

JURISDICTIONAL ANALYSIS OF LAND AND BUILDING GRANTS TO UNDERAGE CHILDREN TO REALIZE LEGAL ASSURANCE (RESEARCH STUDY AT THE OFFICE OF THE OFFICER OF THE LAND DEAL MAKER IN BATAM CITY)

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ABSTRACT

Grant is a covenant with which the giver in his life freely and cannot be taken back to hand over something to which the recipient receives the gift. As for the question of how grants to minors and symptoms should be performed and how they will be satisfied if they are given to minors. The purpose of this study is to identify the forms of legal protection, constraints, and mechanism for executing child grants and efforts to achieve their completion. The adoption of grants to minors should be accompanied by either the parents or the guardians. The study was empirical juridical, qualitative analysis. The literature of the theory referred to under section 1682 PCT chapter 37 pp no. 24 1997, on which grants still have to be made in front of PPAT. Studies that grant could be granted to minors on the condition that a parent should have a guardian or representation of a child, the problem that occurs in the granting of a child to a minor is that other families demand the right of the grant where it is performed without the consent of another sibling, the way it is done by a notary notarized deed, and then it is renewed with a firm and clear vow. For legal protection against property from minors, legal care can be made through parental or child custody, whether by law or by law, it may not be used to transfer, transfer or distribute the child's wealth unless it is granted by the court.

Key Words : *Transfer of Land Rights, Grants, Minors*

1. INTRODUCTION

The unitary state of the Republic of Indonesia based on the 1945 Constitution is a unitary state (constitutional) that provides guarantees and provides protection for the rights of citizens, including the rights of citizens to obtain, own, and enjoy property rights. Property rights to land as one type of property rights are very important for the State, nation and people of Indonesia as an agrarian society that is building towards industrial development and others.

Likewise with humans, who can carry out their lives. Therefore, every human being will always have needs, both physical and spiritual needs. One of the physical needs can be obtained by someone either by entering into a sale and purchase agreement, exchanging, renting, inheritance or granting (Schenking), or giving to someone when the person who gave is still alive. Grants or grants in this case are actually included in the legal sense, because they have their own legal provisions. In general, the process of giving and giving occurs separately, that is, it does not occur at the same time but there is a certain grace period according to the atmosphere at that time, so the nature of the gift is general, because neither the giver nor the recipient need to fulfill certain obligations unless there is the willingness of the giver. parties and do not see their individual status.

An individual as the subject of land rights, namely every person whose identity is registered as an Indonesian citizen domiciled in the territory of the Indonesian State and does not lose the right to obtain any land rights, but to take legal action in terms of land must be legally mature. In the law it is explained that everyone can be a legal subject, but according to the provisions of the law there are legal subjects who are not perfect, meaning that legal subjects only have a will, but are not able to express their will in legal actions, they are people who are not yet adults/minors, adults but unable to act (crazy) and women in marriage.

Regarding imperfect legal subjects, namely people who are not yet mature, according to Article 330 of the Civil Code are those who have not reached the age of 21 years and have never been married before, while women in marriages since the SEMA No. marriage is considered competent according to law, this is in accordance with the provisions of Article 3. Law Number 1 of 1974 concerning Marriage In connection with the above matter, the definition of a grant as explained in the provisions of Article 1666 of the Civil Code is an agreement whereby the grantor during his lifetime freely and irrevocably submits something for the needs of the recipient. the grant receiving the submission. Civil law departs from the principle that for the fulfillment and implementation of its interests, individuals are given the freedom to act according to their will, especially over their assets. They are basically given the freedom to take ownership action on this freedom, the legislators provide restrictions, among others, related to the age factor, which contains an element of protection. All of them are related to the problem of ability to act in law.

To receive a right, it is allowed that the person is not an adult, but he must be represented by his parents or guardian. The guardian here has the function of managing the wealth of children who are under his supervision as well as possible and is responsible for losses caused by poor management. In the case of a transfer given to a minor and under the responsibility of a guardian, it cannot be separated from the role and function of the Balai Harta Peninggalan (BHP) institution. Balai Harta Peninggalan (BHP) is the executor of law enforcement in the field of inheritance within the Ministry of Law and Human Rights. This institution does not only take care of the interests of orphans and children who are not yet mature, but also takes care of the assets of those under guardianship, the assets of the missing and the assets of those who have gone bankrupt.

In granting rights, especially to fixed objects, it cannot be separated from the role of the Land Deed Making Officer, meaning that the transfer procedure requires an authentic deed made by the Land Deed Making Officer, because if it is not carried out, the transfer of rights will be void, on the contrary, the transfer of movable goods does not require authentic deed, this can be done by handing over directly to the recipient of the right or to a third party who receives the transfer of rights on behalf of the recipient of the right, as explained in Article 1682 in conjunction with Article 1687 of the Civil Code. Based on the description of the background above, the authors are interested in conducting research and putting it in the form of.

2. PROBLEM FORMULATION

1. How is the implementation of granting grants to minors?
2. What is the solution if the grant for a minor is done without the knowledge of the other heirs so that the other heirs file a lawsuit?

3. METHODOLOGY

3.1 Research Approach

This research is a normative research research, namely a writing method that uses legal norms that are explaining by researching and discussing applicable legal regulations. a complete and clear picture of the situation.

This study also uses a normative juridical approach and an empirical juridical approach. In research or study of normative legal science, activities to explain the law do not require data support or social facts, because normative legal science does not recognize social data or facts, only legal materials are known. So to explain the law or to find meaning and give value to the law, only legal concepts are used and the steps taken are normative steps.

3.2 Data Sources and Data Collection Tools

Sources of data in this study are secondary data and primary data. For secondary data, the authors carry out data collection activities through document study activities against laws, theories of experts from research literature and so on.

3.3 Data Analysis

The data obtained from both field studies and document studies are basically level data that is analyzed descriptively qualitatively, that is, after the data has been collected, it is then poured in the form of a logical and systematic description, then analyzed to obtain clarity of problem solving, then conclusions are drawn deductively, namely from the following: general to the specific

4. RESULTS AND DISCUSSION

4.1 Competence in Receiving Grants

For the grant recipient, is every person, both individuals and legal entities and eligible to have the goods donated to him. The grant recipient is indicated as a person who is competent to take legal action. If he is still a minor, he is represented by his guardian until the owner of the grant is able to take legal action. In addition, the recipient of the grant can consist of heirs or non -heirs, both Muslims and non -Muslims, all of which are legal. The law only provides a limitation in Article 1679 of the Civil Code, which stipulates that the person receiving the grant must already exist (meaning already born) at the time of the grant, taking into account the provisions of Article 2 of the Civil Code which reads: the unborn child is considered was born while the interests of the child required it. In Article 1678 of the Civil Code prohibits gift between husband and wife during marriage. However, this provision does not apply to gifts or gifts of moving objects whose price is not too high, given the giver's generosity.

The provision of the prohibition of gift between husband and wife is intended to protect third parties who enter into transactions with the husband or wife, where they of course base their trust in the wealth of the husband or wife. In the Marriage Law we can also see the existence of a prohibition to change a marriage agreement. Grants to public institutions or religious institutions, have no consequence, other than by the President or the authorities appointed by him have been empowered to the management of such institutions, to receive the grants (Article 1680 KUH Perdata).

Finally, Article 1681 of the Civil Code states the application of several articles from the second Book of BW, namely Article 904, Article 906, Article 907, and others to the grant. If

we look at these articles it turns out that the provisions contain a prohibition on giving a will to certain people with whom the grantor has such a special relationship that it is considered inappropriate for those people to receive a grant from him, for example:

It is forbidden to receive a will from the guardian of the grantor, to the doctor who treated the giver when he was ill which resulted in the death of the grantor. To the Notary who made the will regarding the will grant made by the grantor.

4.2 Implementation of Grants for Children Under Age

In the implementation of the grant, the grant giver must be an adult, sane and not a husband and wife. grant or will be given to him at a later date. If the implementation of the grant is not done in the grant letter itself, then it will be able to be done in an authentic deed later, the original must be kept, as long as this is done while the grantor is still alive. The implementation of the granting of grants to minors who are under guardianship or to the benefactors, must be accepted by the guardian or the benefactor, which for that must be authorized by the District Court. In the implementation of the grant to the grant recipient, in addition to having to do with an authentic deed must also obtain the consent of the grant recipient's siblings, this is to prevent the emergence of a lawsuit against the grant giver and the grant recipient.

The implementation of the grant of hibah in the form of ownership of the objects enshrined in the grant, even if the grant has been legally received, does not immediately transfer hands to the recipient of the grant, other than by way of handing over moving objects, except those that are not bodily; done by express delivery of the object by or on behalf of the owner, or by the delivery of the keys of the building in which the object is located. Surrender need not be made, when the material to be surrendered on the ground of other rights has been vested in the person wishing to receive it.

While the implementation of the granting in accordance with Islamic Civil Law is explained that the grantor is the rightful owner of the goods donated and at the time the grant is made, is in good health both physically and spiritually. In addition, the grantor must meet the requirements as an adult and able to take legal action and have the property or goods donated. While those who will be given grants are everyone, both individuals and bad.

4.3 Implementation, Obstacles and Solutions in the Process of Implementing Land and Building Grants to Minors To Realize Legal Certainty (Research Study of the Office of Land Deed Maker Arif Rahman Hakim in Batam City).

The results of interviews with respondents regarding implementation, constraint factors and solutions regarding the process of implementing Home Certificate Grants to Minors, interviews were conducted orally with 1 (one) respondent related to the conditions in the field. The respondent is Arif Rahman Hakim (28 years old) who lives in Taman Yasmin Housing Complex Block P No. 23, Batam City. Respondents work as Land Deed Officers (hereinafter abbreviated as PPAT) at the Land Deed Officer Arif Rahman Hakim Office in Batam City.

In interviews with respondents, the author aims to solve the formulation of the problem studied in the writing of this thesis. The formulation of the problem to be answered is regarding implementation, constraint factors and solutions related to Home Certificate Grants to Minors. Through direct interviews with these respondents, the authors get Primary Data, namely data obtained through field research (field research). Based on the results of interviews with respondents, the implementation of House Certificate Grants to Minors is still

rarely carried out due to the understanding of the community who considers it negative. The community considers that parents who donate their house certificates are still alive and in a condition where the child or the recipient of the grant is underage, it feels too hasty and has a sense of trust that the property donated will become a source of conflict in the future if the ownership rights are not immediately transferred. .

Respondents said that the public's view of Land Certificate Grants to Minors was only made if parents did not believe that other children would fairly and appropriately distribute inheritance when their parents died. Meanwhile, according to Respondents, the House Certificate Grants to Minors are more of a form of protection and provide legal certainty over the ownership of assets that are donated to the third child (3) because the third child (3) is taking care of their parents until now, while the first and second children (2) has lived with his new family and or is married, so that his parents agree with the first and second children (2) to donate his house to the third child (3) for the good and the future of the third child (3) even though the third child (3) is in still underage.

The implementation of grants that occurred at the Office of the Land Deed Maker in Batam City, in the case of grants to minors that occurred in Batam City, in the case of grants to minors that occurred in Batam City, that there was a husband and wife, who had three (3) children, one of whom is 13 years old, in the deed of the grant the mother represents or becomes the guardian for her child as the recipient of the grant because she is still under age and this is in accordance with the mutual agreement between husband, wife and their two children. In this incident, it is clear that the grantee is the parents, while the recipient of the grant is a girl who is still under age, and the guardian is her own mother according to a mutual agreement. Provision of hubah to minors is carried out with an authentic deed made before the Land Deed Maker Officer Arif Rahman Hakim, Bachelor of Law, Master of Notary in Batam City.

This gift is made on the basis of the initiative of both parents for the good of their children in the future. Regarding the certificate of the house which was initially recorded in the name of the grantor, in this case the father, then the father gave the house and on behalf of the daughter who was still under age, who in this case was accompanied by a guardian, namely her mother, to appear before a Land Deed Official. Prior to the issuance of Government Regulation no. 24 of 1997 concerning Land Registration (PP 24/1997), for those who are subject to the Civil Code, the deed of grant must be made in writing from a Notary. However, after the issuance of Government Regulation no. 24 of 1997, every grant of land and buildings must be carried out with a deed of the Land Deed Maker (PPAT).

This is in accordance with the provisions of Article 37 paragraph (1) PP 24/1997, the transfer of rights to land and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through The auction can only be registered if it is proven by a deed made by the authorized Land Deed Making Official according to the provisions of the applicable laws and regulations. Then the loading of the deed is attended by the parties who carried out the legal act concerned and disclaimed

5. CONCLUSION

The conclusion regarding the process of granting house certificates to minors is that the management of the assets of minors can be carried out through representatives of parents or guardians of minors who are still under age, either according to the law or based on court decisions, the power of representatives or guardians should not be used to transfer,

transfer or charge the assets of a minor, except in the case that the child's interest requires and there must be permission from the District Court.

Conclusion Regarding Implementation, Obstacles and Solutions in the Process of Implementing Home Certificate Grants to Minors is that in the implementation of granting, the grantor must be an adult, healthy in mind and not husband and wife. are under guardianship or to qualified persons, must be accepted by the guardian or guardian, for which the District Court must authorize. In the implementation of giving a grant to the grantee, besides having to be done with an authentic deed, it must also obtain the approval of the siblings of the grantee, this is to prevent the emergence of a lawsuit against the grantor and the grantee. only by leveraging, but if the object is a permanent object, the gift must be made using an authentic deed made before a notary, because if the grant of a fixed object is not made before a notary, the gift will be void.

6. SUGGESTION

Suggestions regarding the Legal Position regarding the Process of Granting House Certificates to Minors is that every implementation of grants, especially to minors, must be accompanied by parents/guardians and witnesses from other family parties so that grants can be made clear and openly without quietly. in the case of a grant for a minor with a plot of land and building object, registration of the transfer of rights at the local Land Office should be carried out, of course the management is carried out by the authority of the parents so that after the certificate is issued, the name of the minor will appear in the certificate, this is done in the context of protection. law to the recipient of the right who is still a minor, so that no other party, not even his own parents or siblings, will take legal action against the child's property, except for the benefit of the child's will and there must be a stipulation or permission from the local District Court.

Suggestions regarding the Implementation Process of Granting Assets in the Process of Transferring Rights to Home Certificates for Minors is that parents who will provide property grants to their children should strive for a fair distribution that does not burden the interests of only 1 child, in its implementation there are many problems that can be solved. arise regarding the procedure for giving it that is not in accordance with the provisions, namely in the Civil Code, which provides grants to children for free without an authentic deed, because if the object is a permanent object then the gift must be done using an authentic deed made before a notary, because if the provision of fixed object grants is carried out not before a notary, then the grant is void.

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REFERENCE

Books

Adrian Sutedi, 2014, "*Peralihan Hak Atas Tanah dan Pendaftarannya*", Jakarta, Sinar Grafika.

- Ali Affandi, 2000, *Hukum Waris Hukum Keluarga Hukum Pembuktian*, Rineka Cipta, Jakarta.
- Ali, Zainuddin, 2014, *Pengantar Hukum Indonesia*, Cetakan Kedua, YAMIBA, Jakarta.
- Bambang Sunggono, 1996, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta
- Bernard L. Tanya, 2010, *Teori Hukum*, PT. Genta Publishing, Jakarta.
- Buku Pedoman Penulisan Skripsi Program Studi S1 Ilmu Hukum, Fkultas Hukum, Universitas Batam.
- Boedi Harsono, 2005, *Hukum Agraria Indonesia-Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta.
- Boedi Harsono, 1999, *Undang-undang Pokok Agraria-Sejarah Penyusunan, Isi dan Pelaksanaannya Hukum Agraria Indonesia*, Djambatan, Jakarta.
- Boedi Harsono, 2005, *Himpunan Peraturan-Peraturan Hukum Tanah*, Djambatan, Jakarta.
- Damanhuri, 2007, *Segi-segi Hukum Perjanjian Perkawinan Harta Bersama*, Mandar Maju, Bandung.
- Departemen Pendidikan Nasional, 2012, *Kamus Besar Bahasa Indonesia*, Pusat Bahasa, PT. Gramedia Pustaka, Jakarta.
- Effendi Bachtiar, 1993, *Kumpulan Tulisan tentang Hukum Tanah*, Alumni, Bandung.
- Hariri, Wawan Muhwan, 2011, *Hukum Perikatan*, CV Pustaka Setia, Bandung.
- Hasan, Mustofa, 2011, *Pengantar Hukum Keluarga*, CV Pustaka Setia, Bandung.
- Herimanto dan Winarno, 2012, *Ilmu Sosial dan Budaya Dasar*, PT Bumi Aksara, Jakarta.
- Husaini Usman dan Purnomo, 2008, *Metodologi Penelitian Sosial*, PT Bumi Aksara, Bandung.
- Idham, 2019, *Analisis Kritis Pendaftaran Tanah Hak Ulayat Milik Masyarakat Adat Untuk Meneguhkan Kepastian Hukum dan Pertimbangan Ekonomi Kerakyatan*, PT. Alumni, Bandung, *Kontruksi Politik Hukum Hak Atas Tanah Untuk Melaksanakan Manajmen Statu Tanah Hak Pengelolaan (HPL) Guna Meneguhkan Prinsip Kedaulatan Rakyat*, PT Alumni, Bandung.
- _____, 2019, *Dimensi Politik Hukum Penerbitan dan Pendayagunaan Tanah Terlantar Guna Mewujudkan Negara Berkesejahteraan*, PT. Alumni, Bandung.
- _____, 2019, *Dimensi Paradigma Politik Hukum Pelaksanaan Konsolidasi Tanah di Wilayah Pesisir dan Pulau-Pulau Kecil Guna Meningkatkan Pertumbuhan Ekonomi Masyarakat*, PT. Alumni, Bandung.
- _____, 2013, *Implementasi Politik Hukum Agraria-Pertanahan Pelaksana Sertifikasi Tanah Pedesaan*, PT. Alumni, Bandung.
- _____, 2014, *Konsolidasi Tanah Perkotaan Dalam Perspektif Otonomi Daerah Guna Meneguhkan Kedaulatan Rakyat dan Negara Berkesejahteraan*, PT. Alumni, Bandung.
- _____, 2019, *Postulat dan Kontribusi Paradigma Politik Hukum Pendaftaran Tanah Sistematis Lengkap (PTSL), Guna Mewujudkan Negara Berkesejahteraan*. PT. Alumni, Bandung.
- Iskandar, 2008, *Metodologi Penelitian Pendidikan dan Sosial (Kuantitatif dan Kualitatif)*, GP Press, Jakarta.
- Isnaeni, Moch, 2016, *Hukum Perkawinan Indonesia*, PT. Refika Aditama, Bandung.
- Jemmy Rumengan, Idham, 2015, *Metode Penelitian Kualitatif dan Kuantitatif*, Perdana Mulia Sarana, Bandung.
- Jemmy Rumengan, Muammar Khaddafi, Febby Melanie, 2015, *Metodologi Penelitian Kuantitatif*, Perdana Publishing, Medan.
- Kelsen, Hans, 1961, *General Theory of Law and State*, diterjemahkan oleh A. Wedberg.

- Kelsen, Hans, 1967, *Pure Theory of Law*, diterjemahkan oleh M. Knight of R22.
- Mariati Zendrato, 2016, “*Bahan Ajar Pendaftaran Tanah (Pemahaman Terhadap Perlindungan Hukum dan Kepastian Hak Atas Tanah)*”, Medan.
- Marilang, 2013, *Hukum Perikatan yang Lahir dari Perjanjian*, Alauddin University Press, Makassar.
- Melia, Djaja S, 2015, *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*, Penerbit Nuansa Aulia, Bandung.
- Miru, Ahmad, 2011, *Hukum Kontrak dan Perancangan Kontrak*, Cetakan Keempat, Raja Grafindo Persada, Edisi Kesatu, Jakarta.
- Muhammad, Abdulkadir, 2010, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung.
- Nasution, Amien Husein, 2012, *Hukum Kewarisan*, Raja Grafindo Persada, Jakarta.
- Nurbani, Halim HS, Erlies Septiana, 2017, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, Rajawali Pers, Jakarta.
- P. Manjorong, Aditya dan Intan Aditya, 2016, *The Law of Love*, Visimedia, Jakarta Selatan.
- Prapto, Bambang Setia Merpati, 2010, *Pemikiran Hans Kelsen Dalam Teori Hukum Murni (Suatu Telaah Filsafat Hukum)*, Jakarta.
- Rumengan, Jemmy dan Idham, 2015, *Metode Penelitian Kualitatif dan Kuantitatif*, Perdana Mulia Sarana, Bandung.
- Salim, 2010, *Hukum Kontrak*, Sinar Grafika, Jakarta.
- S. Chandra, 2005, *Sertipikat kepemilikan hak atas tanah*, Gramedia, Jakarta.
- Sjaifurrachman dan Habib Adjie, 2011, *Aspek Pertanggung Jawaban Notaris Dalam Pembuatan Akta*, Mandar Maju, Bandung.
- Subekti, 1994, *Pokok-Pokok Hukum Perdata*, PT. Internusa, Bandung.
- Subekti, 1985, *Aneka Perjanjian*, PT. Alumni, Bandung.
- Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia Press, Jakarta.
- Soerjono Soekanto, Sri Mamudji, 2011, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawal Pers, Jakarta.
- Syarifuddin, Muhammad, 2012, *Hukum Perjanjian, Memahami Perjanjian Dalam Perspektif Filsafat, Teori, Dogmatik, dan Praktis Hukum*, Mandar Maju, Bandung.

Legislative Regulations

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Negara Republik Indonesia No. 1 Tahun 1974 tentang Perkawinan (Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1 Tambahan Lembar Negara Nomor 3019)
- Kitab Undang-Undang Hukum Perdata
- Putusa Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tahun 2015 Tentang Pengujian Undang-Undang Nomor 5 Tahun 1960 Tentang Pengaturan Pokok-Pokok Agraria Dan Undang-Undang Nomor 1 Tahun 1974
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah (Peraturan Pemerintah 24/1997 Tentang Pendaftaran Tanah)
- Kitab Undang-Undang Hukum Perdata Pasal 1666 tentang Hibah