



Settlement of Grant Disputes in the Perspective of Islamic Law (Analysis of Decision Number: 48/Pdt.Sus/2011 About Cancellation of Grant)

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Abstract

In recent decades, grant disputes have attracted considerable attention because the decisions often present debates and the decisions concluded need to reach decisions that are just and in accordance with applicable legal principles. This article will analyse Decision Number: 48/Pdt.Sus/2011 on grant cancellation. The method used in this research uses a normative juridical approach method by examining the results of the decision. This research aims to understand how Islamic law is applied in grant dispute cases, particularly in the context of grant cancellation between parents and their children. Through this case study, the legal bases used by the court were analysed, including the Compilation of Islamic Law (KHI) and the Compilation of Sharia Economic Law (KHES). This study found that the court's decision refers to Article 212 of the KHI and Article 712 of the KHES which stipulates that the grantor can withdraw the grant after the handover has been carried out on the condition that the recipient agrees to it, this provision does not apply to grants from parents to their children. Grants from parents to their children can be withdrawn as long as the child is still alive, according to article 714 paragraph (2) KHI.

Keywords: Dispute, Grant, Islamic Law, Islamic Jurisprudence.

Introduction

Grant dispute cases often occur in a family context when property, such as land or property, is given by one family member to another without clear documentation.¹ Conflicts arise when grants are not documented in writing or there are no valid witnesses, thus causing disputes after the grantor dies or in certain situations.² The legal relevance of this case lies in the importance of clear and formal documentation

¹ Febrian Wardhana, "Legal Protection to Crediture to The Warranty of Changed Living Rights Status Become A Disclosure: Decision Analyse of The Republic Of Indonesia Supreme Court Number: 390K/Pdt/2016," *Unram Law Review* 2, no. 1 (May 18, 2018), <https://doi.org/10.29303/ulrev.v2i1.39>.

² In certain situations there are sometimes grants given before death because they refer to certain customary laws. Suaidi Suaidi, "Pluralisme Hukum (Islam) Dalam Praktik Dan Penetapan Hak Waris Di Kalangan Muslim Lokal Madura," *Asy-Syari'ah: Jurnal Hukum Islam* 10, No1 (n.d.): 1-20, <https://doi.org/10.55210/assyariah.v10i1>.

to provide legal certainty and prevent disputes.³ Laws governing grants, such as the Compilation of Islamic Law (KHI) and the Compilation of Sharia Economic Law (KHES), form the basis for resolving this conflict.⁴ A fair and transparent settlement is important to maintain good relations within the family and prevent social tension.⁵ This case also raised legal awareness in the community about the importance of following the correct procedures in grant transactions, encouraging people to document grants properly to avoid future conflicts.⁶

Recently, cases of grant disputes, for example, the resolution of such cases in the courts has a deep importance in the social and legal context because it not only provides legal certainty and protection, but also for the sake of upholding social justice, sharia principles, and legal awareness in society, for example, to maintain family harmony, public trust in the judicial system, and overall socio-economic stability.⁷ This is illustrated by the fact that this civil dispute started as an internal family conflict in Mataram, West Nusa Tenggara province (NTB), between a son and a father, which then developed into a civil dispute. Where the father is the plaintiff and his two children are the defendants in a grant dispute. This conflict started when a grant deed was claimed to have originated from the grantor, namely the biological mother of the respondent. This grant deed arose when the mother died and the deed began to be contested after the plaintiff's wife died. The plaintiff argued that the grant deed was legally flawed, so in an effort to prove this argument, the plaintiff brought the case to the Giri Menang religious court, after undergoing case examination and going through the judicial stages, as a result the father as well as the plaintiff was declared defeated.

The existence of a decision that punishes the plaintiff, then the plaintiff's legal efforts to appeal the decision of the Giri Menang Religious Court, in the ruling at the first level, is to punish the plaintiff to pay court costs and reject the claim that the

³ St Petersburg State University and Sergei A. Belov, "The Role of Language in Providing Intelligibility and Certainty of Normative Legal Acts," *Vestnik of Saint Petersburg University. Law* 13, no. 2 (2022): 293-308, <https://doi.org/10.21638/spbu14.2022.201>.

⁴ "Legal Due to Cancellation of Grants in Perspective of Legal Certainty," *Journal of Law, Policy and Globalisation*, November 2021, <https://doi.org/10.7176/JLPG/115-03>.

⁵ David A. Hoffman, "What the #@!* Are They Fighting About?!?: Reflections on Fairness, Identity, Social Capital, and Peacemaking in Family Conflicts," *Family Court Review* 53, no. 4 (October 2015): 509-16, <https://doi.org/10.1111/fcre.12171>.

⁶ Natalia Kuzovleva, Anna Samoilova, and Natalia Pachina, "Compliance with Human Rights on the Example of Obtaining Grants in the Field of Smart Technologies," in *2022 2nd International Conference on Technology Enhanced Learning in Higher Education (TELE)*, Lipetsk, Russian Federation: IEEE, (2022), 234-36, <https://doi.org/10.1109/TELE55498.2022.9800953>.

⁷ Zainul Mun'im et al., "Revisioning Official Islam in Indonesia: The Role of Women Ulama Congress in Reproducing Female Authority in Islamic Law," *AHKAM*: 24, no. 1 (June 30, 2024), <https://doi.org/10.15408/ajis.v24i1.34744>.

plaintiff does not have a strong evidential basis. The existence of this decision, the plaintiff considered that the decision of the *judex facti*,⁸ in this case the Panel of judges of the Giri Menang Religious Court did not reflect the values of justice and humanity,⁹ because the legal considerations were not based on the facts revealed in the trial, both from the evidence submitted by the Plaintiff and from the testimony of witnesses submitted by the Appellant and the Defendant, and moreover the *judex facti* made legal considerations that only assessed from a normative perspective. In addition, the *judex facti* ignored the facts and evidence from the testimonies of witnesses in relation to the land grant that could only be taken by the Appellants after the death of the Appellant and the Appellant's wife (Hajjah Tasniah), and as long as the Appellant was alive the Appellant had to be dutiful to her parents, but what happened was that the Appellants committed acts that hurt the Appellant's feelings.

Based on this description, it is important to understand how Islamic law is applied in grant dispute cases, especially in the context of grant cancellation between parents and their children.¹⁰ This study was undertaken to study a case of grant dispute resolution to provide a deep insight into the various legal, social, and ethical aspects involved in grant transactions. This not only helps in understanding and enforcing existing laws but also in creating a more just and harmonious society. Therefore, the author formulates several main problems including questioning how the law of grant withdrawal by the grantor in the Law and Islamic Law including questioning the basis of consideration and dictum in decision number 48/Pdt.G/2011/PTA.MTR. Therefore, this case is interesting to study because in it there is a family conflict triggered by mere property and the withdrawal of property / grant objects that have been given to grantees, whether in Islamic law this kind of thing is justified or it is prohibited to practice it. This study will emphasise the importance of considering all legal aspects and evidence in resolving grant disputes, as well as highlighting the need for a deep

⁸ *Judex facti* is a term used in the judicial system that refers to the court or judge in charge of examining and deciding cases based on the facts revealed during the trial. "Legal Due to Cancellation of Grants in Perspective of Legal Certainty," *Journal of Law, Policy and Globalisation*, November 2021, <https://doi.org/10.7176/JLPG/115-03>.

⁹ As Islamic principles themselves strongly encourage the principles of justice, transparency, piety, and balance between material and spiritual aspects. Suaidi Suaidi and Akhmad Farid Mawardi Sufyan, "Contemporary Fiqh Construction for Progressive Islamic Business Ethics In The Society 5.0 Era: Methods, Challenges, and Opportunities," *ALFIQH Islamic Law Review Journal* 2, no. 3 (2023): 150.

¹⁰ As the KHI and the Civil Code explain, parents can give grants to their children, but can also cancel them if the child has bad behaviour or a wasteful spirit: Borkat Halomoan Siregar and Ahmad Rezy Meidina, "Giving Grants from Parents to Their Children According to the Compilation of Islamic Law and the Civil Code," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (June 25, 2023): 1054-62, <https://doi.org/10.47467/as.v5i3.3192>.

understanding of the application of Islamic law in the context of positive law in Indonesia.¹¹

Methods

This research is a qualitative research with a normative juridical approach. Qualitative research with a normative juridical approach in the context of grant dispute resolution aims to analyse and understand the application of law in grant dispute cases, especially through the interpretation and application of applicable legal norms.¹² This approach is used to analyse primary and secondary legal materials relating to grant disputes in Islamic law. The data sources in this research are Court Decision Number 48/Pdt.Sus/2011, Interviews with judges or lawyers who handle grant cases, Interviews with Islamic law experts, Books and scientific articles on grant law in Islam, Compilation of Islamic Law (KHI), Compilation of Sharia Economic Law (KHES) and legal journals and other relevant literature. The technique in data analysis is descriptive analysis, presenting and describing the facts related to case number 48/Pdt.Sus/2011. Then juridically analysed by analysing court decisions by referring to articles in KHI and KHES as well as relevant Islamic legal principles and comparing court decisions with similar cases that have occurred and analysed in the literature. This research is expected to provide a comprehensive understanding of the settlement of grant disputes in the perspective of Islamic law, as well as contribute to the literature of Islamic law, especially in terms of the application of grant law in real cases. The results of this research are also expected to be a reference for legal practitioners and academics in understanding and handling grant disputes.

Definition of Grant

Hibah comes from the Arabic word *hubub* (gust). The word *hubub al-rih* (gust of wind) because in the "gust of wind" there is a "gift or in other words giving to someone during his lifetime, with no expectation of return or bond either verbally or in writing."¹³ So, the definition of grant itself etymologically means gift, alms, transfer

¹¹ S.L. Budylin, "Review of Preliminary Injunction Orders In U.S. Courts," *Herald Of Civil Procedure* 10, No. 6 (January 25, 2021): 177-92, <https://doi.org/10.24031/2226-0781-2020-10-6-177-192>.

¹² Arifin Tumuhulawa, Roy Marthen Moonti, and Yusril Katili, "Analysis of the Dispute Settlement of the Authority of State Institutions Based on the Constitution of the Republic of Indonesia," *International Journal of Humanities Education and Social Sciences (IJHESS)* 1, no. 6 (June 18, 2022), <https://doi.org/10.55227/ijhess.v1i6.176>.

¹³ Borkat Halomoan Siregar and Ahmad Rezy Meidina, "Giving Grants from Parents to Their Children According to the Compilation of Islamic Law and the Civil Code," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* 5, no. 3 (June 25, 2023): 1054-62, <https://doi.org/10.47467/as.v5i3.3192>.

of rights.¹⁴ In terms of Muhammad Asy-Syarbini said; grant is a contract that gives ownership of an asset to another person without any reward or substitute, which is done when the grantor is still alive and carried out voluntarily.¹⁵ As in the explanation of Article 49 letter d. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, it is stated that what is meant by "grant" is the giving of an object voluntarily and without reward from a person or legal entity to another person or legal entity to be owned.¹⁶

The term Hibah in the Civil Code is confirmed in Article 166,¹⁷ that a grant is an agreement in granting a grant while still alive which is given voluntarily and without receiving anything in return, so that when giving an object to the grantee, the grant property is permanently owned and cannot be cancelled.¹⁸ In Islamic law, hibah means aqad which basically is the giving of one's property to another person while he is still alive without any reward. In general, hibah has the following meanings: Ibra', Şodaqoh and Gift.¹⁹

As the division of the pillars of a grant which includes several important elements: *First*, the grantor, known as wahib, is the party giving the grant where the grantor must have full rights to the object being granted and do so voluntarily;²⁰ *Second*, the grantee or mauhub lahu is the party receiving the grant, which can be anyone who is eligible to receive and own the object being granted; Furthermore, *Third*, the object of the grant is the item or object being granted. The item must be clear and have value. Finally, *Ijab* and Qabul, known as shigat hibah, is the process of declaration and acceptance of the grant; *Fourth*, *Ijab* and Qabul in the sense that ijab is a statement from the grantor, while qabul is an acceptance from the grantee. Therefore, both parties must agree, and this process must be carried out clearly and firmly.²¹

¹⁴ Nor Mohammad Abdoeh, "Hibah Harta Pada Anak Angkat: Telaah Filosofis Terhadap Bagian Maksimal Sepertiga," *Millah: Jurnal Studi Agama*, 2019, 207-34.

¹⁵ Muhammad al-Sharbini Al-Khatib, "Mughni Al-Muhtaj," *Volume II, Beirut: Dar al-Fikr*, 1978, 396.

¹⁶ Xavier Nugraha et al., "Lampau Dan Sekarang: Analisis Kompetensi Absolut Dalam Perselisihan Hak Pada Pengadilan Agama," *Mizan: Journal of Islamic Law* 4, no. 2 (December 10, 2020): 141, <https://doi.org/10.32507/mizan.v4i2.799>.

¹⁷ Chatib Rasyid, "Syaifuddin, Hukum Acara Perdata Dalam Teori Dan Praktik Pada Peradilan Agama," 2009, 25.

¹⁸ Ria Sintha Devi, Alusianto Hamonangan, and Emi Rafika Sitepu, "Analisis Yuridis Penyelesaian Sengketa Hibah Di Pengadilan Tinggi Medan (Studi Kasus Putusan No.142/Pdt/2015/Ptmdn)," *Jurnal Darma Agung* 29, no. 2 (April 13, 2021): 30, <https://doi.org/10.46930/ojsuda.v29i1.944>.

¹⁹ Nor Mohammad Abdoeh, "Hibah Harta Pada Anak Angkat: Telaah Sosiologis Terhadap Bagian Maksimal Sepertiga," *Cakrawala: Jurnal Studi Islam* 13, no. 1 (2018): 1-18.

²⁰ *The Wahib* is the one who grants the property. The majority of scholars are of the view that if a sick person makes a bequest and then dies, the bequest is one-third of the *estate*.

²¹ Syafei Rachmat, "Fiqh Muamalah," *Bandung: Pustaka Setia*, 2001, 244-45.

Meanwhile, the conditions of the grant itself include several important provisions. *First*, the property given as a grant must already exist at the time the grant contract is made. *Second*, the property must come from the grantor's property. If the property granted does not belong to the grantor, the grant can be considered valid as long as the actual owner gives permission, even if the permission is given after the property is handed over; *Third*, the property granted must be clear and known with certainty; *Fourth*, the grantor must also be of sound mind and an adult; *Fifth*, the grant will be void if it is made under duress or pressure.²²

The Law of Withdrawing Grants

In the provisions of Islamic law regarding withdrawing grants, a grant transaction must have rules governing the possibility of withdrawing grants.²³ For example, the grantor can withdraw the grant before the transfer of property is made, or if there is consent from the grantee after the transfer is made.²⁴ However, there are also situations where withdrawal is not allowed, such as when the grant has been handed over to close relatives or in marriage, or if the grant has been used by the grantee for personal interests.²⁵ In addition, in some cases, such as when the grantee dies or if the grant is in the form of sadaqah, withdrawal is not permitted. All of this illustrates the various conditions under which a grant may or may not be withdrawn, in accordance with the applicable provisions.²⁶

Case Number: 48/Pdt.G/2011/PTA.MTR related to Grant Cancellation

1. Types, Classifications and Litigants

a. Case type and classification

Based on the lawsuit filed with the Mataram High Court dated 14 June 2011 with register number 48/Pdt.G/2011/PTA.MTR, the type of lawsuit is a civil case and classified as a sharia economic dispute.

b. Litigating parties

²² Zakiyatul Ulya, "Hibah Perspective of Fikih, KHI and KHES," *Maliyah: Journal of Islamic Business Law* 7, no. 2 (2017): 1-23.

²³ Junaidi Junaidi and Mila Surahmi, "Issue of Grant Property Withdrawal In Article 712 Of Sharia Economic Law Compilation And Article 212 Of Islamic Law Compilation," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 1 (June 9, 2021): 25-30, <https://doi.org/10.19109/nurani.v21i1.7977>.

²⁴ B Febrianti and Musyfica Ilyas, "Hibah Yang Ditarik Kembali Perspektif Hukum Islam Dan KUHPerdara," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, 2021.

²⁵ Noor Lizza Binti Mohamed Said, Mohd Ridzuan Bin Awang, and Amir Husin Bin Mohd Nor, "Qabid Dan Hukum Penarikan Balik Hibah," *Jurnal Muamalat* 3 (2010): 157-84.

²⁶ Ahmad Ifham Sholihin, *Buku Pintar Ekonomi Syariah* (Gramedia Pustaka Utama, 2013), 314-15.

- a) H. Abdul Hanan, a 65-year-old self-employed man, who lives in Negarasakah Utara, Cakra Timur Village, Cakranegara Sub-District, Mataram City, has transferred his power of attorney to Sri Hayatiningsih, S.H., Ini Kurniawati, S.H., and INA Maulina, S.H., advocates at Lombok Hayat Legal Aid Institute (LBH). Initially she acted as the Plaintiff, but now she acts as the Appellant. against.
- b) H. Musta'il, a Muslim self-employed man, who lives in Kebun Duren, Selagalas Sub-District, Mataram City, was originally Defendant I in this case, but now acts as the 1st Respondent.
- c) Haji Muhammad Bisri, a 40 year old self-employed man living at Butun Indah, Bertais, RT 03 RW 05, Bertais Village, Sandubaya Sub-District, Mataram City, was originally the second respondent in this case, but is now the second appellant.

Posita (Sitting of the Case)

This case originated from a grant claimed by respondents I & II/appellants I and II to have been given by Hajjah Tasniah as the grantor, who is none other than the mother of the appellant. At the beginning of the grant and during the course of the grant, there was no conflict between the appellant and the appellant I and II. The starting point of the conflict began when the grantor passed away. The appellant, as well as the husband and father of the appellant, began "beating the drums of war", by filing a civil suit at PA Giri Menang. After undergoing examination and litigating the case at PA Giri Menang, the plaintiff, who is the father of the appellant, lost. Not accepting the decision, the plaintiff filed an appeal to the Mataram Religious High Court with the same demand, namely the cancellation of the grant object. There were several reasons for the appellant to have the grant cancelled, namely:

- a. The grant deed is legally defective or fake;²⁷
- b. Physical possession of the granted goods and the Certificate of Title are still controlled by the Appellant as the grantor;

²⁷ The Grant Deed lists the names of the Appellants as grantees and the Certificates in the names of Appellant 1 and Appellant 2 respectively does not necessarily mean that the Grant Deed and Certificates are deemed to be evidence of the transfer of the goods granted by the Appellant to the Appellants, because physical control of the granted land and the certificates remain in the possession of the Appellant (posita point 4).

- c. The children insisted on taking the grant before the Appellant died and disobeyed the Appellant, so there was no transfer or *levering of the* grant and no consensus between the Appellant and the Appellants;
- d. They argued that in fiqh law, grants have pillars and conditions that must be fulfilled by both the grantor and the grantee. If one of the pillars or conditions is not fulfilled, then the grant becomes invalid. In this case, it turned out that one of the pillars of the grant was not fulfilled, namely *ijab kabul* between the grantor and grantee. Therefore, the grant is considered invalid and deserves to be cancelled;
- e. The decision of the *judex facti*, the panel of judges of the Giri Menang Religious Court is considered not to reflect the values of justice and humanity because its considerations are not based on the facts revealed in the trial. Neither the evidence presented by the Appellant/ Plaintiff nor the testimonies of witnesses presented by both parties were properly considered. Furthermore, the decision is considered to only make legal considerations that assess from a normative perspective;
- f. *The judex facti* did not see that the grant was not yet fully effective;
- g. The grant made above is considered a conditional grant, because the goods will be given to the 1st and 2nd Appellants at a time determined by the Appellant. The condition is that the Appellants must be devoted to the Appellant as their parents, and if both parents, namely the Appellant and Hajjah Tasniah (biological parents of the Appellants), have passed away;
- h. In fact, the Appellant also disobeyed the Appellant, so it is reasonable for the law that the cancellation of this grant be filed;
- i. *Judex Facti* (Authority of the judge to examine the facts) upheld the reason that the panel of judges of the Giri Menang Religious Court was deemed to have ignored the facts and evidence from the testimony of witnesses presented by the Plaintiff/Appellant;²⁸
- j. Based on Article 212 KHI in *conjunction with* Article 714 KHES, grants are basically irrevocable, except in the case of grants from parents to their

²⁸ The witnesses involved in this case, namely Sahwal bin Bikam, Muhamad Sahde bin Mardan, Erwin, and Zainudin bin Eman, explained in their testimonies that the land was only allowed to be taken by the Appellants after the death of the Appellant and his wife (Hajjah Tasniah). While the Appellant was alive, the Appellants had to be dutiful to their parents. However, the Appellants committed acts that hurt the Appellant's feelings, such as filing an inheritance lawsuit with the Mataram Religious Court, destroying the Appellant's rice field, and reporting the Appellant to the local police. However, this was not taken into consideration by the *judex facti* in deciding this case.

children. Therefore, the grant from the Appellant to the Appellants can be revoked, especially if the Appellants have disobeyed the Appellant. Therefore, the *judex facti* decision should have taken this into consideration and cancelled the grant. According to the Appellant, the *judex facti*'s decision was incorrect, because according to him, the withdrawal of the grant could have been done by the Appellant and the Appellant's wife, Hajjah Tasniah (who has passed away). The Appellant felt that this was an erroneous and unfounded legal consideration.

Petition (Legal Demand)

Based on the subject matter submitted on appeal, the legal claims are as follows:

1. Receive the appeal from the Appellant
2. Cancel the decision of the Giri Menang Religious Court Number: 223/Pdt.G/2010/PA.GM dated 12 April 2011;
3. Grant the Appellant's Appeal Brief in its entirety;
4. Punish the 1st and 2nd Appellants to pay court costs at both levels of court.

Exception (Appellant's Objection)

In the main case, the Appellants can accept all legal considerations of the decision *a quo*, because the *judex facti*²⁹ did not err in applying the law as follows:

- a. The Appellants state that the decision of the *judex facti* is in accordance with the law, based on formal evidence, and reflects a sense of justice and humanity. They argue that the legal considerations were based on the facts of the trial as well as on the six authentic exhibits submitted by both the Appellant and the Appellants;
- b. In the view of the Appellants, in this case, there is not a single sentence stating that there is a requirement that the Appellants fulfil;
- c. Based on the foregoing, the Appellants request the Mataram Religious High Court to examine this case and decide as follows: (1) To reject the Appellant's appeal, (2) To uphold the decision of the Giri Menang Religious Court, and (3) To order the Appellant to pay all costs arising from this case;

²⁹ *Judex facti* are judges authorised to examine facts and evidence, in this case the judges of the district court and the high court. Charles M. Cameron, Jeffrey A. Segal, and Donald Songer, "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," *American Political Science Review* 94, no. 1 (March 1, 2000): 101-16, <https://doi.org/10.2307/2586383>.

Judge's Consideration and the Law

After the judge examined the appeal and found that the application was in accordance with the legislation, so that it was formally admissible for examination at the appeal level, the judge studied the case file and the evidence, both in the form of letters and witness testimony.³⁰ The judge also read the appeal memory and counter-memory of the appellant. Based on this examination, the judge's considerations were as follows:

- a. The case contested by the Plaintiff/Appellant in his lawsuit is the cancellation of the grant of two parcels of paddy fields. The first parcel of land with an area of 9,321 m² (SHM No.1574) was granted to the First Respondent, while the second parcel of land with an area of 9,850 m² (SHM No.1572) was granted to the Second Respondent. Both paddy fields are located in Gontoran, Lingsar Village, Lingsar Sub-District, West Lombok District;
- b. Considering, the Appellant's objection to point 1 cannot be justified, because the court of first instance has considered the facts in the trial as well as written evidence and witness testimony. Nevertheless, these legal considerations may need to be added and refined by the Court of Appeal;
- c. Considering, the Court of Appeal needs to refine the legal considerations of the Court of First Instance by referring to Article 712 KHES which stipulates that the grantee can withdraw the grant property after the delivery is carried out, provided that the recipient agrees. However, this provision only applies to grants in general and does not apply to grants from parents to their children. In the case of parents' grants to their children, the provisions of Article 714 paragraph (2) apply, which states that if parents make grants to their children, then they have the right to withdraw the grant as long as the child is still alive;
- d. The Appellant's objection to points 2 and 3 cannot be accepted. Although the physical possession of the grant goods and their certificates are still controlled by the Appellant, and have not been handed over to the Appellant 1 and Appellant 2 as grantees, the Court of Appeal is of the opinion that the transfer of rights through a grant has been proven by a Grant Deed made by a PPAT and has obtained a certificate of ownership, in accordance with Exhibits P.4 and P.5. Thus, the Plaintiff/Appellant and his deceased wife were correct in

³⁰ Charles M. Cameron, Jeffrey A. Segal, and Donald Songer, "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's Certiorari Decisions," *American Political Science Review* 94, no. 1 (March 1, 2000): 101-16, <https://doi.org/10.2307/2586383>.

- granting rights to the 1st and 2nd Appellant as their biological children. This is in accordance with the provisions of Supreme Court Regulation No. 02/2008 (Compilation of Shari'ah Economic Law) Revised Edition 2010 Article 686 paragraph (3) which states that ijab in a grant can be expressed in words, writings, or gestures containing the meaning of free transfer of ownership of property. In addition, referring to the provisions of article 698, in the case of grants given by parents to their adult children, the property given as a grant must be handed over and must be accepted by the child;
- e. Based on the provisions of Article 686 paragraphs (1) and (3), with the execution of the grant deed and the completion of the title transfer process (certificate), the grant contract is deemed to have taken place. Article 686(2) together with Article 698 confirms that the grantor, in this case the Plaintiff/Appellant, must be proactive in handing over the grant goods to the grantees (Appellant 1 and Appellant 2). Therefore, according to the Panel of Appellate Judges, the legal handover has taken place, even though the rice field and its certificate are still physically controlled by the grantor (Plaintiff/Appellant);
 - f. Considering, the Appellant's objection to numbers 4 and 5 cannot be accepted. This is because the clause argued by the Plaintiff/Appellant regarding the conditional grant is not contained in the Grant Deed (Exhibits P.3 and P.7), and there is no evidence of an agreement contained in an agreement made by both parties. In addition, the testimonies of the Plaintiff's/Appellant's witnesses, such as Sahwal Bin Bikam, Muhamad Sahde bin Mardan, Erwin, and Zainudin Bin Eman, who were given under oath, were only based on stories from the Plaintiff/Appellant and the Plaintiff's/Appellant's wife (Hajjah Tasniah who has passed away). Therefore, the Appellant's objection to the claim of a conditional grant cannot be accepted;
 - g. Based on Supreme Court Regulation No. 02/2008 (KHES) Article 701, if the grantee is a child who is capable of acting (mumayiz), then the grant transaction is considered to have been completed if the child takes the grant directly, even though he/she has a guardian. Therefore, the Court of Appeal held that the claim of conditional grant made by the Plaintiff/Appellant was not supported by evidence that included the inclusion of the conditional clause in the grant deed, the agreement in the conditional agreement, or evidence from the Plaintiff/Appellant's witnesses. In addition, the 1st and 2nd Respondents are the biological children of the Plaintiff/Appellant who have the

- capacity to act or are adults. Thus, according to the Court of Appeal, the grant transaction was legally considered perfect;
- h. Although the Appellant's objection in point 6 can be accepted by referring to Article 212 of the Compilation of Islamic Law in conjunction with the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 (Compilation of Sharia Economic Law) Article 714 paragraph (2), which states that if parents give grants to their children, then they have the right to withdraw the grant as long as the child is alive, However, based on Article 35(1) of Law No. 1 of 1974 which states that property acquired during marriage becomes joint property, and Article 36(1) which states that husband and wife can act upon the consent of both parties, the object in dispute (the grant) is the joint property of the Plaintiff/Appellant and the deceased Hajjah Tasniah (wife of the Plaintiff/Appellant). Therefore, to revoke the grant or cancel the grant cannot be done by the Plaintiff/Appellant alone without the consent of Hajjah Tasniah (wife of the Plaintiff/Appellant);
 - i. Considering, the Appellant's objection in point 7 cannot be justified. With the signing of the Deed of Grant for the rice field land, moreover with the issuance of the respective land certificates in the names of those who were given the grant, *ijab-kabul* is automatically considered to have taken place, and the conditions of the grant according to the Appellate Judges have been fulfilled. This refers to the Compilation of Islamic Law Article 210 and the Compilation of Sharia Economic Law Articles 685 and 686. Given that the Plaintiff/Appellant is the losing party, based on the provisions of Article 192 paragraph (1) R.Bg., the Plaintiff/Appellant is ordered to pay court costs at both levels of court, the amount for the appeal level will be stated in the dictum of this decision;
 - j. Considering, the legal considerations of the Panel of Judges of the Giri Menang Court in this case are considered correct and correct. Therefore, these considerations are taken over by the Appellate Judges as their own considerations in deciding this case;
 - k. Based on an in-depth review of all the arguments presented and evidence presented in the trial, it turns out that the verdict that has been produced by the Panel of Judges of the Giri Menang Religious Court has proven to be correct and accurate. Therefore, in making a decision, the Appellate Court Judges referred to the considerations that had been clearly and unequivocally outlined. This is in line with the principles set out in various articles of Law No.

48 of 2009, Law No. 7 of 1989 which has been amended by Law No. 3 of 2006 and the second amendment by Law No. 50 of 2009, as well as various other laws and regulations, including the norms of sharia law that are relevant in the context of this case.

Judgement (*Dictum*)

The judge's dictum on the appeal memory is as follows:

- a. The judges stated that the Appellant's request for an appeal hearing was admissible for the reasons stated.
- b. The panel of judges upheld the Decision of the Giri Menang Religious Court, Number: 223/Pdt.G/2010/PA.GM. handed down on 12 April 2011 AD, coinciding with 08 Jumadil Awal 1432 Hijri, which is the object of the appeal.
- c. Furthermore, the panel of judges decided to punish the Appellant by paying court costs at the appeal level in the amount of Rp. 150,000 (one hundred and fifty thousand rupiah).³¹

Analysis of Decision Number: 48/Pdt.G/2011/PT.MTR on "Cancellation of Grant"

This case is a type and qualification of civil case with the type of lawsuit contentius (contentiosa).³² Meanwhile, in terms of civil procedural law, this case lawsuit is in accordance with the provisions of the legislation. There are several things that the author analyses, namely as follows:

1. Absolute power to hear cases

The *choice of* religious courts and religious high courts as the *choice of forum for* resolving disputes is appropriate, because this case is a sharia economic dispute, namely about grants as stipulated in Article 47 of Law Number 3 of 2006 on Amendments to Law Number 7 of 1987 concerning Religious Courts that grants are one of the sharia economic disputes which become the absolute power of religious courts / religious high courts. Absolute competence means the authority of the judicial environment with regard to the type of case or type of court or level of court in contrast to the type of case or type of court or level of court.³³ This case is a *lex specialis of the religious high court* in the field of waqf.

³¹ Deed of Supreme Court Decision Number: 48/Pdt.G/2011/PT.MTR

³² Fachrul Rozi Harfi and Taufik Hidayat Lubis, "Problematisasi Pemeriksaan Silang (Cross-Examination) Atas Saksi Dalam Perkara Gugatan Contentiosa Di Pengadilan Agama: (Studi Di Pengadilan Agama Medan)," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 7 (2024): 211-36.

³³ Abdul Ghofur Anshori, *Penyelesaian Sengketa Perbankan Syariah: Analisis Konsep Dan UU No. 21 Tahun 2008* (Gadjah Mada University Press, 2010), 76.

2. Sitting of the case and position of the parties

In this case, the position of the plaintiff/appellant is interesting to look at, namely the appellant who filed a land grant case when the grantor had passed away. When the grantor (the wife) was still alive, this problem should have been discussed together in a family manner to obtain consensus, but the absence of the grantor was used as a reason for *legal standing* to sue the defendant, who is the biological son of the plaintiff/appellant. The position of the plaintiff and the father of the appellant, who is 64 years old, should have been able to embrace and wisely choose a peaceful way to create a harmonious family atmosphere, but what happened was that the father actually started the conflict. This means that family conflicts involving children and fathers are triggered because of property. The right way should be to discuss it in a family manner in order to create harmony between families.

3. Judge's Legal Consideration

The judge's step in deciding and upholding the judge's decision at the first level with several considerations that are in line with the spirit of Islamic law, therefore there are several points that the judge's reasons (legal considerations of judges) need to be appreciated as follows:

- a. The judge's consideration that the written evidence and witnesses submitted as plaintiffs' objections by the Appellant could not be justified because it was evident that the court of first instance had considered the facts in the trial.
- b. The judge's consideration in strengthening and refining the legal considerations of the Court of first instance refers to article 212 of the Compilation of Islamic Law (KHI) and article 712 of the Compilation of Sharia Economic Law (KHES). Article 712 KHES states that "*the grantor may withdraw the grant property after the delivery is carried out, provided that the recipient agrees.*"³⁴ However, this provision only applies to grants in general and does not apply to grants from parents to their children. In the context of grants from parents to their children, Article 714 point (2) KHI stipulates that "*If parents make grants to their children, then they have the right to withdraw the grant as long as the child is still alive.*"³⁵ Thus, the appellant's claim that the grant can be withdrawn by the parents is contrary to the basis of Islamic law contained in the KHI and KHES. Based on these provisions,

³⁴ Article 712 KHES

³⁵ Article 714 Number (2) KHI

although in general a grant can be withdrawn with the consent of the recipient, in the case of a grant from a parent to their child, the right of withdrawal remains as long as the child is alive. Therefore, the judge ruled that the appeal filed by the Appellant was unfounded because it did not comply with the applicable legal provisions in KHI and KHES. The plaintiff's/appellant's mistake in the petitum of this lawsuit was that he could not distinguish between grants intended for the public interest and grants for relatives or kin. Even if he argues that the basis for the withdrawal of the grant is permissible, the withdrawal of the grant property requires that the child who receives the grant must die.

- c. In relation to the objection note, the land certificate and control of the grant, both physically and the certificate, are still controlled by the Appellant and have not been handed over to the Appellant 1 and Appellant 2 as grantees. However, the Court of Appeal Judges were of the opinion that the transfer of rights through a grant had been evidenced by a Grant Deed made by a Land Deed Official (PPAT) and had obtained a certificate of title, in accordance with Exhibits P.4 and P.5. Thus, the Plaintiff/Appellant and his deceased wife had actually granted the land to Defendant 1 and Defendant 2 as their biological children. This is in accordance with the provisions of Supreme Court Regulation No. 02/2008 on the Compilation of Shari'ah Economic Law (KHES), 2010 Revised Edition article 686 paragraph (3), which states that *"Ijab in a grant can be expressed in words, writing, or gestures that contain the meaning of the transfer of ownership of property for free."* In addition, article 698 states that *"In the case of a grant made by parents to their adult children, the property given as a grant must be handed over and must be accepted by the child."* In other words, although the land is still physically in the hands of the Appellants, the legal process for the transfer of ownership rights has taken place through a valid grant deed and the issued certificate of title. Therefore, according to the law, the transfer of title to the land has legitimately taken place and the Plaintiff/Appellant cannot claim that the grant has not taken place simply because physical possession and title to the land are still with him.

In this case, the judge emphasised that the grant deed was stronger authentic evidence than the land certificate of the applicant. The judge was more concerned that the grant had obtained a grant deed made by a PPAT

and had obtained a certificate of ownership. This means that the two authentic instruments of evidence, namely the grant deed and the land certificate, became the judge's basis that the grant was not a fake as alleged by the appellant/plaintiff.

- d. Based on the Compilation of Shari'ah Economic Law (KHES), *"If the grantee is a child who is capable of acting (mumayiz), then the grant transaction is considered to have been completed if the child himself takes the grant directly, even though he has a guardian."*³⁶ Therefore, the judge's opinion that the conditional grant argued by the Plaintiff/Appellant was not supported by evidence was correct. The evidence includes the inclusion of the conditional clause in the grant deed, the agreement in the conditional agreement, as well as evidence from the Plaintiff/Appellant's witnesses. In addition, the 1st and 2nd Respondents are the biological children of the Plaintiff/Appellant who are capable of acting or are adults. Therefore, the grant transaction fulfils the legal elements and is considered perfect. In other words, despite the claim of the Plaintiff/Appellant that certain conditions had to be fulfilled, the grant transaction was still valid and applicable because the children receiving the grant were adults and capable of acting on their own behalf.
- e. The object of dispute in this case is grant property which is joint property between the Plaintiff and the deceased Hajjah Tasniah, the wife of the Plaintiff. Based on the law, the withdrawal or cancellation of the grant cannot be done by the Plaintiff/Appellant alone without the consent of the deceased Hajjah Tasniah. The Appellant's argument, which refers to article 212 of the Compilation of Islamic Law (KHI) in conjunction with SEMA No. 02/2008 KHES article 714 paragraph (2), which states that *"If a parent gives a grant to his/her children, he/she has the right to withdraw the grant as long as the child is still alive,"* contradicts article 35 paragraph (1) of Law No. 1/1974 which states that *"Property acquired during marriage becomes joint property,"* as well as article 36 paragraph (1) which states that *"Husband and wife may act upon the consent of both parties."* This shows that, in the context of marriage, decisions regarding joint property must be agreed upon by both parties. As Hajjah Tasniah had passed away, consent to revoke or

³⁶ Asiah Aqilah Abdul Ghani et al., "Analisis Hibah Menurut Tinjauan Fiqh Dan Kompilasi Hukum Ekonomi Syariah (KHES)," *Journal of Contemporary Islamic Law* 8, no. 2 (2023): 27-34.

cancel the grant could not be obtained, so the unilateral action by the Appellant to revoke the grant was legally invalid.

Considering the appellant's position as husband, the property granted is joint property in accordance with Article 36 paragraph 1 of Law No.1/1974 on Marriage, when the appellant wants to withdraw the grant, the appellant is required to do so "with the consent of the wife". The law also does not regulate the right to consent when the wife or husband dies, it is not explicitly mentioned, it is only regulated when the wife/husband is still alive. Therefore, the plaintiff/appellant did not clarify whether the grant was obtained before the marriage or during the marriage.

- f. The signing of the grant deed to the paddy field land (especially with the issuance of the respective land certificates in the name of those who were given grants), then the ijab-qabul has automatically occurred and the conditions of the grant pillars). This element has fulfilled KHI article 210 and KHES articles 685 and 686.

The discretion of the judge's knowledge on the basis of evidence and facts in the trial in order to obtain a conviction in upholding the formal truth is in line with civil procedural law.³⁷

4. Judge's Dictum

According to the author, the decision of the panel of judges of the Mataram Religious High Court is correct and has fulfilled a sense of justice.³⁸ This decision is a final decision that is *condemnatoir* and *declatoir* and has binding force. The existence of a decision that mentions "stating" as a characteristic of a *declaratory* decision and "punishing" as "*condemnatoir*".

As stipulated in Article 192 paragraph (1) R.Bg. The appellant is sentenced to pay court costs in both levels of court, the amount for the appeal level will be mentioned in this dictum that meets the provisions of the law of civil procedure.

³⁷ Hendri Jayadi, "Searching for Material Truth in Civil Trials Based on Civil Procedure Law in Indonesia," *International Journal of Law and Politics Studies* 5, no. 4 (September 4, 2023): 49-53, <https://doi.org/10.32996/ijlps.2023.5.4.6>.

³⁸ This sense of justice must be raised either by individuals, communities or in the form of institutions such as the judiciary, especially justice-based courts such as religious courts because the sense of justice itself is the desire of every human being and this is highly recommended in religion, for example in QS. Al-hadid: 25 or Qs. Ar-Rahman: 7-9. Suaidi Suaidi, *Ekonomi Islam dalam Al-Qur'an* (Duta Media, n.d.), 19-20, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=uC-PdGQAAAAJ&citation_for_view=uC-PdGQAAAAJ:roLk4NBRz8UC.

Conclusion

From the description of the discussion presented, there are several conclusions that can be drawn as follows: *First*, in Islamic Law it is stated that the withdrawal of a grant cannot be justified to be withdrawn by the grantor. This provision refers to Article 212 KHI and article 712 KHES. That the grant law that can be withdrawn by the grantor is a grant given between the father/mother to his child. In addition, the object of the grant that is required to be withdrawn by the father/mother of his child, it is required that the child who was given the grant has passed away. As long as the grantee (child) has not passed away, the grant property cannot be withdrawn; *Second*, the judge's reasoning in deciding and upholding the decision of the court of first instance looks more at the first judge's consideration in revealing the facts, evidence and witnesses in the trial. One of them is the authentic letter of grant deed recorded at PPATK owned by the defendant along with the grant land certificate and the basis of Islamic law contained in article 212 KHI and article 712 KHES regarding the law of grant withdrawal. Meanwhile, the judge's decision is a final decision that is *declaratory* and *condemnatory*, namely strengthening and punishing the plaintiff. The *declaratory* nature is to accept the appellant's petition and uphold the decision of the Giri Menang Religious Court, Number: 223/Pdt.G/ 2010 / PA.GM. dated 12 April 2011 AD. and the *condemnatory* nature is to punish to pay court costs at the appeal level in the amount of Rp. 150,000, (one hundred and fifty thousand rupiah).

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