikan tanah waris. Penelitian

DOI: 10.35673/al-bayyinah.v4i2.2235

ini bertujuan untuk mengetahui bagaimana kekuatan akta hibah notaris yang mempunyai kekuatan pembuktian sempurna dikaitkan dengan praktik hukum yang terjadi di masyarakat dimana masih banyak terjadi kasus pembatalan akta hibah notaris oleh hakim di pengadilan. Studi ini merupakan penelitian hukum normatif (doctrinal approach) yang dilakukan dengan menganalisa peraturan perundang-undangan ataupun bahan hukum lainnya yang berkaitan dengan kekuatan akta hibah notaris sebagai akta otentik dalam penyelesaian sengketa kepemilikan tanah waris. Hasil penelitian ini menggambarkan bahwa pada dasarnya akta hibah notaris mempunyai kekuatan pembuktian sempurna yang secara teknis berfungsi untuk memberikan jaminan perlindungan dan kepastian hukum kepada pemberi hibah, penerima hibah, ahli waris, dan kepada pihak-pihak yang terkait. Namun pada kenyataannya kekuatan pembuktian akta hibah notaris di pengadilan tergolong lemah ketika terdapat kekurangan dalam pembuatannya yang menyebabkan akta hibah tersebut dapat dibatalkan oleh hakim. Kelemahan akta hibah dalam proses pembuktian selama ini adalah karena data-data yang dicantumkan dalam akta tersebut tidak komprehensif sehingga masih terbuka celah hukum yang berpotensi menimbulkan sengketa baik dari aspek subtansi hukum yang belum singkron antar berbagai jenis peraturan perundang-undangan, peran struktur hukum (Notaris/PPAT) yang belum maksimal dalam melihat motivasi dan prasyarat dari pemohon, dan faktor kultur hukum masyarakat yang belum mempunyai pemahaman yang memadai tentang mekanisme pelaksanaan hibah yang benar secara hukum.

Key words: *Deed of grant; dispute settlement; inherited land.*

Introduction

The transfer of land ownership rights through grants is still a problem in Indonesian society, especially from the aspect of the legal proof system. This is evident from the many cases of lawsuits that go to court institutions against the land object of the grant, or lawsuits against the deed of the grant as legal evidence.

In the provisions of the Compilation of Islamic Law (KHI) it is explained that a grant is the giving of an object voluntarily and without compensation from someone to another person who is still alive to be owned.[1] While the grant deed is an authentic deed made by an authorized official who has perfect evidentiary power. The strength of the proof of the grant deed is largely determined by the data and information contained in it, because that will be the basis for the judge in giving a decision when a dispute occurs.

The deed is divided into two, namely the authentic deed and the private deed. The grant deed as an authentic deed according to Article 1870 of the Civil

[1]Compilation of Islamic Law (KHI) article 171 letter g.

DOI: 10.35673/al-bayyinah.v4i2.2235

Code and Article 165 HIR and 285 Rbg has absolute and binding evidentiary power, what is stated in the deed is perfect evidence so there is no need to prove it with other evidence as long as the untruth cannot be proven. An authentic deed provides between the parties including the heirs or the person who has rights from the parties a perfect proof of what was done or stated in this deed. However, the deed can become inauthentic, for example, when the deed blocks a person's rights in terms of inheritance.[2]

Provisions regarding the making of authentic deeds as regulated in Law no. 30 of 2004 jo. Law No. 2 of 2014 concerning the position of a Notary only describes the importance of an authentic deed in a transaction of transfer of rights, while its preparation and formulation still require a follow-up that must be made professionally by an authorized official.

By taking into account the function of the grant deed as an authentic deed, it is associated with the number of grant deeds that are in question or even canceled or deemed not to have binding legal force by the judge in court in connection with a lawsuit filed by the heirs of the grantor to the recipient of the grant (non-heirs). Therefore, it is necessary to have the right concept and formulation to be stated in the grant deed so that the grantee gets protection and legal certainty for the grant he receives.

This study aims to contribute to the literature by examining how the strength of proof of a notarial grant deed as an authentic deed that has perfect legal proof power is associated with legal practices that occur in the community where there are still many cancellations of grant deeds by judges in the settlement of inheritance land disputes in court so that the ownership of the grant deed does not guarantee maximum legal protection and certainty.

Methodology

This research is included in the type of normative legal research or doctrinal legal research (doctrinal approach), namely legal research that uses secondary data sources or is library research, namely research on secondary data. In this type of legal research, law is conceptualized as what is written in legislation (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.[3] Normative legal research is carried out

[2]Malahayati, Malahayati, Syahrizal Abbas, and Dahlan Dahlan. "Kekuatan Hukum Akta Hibah untuk Anak Angkat." *Kanun Jurnal Ilmu Hukum* 21.2 (2019): 187-208.

[3]Said Sampara and Laode Husain, *Metode Penelitian Hukum Revised Edition*, Makassar: Kretakupa Print, 2016, p. 39.

DOI: 10.35673/al-bayyinah.v4i2.2235

with an approach to legal norms or substance, legal principles, legal theory, legal arguments and legal comparisons.[4]

This normative legal research is carried out by reviewing and analyzing laws and regulations or other legal materials related to the strength of a notarial grant deed as an authentic deed in the settlement of inherited land ownership disputes.

Discussion

Definition of Grant

This word is taken from the words "*hubuubur riih*" which means "*mururuhaa*" (traveling of the wind). Then the word grant is used with the intention of giving to others, whether in the form of property or not. In Islam, this grant means a contract whose main issue is the giving of one's property to another while he is alive, without any reward.[5]

In terminology, a grant is a transfer of wealth made by the owner to a desired person/group during his lifetime and is effective at that time.[6] Meanwhile, according to Satria Effendi M. Zein, a grant is a gift without expecting anything in return. In practice, the weigh-in on grants is carried out directly at the time the grantor is still alive. The latter is what distinguishes it from a will. In a will, the granting will only be carried out when the testator has died.[7]

The definition of a grant in the Encyclopedia of Islamic Law is a gift that is made voluntarily in order to get closer to Allah SWT without expecting anything in return.[8]

Therefore, the grant is a voluntary gift, without expecting any reward/contra-achievement from the person receiving the grant, and the gift is made while the grantor is still alive. In short, grants are a form of transfer of property rights.

Meanwhile, Article 1666 of the Civil Code (KUH Perdata) explains the definition of a grant that;

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[4]Syahruddin Nawi, *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris,* Makassar: PT.Umitoha Ukhuwah Grafika, 2017, p. 7.

[5]Abdul Manan, *Aneka Masalah Hukum Perdata Islam di Indonesia,* Jakarta: Kencana, 2012, p. 131.

[6] A. Sarjan, Kapita Selekta Hukum Keluarga Islam, Watampone: Luqman al-Hakim Press, 2016, p. 83-84.

[7]Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer – Analisis Yurisprudensi dengan Pendekatan ushuliyah,* Jakarta: kencana, 2010, p. 472.

[8]Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam,* Jakarta: Ichtiar Baru Van Hoeve- Vol. 4, 1996, p. 540.

DOI: 10.35673/al-bayyinah.v4i2.2235

> Grant is an agreement whereby a donor delivers an item free of charge, without being able to withdraw it, for the benefit of the person who receives the delivery of the item. The law only recognizes gifts between living persons.[9]

From some of the above understanding, it can be understood implicitly that in essence a grant is the gift of an object from one person to another during his life without requiring any reward and only expecting the pleasure of Allah SWT.

Legal Basis of Grant

The legal basis for grants in Islam is contained in the Qur'an and the Hadith of the Prophet Muhammad, including in the QS. Al-Baqarah verse 262, Allah says:

اَلَّذِيْنَ يُنْفِقُوْنَ اَمْوَالَهُمْ فِيْ سَبِيْلِ اللّٰهِ ثُمَّ لَا يُتْبِعُوْنَ مَآ اَنْفَقُوْا مَنًّا وَّلَآ اَذًىۙ لَّهُمْ اَجْرُهُمْ عِنْدَ رَبِّهِمْ ۚ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُوْنَ

The translation:

> Those who spend their wealth in the way of Allah and then do not follow up what they have spent with reminders [of it] or [other] injury will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve. (Q.S Al-Baqarah: 262).[10]

> Likewise in the hadith the Prophet (pbuh) said:
> From Ibn Abbas ra, he said: I heard the Messenger of Allah (pbuh) say: "The example of those who give charity and then withdraw their gift is that of a dog that vomits and then eats its vomit." (narrated by Muslim).

Grants according to Indonesian positive law are regulated in various relevant laws and regulations, namely as follows:

1. Civil Code (Burgerlijk Wetboek/ BW);
2. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles;
3. Law Number 30 of 2004 which has been amended by Law Number 2 of 2014 concerning Notary Positions

[9]Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek/BW).

[10]Departemen Agama RI, *Al-Qur'an dan Terjemahnya*, Bandung: CV. Penerbit Jumanatul 'Ali, 2005, p. 44.

DOI: 10.35673/al-bayyinah.v4i2.2235

4. Law Number 7 of 1989 concerning Religious Courts, which has been amended by Law Number 3 of 2006, and lastly amended by Law Number 50 of 2009 concerning Religious Courts;
5. Government Regulation Number 24 of 1997 concerning Land Registration;
6. Government Regulation Number 37 of 1998 concerning the Position Regulation of the Maker of Land Deeds;
7. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.

Grant Deed as Evidence in the Trial

The evidence in the civil procedural law mentioned in the Act (Article 164 HIR, Article 284 RBg, and Article 1866 BW) are:

a. Written evidence;
b. Witnesses;
c. Confession;
d. conjecture;
e. and Oath.

The principle of proof adopted by civil procedural law is what is known as beyond reasonable doubt. The truth that is realized is really based on undoubted evidence, so that truth is considered valuable as the ultimate truth.[11]

In accordance with the purpose of proof, which is to provide clarity and confidence to the judge regarding the existence of a legal event, what must be proven is an event or events that are stated by the parties in an event that is not clear or that is a dispute. Regarding the legal status, the judge will decide because the judge is considered to know the law (*ius curia novit*), because a judge is considered to have sufficient legal knowledge, including unwritten law or custom. The evidence in the trial places the plaintiff and the defendant in an equal/equal position, as the legal principle says "equality before the law". This theory regulates how a judge acts fairly in giving equal rights and opportunities to the litigants in the trial. Judges are not allowed to side with one party, including in giving the burden of proof to the parties.

The procedural law theory also applies the "*Audi et alteram partem*" principle which implies that the position between the parties in the trial process must be equal before the judge, including the distribution of the burden of proof. According to this theory, the judge must share the burden of proof based on the

[11]R. Subekti, *Hukum Pembuktian,* Jakarta: Pradnya Paramita, 2007, p. 9.

DOI: 10.35673/al-bayyinah.v4i2.2235

equal position of the parties, so that the parties feel they have the same opportunity to win the case they face.

In the implementation of the trial, the deed has a function as a means of proof (written evidence). The function of a deed as a means of proof is that in the absence or not making of a deed, it means that the legal act cannot be proven. In this case, an example can be taken in articles 1681, 1682, 1683 (regarding how to grant). So here the deed is indeed made as a means of proof at a later date.

From the explanations described above, it can be understood that the deed was made from the beginning intentionally to serve as evidence. The written nature of an agreement or legal action in the form of a deed does not become a benchmark for the validity of an agreement or legal action, but it aims in addition to explaining that a legal act has occurred, also so that it can be used as legal evidence in the future.

The strength of deed proof is divided into three types, namely:[12]

a. The physical proving power (third party).

What is meant by the power of physical evidence of a deed is the strength of proof of a letter based on its physical condition, that a letter that looks like a deed is accepted/considered like a deed and treated as a deed, as long as the opposite is not proven. So, the letter is treated like a deed, except that the inauthenticity of the deed can be proven by another party, for example, it can be proven that the signature in the deed was falsified. Thus, it means that the proof is based on reality.

b. The formal proving power

What is meant by formal proof of a deed is a strength of proof based on whether or not the statement signed in the deed is true, that the signatories of the deed have explained what is contained in the deed. For example, between A and B who make a sale and purchase, they acknowledge that the signature stated in the deed is correct, so the acknowledgment of the statement of the occurrence of the event itself, is not about the contents of the statement or in this case concerning the statement, "is it true that there is a statement by the the party who signed it." Thus, it means that the proof is based on habit in society, that the person signs a letter to explain that the things listed above are his/her statement.

c. The material proving power

What is meant by material proof of the deed is a power of proof based on whether or not the contents of the statement signed in the deed, that the legal events stated in the deed have actually occurred, thus provide certainty about the

[12]Palit, Richard Cisanto. "Kekuatan Akta di Bawah Tangan sebagai Alat Bukti di Pengadilan." *Lex Privatum* 3.2 (2015).

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material of the deed. For example, A and B admit that a sale and purchase (legal event) has occurred.

The Proving Power of the Grant Deed

Proving is a way to show the clarity of the case to the judge so that it can be assessed whether the problems experienced by the plaintiff or victim can be prosecuted legally. Therefore, proving is a procedure that must be followed because it is an important thing in applying material law.[13]

In a civil dispute, including a grant dispute, it is certain that the parties have believed that what is demanded or fought for in court is true and can be legally proven. This proving is of course supported by various kinds of evidence regulated in the procedural law, one of which is evidence in the form of an authentic document/deed made by an authorized public official.

Public Officials who are given an authority by law in terms of making a Deed of Grant are the Official making Land Deeds after the issuance of Government Regulation Number 24 of 1997 concerning Land Registration, that each gift in the form of a grant in the form of land and/or buildings must be made in writing with a deed made by the Land Deed Making Official as regulated in Article 37 paragraph (1) Government Regulation Number 24 of 1997. The Land Deed Making Official is given the authority to carry out some activities from land registration by making authentic deeds.[14]

In Article 165 HIR (Articles 1870 and 1871 of the Civil Code) it is stated that the authentic deed is a perfect means of proof for both parties and their heirs as well as all those who have rights from it about what is contained in the deed. The proving power of an authentic deed which is complete evidence means that the truth of the things written in the deed must be acknowledged by the judge, that is, the deed is considered true, as long as the truth is that no other party can prove otherwise, including:

a. Physical proving power

   The power of proof comes from a deed, namely that a letter that looks like an authentic deed is accepted/considered like a deed and treated as an authentic deed to everyone as long as it is not proven otherwise.

b. Formal proving power

   The formal proving power of the deed, namely that usually people sign a letter to explain that the things mentioned above are true signatures, or in other words that the events written in the deed have occurred.

[13]Zainal Asikin, *Hukum Acara Perdata di Indonesia,* Jakarta: kencana, 2016, p. 98.

[14]Hadiyanti, Anisa Rahma, Rachmad Safa'at, and Tunggul Anshari. "Kedudukan Akta Hibah dalam Sengketa Kepemilikan Hak Atas Tanah." *Lentera Hukum* 4 (2017): 213.

DOI: 10.35673/al-bayyinah.v4i2.2235

Because it is not the duty of a notary to investigate the truth of the statements of the applicants written in the deed. So in an authentic deed in the form of a deed of the parties, if the signatures of the signatories have been acknowledged as true, it means that the things written and explained above the signatures of the parties are proof against everyone. And also in an authentic deed in the form of a deed of official report, that the statement of the public employee (notary) is the only information given and signed. So in this case what is certain is about the date and place of the deed and the authenticity of the signature, which applies to everyone. Thus, the two deeds have the formal proving power.

c. Material proving power

The material proving power of the deed, namely the desire for others to consider that what is contained in the information and for whom the contents of the deed are valid and aims to provide evidence for themselves.

In other words, the desire for others to assume that the legal event stated in the deed is true has occurred. So in an authentic deed in the form of a deed of the parties, the contents of the information contained in the deed only apply correctly to the person who provided the information and for whose interest the deed was given.

Analysis of the Power of a Notary Grant Deed in an Inherited Land Dispute

Basically, the process of transferring one's property to his heirs, which is called inheritance, occurs only because of death. New inheritance will occur if three conditions are met, namely:

1. Someone died;
2. There is someone who is still alive as an heir who will receive an inheritance when the beneficiary dies;
3. There are a number of assets left by the beneficiary.[15]

The relationship between grants and inheritance can be further analyzed that grants are a transfer of rights when the person who gave the property is still alive, while inheritance is given when the person who owns the property has died. However, the two have a very close relationship, especially if the grant is given to heirs, because it will determine the amount of the inheritance obtained. So, it cannot be denied that there is a very close correlation between grants and inheritance, especially if the grant is from a parent to a child which is not a

[15]Cahyaning, I. Gusti Ayu Putu Oka, et al. *Peralihan Hak Atas Tanah Berdasarkan Hibah Wasiat Oleh Pelaksana Wasiat*. Diss. Udayana University, 2018.

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conditional grant (compensation), then according to the provisions of Article 211 of the Compilation of Islamic Law it can be counted as part of the inheritance.

The grant deed as an authentic deed that has perfect evidentiary value should not only prove the existence of a grant-giving event, but it should also clearly describe the type of grant, whether it is a pure grant or a conditional grant (compensation), if a pure grant does not exceed the maximum limit (*legitime portie*) which is 1/3 part of the assets of the grantor at the time of the grant. Due to the current practice, the grant deed made by a notary/PPAT which is used as evidence at the trial has never been listed and explained the assets of the grantor other than that which was granted, so that when a legal dispute occurs it is not clear and clear to the judge whether the land being granted exceeds *legitime portie* (1/3) part of the assets of the grantor which results in objections from the heirs of the grantor.

KHI determines that the main cause of a grant can be canceled because basically based on Islamic law, in giving a gift a person is only limited to 1/3 of the wealth of the donor. The purpose of this restriction is to avoid conflicts between families. So, that if the grant to another person exceeds this limit, then the heirs of the grantor can apply for the cancellation of the grant. The granting of authority to the heirs in order to apply for the cancellation of the grant to the Religious Courts because basically the legal grant is sunnah and the purpose is for good. However, if the giving of the grant actually causes harm, especially for the heirs who are more entitled to the property, the grant can be canceled.[16]

In practice, what is often the reason for a lawsuit for cancellation of a grant deed in an inheritance land dispute in the Religious Courts is because it harms the heirs, and if it is proven, the judge will cancel the status of the grant and the *a quo* grant deed is declared to have no binding legal force, as a result, the land of the grant that already has a certificate owned by the recipient of the grant will be canceled/annulled because the basis for making it has been declared invalid and has no binding legal force so that the grant deed which incidentally is an authentic deed made by the authorized official in this case the Notary/PPAT is not able to provide legal certainty and protection to the grantee.

Of the various cases of cancellation of the grant deed in the Religious Courts and annulling the status of the proof of the grant deed, the making of the grant deed should not only be based on the will or will of the grantor alone by ignoring the approval of the heirs (as has happened so far), because this is the same as ignoring aspects of the grant deed. justice and legal certainty, because even

[16]Prayitno, Dhea Nada Safa. "Keabsahan Surat Pernyataan Hibah Untuk Salah Satu Ahli Waris Tanpa Persetujuan Ahli Waris Lainnya." *Indonesian Notary* 2.4 (2020).

DOI: 10.35673/al-bayyinah.v4i2.2235

though the property is the full right of the grantor, there are also the rights of others, especially children, wife or husband as heirs.

This problem in the provisions of Article 211 of the Compilation of Islamic Law has provided a solution, namely by way of grants given by parents to their children (as long as they are not conditional grants) can be counted as inheritance. The definition of "can" in the article does not mean imperative (must), but is one alternative that can be chosen to resolve inheritance disputes as long as the heirs do not question the grants that have been received by other heirs, the inheritance that has not been granted can be distributed to all heirs according to their respective portions. But if there are some heirs who question the grant given to other heirs, then the grant can be calculated as part of the inheritance of his parents/heirs by way of compensation between the grant that has been received and the portion of the inheritance that should be. If it is still lacking, it remains only to add to the deficiency and if the grant given is more than it is withdrawn to be handed over to the heirs whose portion is less.

The completeness of the data contained in the grant deed as an authentic deed in grant disputes related to inheritance cases is very decisive in examining cases in court, from which the judge will get a clear picture of the events that are being disputed, in the previous description it is illustrated that the practice that occurred so far in the community, the grant deed is still weak in its evidentiary strength because there are still legal deficiencies and loopholes that have the potential to cause disputes, both from the aspect of legal substance, which should be carried out by synchronizing various types of related laws and regulations, the role of authorized officials, and the legal culture of the community.

From the description above we can conclude that the weakness of the grant deed in proving is because so far the data included in the making of the grant deed is not comprehensive so that the grant deed does not meet the material requirements as evidence that has perfect evidentiary power so that it has not been able to provide protection to the land ownership rights of the grant, both to the grantor, heirs and grant recipients because what must be believed by the judge if the data and information needed are not included in the deed.

This is where a notary/PPAT has a very urgent role in making a grant deed that can provide legal protection to interested parties. The Notary/PPAT needs to make a breakthrough or discretion in making the grant deed not only to record the wishes of the applicant, but the Notary/PPAT also provides input and advice to the applicant if there are indications of violation of legal norms. Notary input to the prospective grantor is certainly a way out so that a deed that has perfect legal proof is born.

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Conclusion

From this research it can be concluded that basically a notary grant deed has perfect proving power which technically functions to provide guarantees of legal protection and certainty to the grantor, grantee, heirs, and related parties. However, in reality the proving power of a notary grant deed in court is weak when there are deficiencies in its making which cause the grant deed to be canceled by the judge. The weakness of the notary grant deed in the evidentiary process so far is because the data included in the deed is not comprehensive, so there are still legal loopholes that have the potential to cause disputes, both from the aspect of legal substance that has not been synchronized between various types of legislation, the role of the legal structure (Notary/PPAT) who have not been maximal in seeing the motivation and prerequisites of the applicant, and the legal culture factor of the community who does not yet have an adequate understanding of the legal mechanism for implementing grants.

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