

LEGAL CERTAINTY OF THE DEED OF GRANT OF RIGHTS TO INHERITANCE LAND RELATED TO ITS PREPARATION BY LAND DEED OFFICIALS WITHOUT THE CONSENT OF THE HEIR

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Abstract

A grant (grant) is a voluntary provision given without compensation while the grantor is still alive. In the context of undivided inherited land, the consent of all heirs is an absolute requirement because the property is jointly owned. However, in reality, grants of inherited land without such consent still occur frequently. This research specifically examines: (1) the legal consequences of a grant made without the heirs' consent, and (2) its legal certainty. The analysis employs R. Soeroso's theory of legal consequences and Jan M. Otto's theory of legal certainty. The research method used is normative juridical based on secondary data, consisting of primary, secondary, and tertiary legal materials. The approaches include statutory, case, analytical, and conceptual approaches. Data collection was conducted through the inventory of positive legal rules and literature, which were then analyzed using grammatical and systematic interpretations, as well as legal constructions in the form of analogy and legal refinement. The research results indicate that granting undivided inherited land without the heirs' consent leads to legal consequences in the form of cancellation by a court decision. This cancellation automatically nullifies the grant and the legal relationship between the grantor and the grantee, while simultaneously giving rise to sanctions for unlawful acts (tort). Meanwhile, legal certainty in resolving these cases is guaranteed through the Indonesian Civil Code as *lex generalis* and land regulations as *lex specialis*. The firm action of the District Court in canceling grants that violate these rules is a concrete manifestation of enforcing legal certainty.

Keywords: Grant, Inherited Land, Not Yet Divided .

A. INTRODUCTION

As a country based on law, Indonesia desires that the values of certainty, order, and legal protection are reflected in all dimensions of national life, including in the management of agrarian resources as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹ In the context of civil relations, the transfer of land rights through a grant instrument is subject to a layered legal framework: the Civil Code (KUHPerdara) serves as a general provision (*lex generalis*), while Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) functions as a special provision (*lex specialis*).² Juridically and administratively, these legal acts must be set out in an authentic deed drawn up before a Land Deed Making Officer (PPAT).³ For objects of grant originating from undivided inheritance (*boedel waris*), the law outlines an absolute requirement in the form of approval from all legitimate heirs, considering that the assets still have the status of joint ownership among the heirs.⁴

However, the empirical reality (*das sein*) shows a clear gap with the prevailing norm (*das sollen*): it is not uncommon to find the transfer of inherited land rights through gifts carried out without involving the consent of all

¹ Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia : "The earth, water and natural resources nature contained therein controlled by the state and used For as big as possible prosperity of the people."

² Civil Code (Burgerlijk Wetboek), Staatsblad 1847 Number 23; Law Number 5 of 1960 concerning Basic Agrarian Principles, State Gazette of the Republic of Indonesia 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043.

³ Government Regulation Number 24 of 1997 concerning Land Registration, Article 37 paragraph (1).

⁴ Compare Article 1666 in conjunction with Article 1667 of the Civil Code regarding gifts, and Article 1066 of the Civil Code regarding the status of inherited property that has not been divided as joint property of the heirs.

heirs. This clash between norms and practice is clearly illustrated in a number of court decisions that have permanent legal force (*inkracht van gewijsde*). In Decision Number 267/Pdt.G/2025/PA.Pyb and Decision Number 441/PDT/2023/PT SBY, ⁵for example, the panel of judges annulled the deed of gift on the grounds that the deed was not signed by all heirs, so that the omission of the party entitled to the inheritance made the deed formally flawed due to the lack of parties. On the other hand, disputes over the cancellation of gifts are also often colored by errors in the application of the principles of family law distribution, as seen in Supreme Court Decision Number 737 K/Pdt/2023. ⁶In this decision, the Supreme Court corrected the *judex facti* which was deemed erroneous because it granted the cancellation of the gift without considering evidence regarding the violation of the principle of distribution or the absolute portion (*legitime portie*) of other heirs.

The issue surrounding the deed of gift is actually not new in academic discourse. Bunga Refi Yunita's thesis entitled Cancellation of Deed of Gift and its Legal Consequences (Study of Decision Number 0456/Pdt.G/2018/PA.Bi). Faculty of Law, Islamic University of Indonesia 2024. The results of the study explain that land certificates that have been transferred to another person's name then the legal consequences of the court decision regarding the cancellation of the deed of gift that has permanent legal force with the object of the dispute are legally flawed and have no legal force.

Wandi Putra Risman's thesis entitled Legal Analysis of the Cancellation of a Deed of Grant (Study of Decision Number: 129/Pdt.G/2020/PTA.Mks). Faculty of Law, University of East Indonesia 2025. The results of the study explain that although grants are rights, their implementation must pay attention to the individual, the principles of proportionality and justice must be followed. The judge in decision the has put forward principle justice substantive For prevent injustice to expert other heirs .

Amirudin Fardianzah's thesis with title study that is Cancellation Deed of Gift Made Before a Land Deed Official by the Grantor . Faculty of Law, Brawijaya University 2015. Research Results explain that cancellation deed grants made before the PPAT , the cancellation process must use decision court .

Ery Agus Priyono's Thesis with title study that is Analysis Justice To Legitime Portie On Cancellation Land Grant Deed by PPAT. Faculty of Law, Diponegoro University 2026. The results of the research are that the cancellation of this deed of grant reflects an effort to restore balance and justice in the family in accordance with the principles of justice in inheritance and grant law.

Asyura Triana Arimurti's thesis entitled Perspectives on the Cancellation of Deeds of Grant by Land Deed Making Officials for Grants That Are Not Given Free of Charge (Case Study of Kalianda District Court Decision Number: 31/PDT.G/2020/PN KLA). Faculty of Law, University of Indonesia 2022. The results of the study are that PPAT as a public official authorized to make authentic deeds in the land sector has a role in avoiding the making of deed of grant that is not given free of charge.

Although many studies have been conducted on the legal consequences of the cancellation of a deed of gift and distributive justice for heirs, a review from the perspective of procedural validity and the authority of public officials at the time of making the deed still leaves a gap in the literature (*research gap*). This gap is what this study aims to fill as an element of novelty from previous studies. Therefore, this research is specifically directed at analyzing and describing the legal certainty of a deed of gift of inherited land rights made by a Land Deed Making Officer (PPAT) without the consent of the heirs. Based on the background of the problem above, the author makes the following problem formulation: What are the legal consequences of a deed of gift of inherited land rights made without the consent of the heirs and what is the legal certainty of a gift of inherited land rights made without the consent of the heirs.

B. RESEARCH METHODS

This research is a normative legal research (*juridical normative*), namely a scientific research procedure aimed at finding the truth based on the logic of legal science from the perspective of norms. This study is built using four main approaches, including the statute approach , the case approach , the conceptual approach , and the analytical approach . In the legal material analysis stage, the researcher applies two methods of legal interpretation. First , grammatical interpretation (*taalkundige interpretatie*), which is used to understand the meaning of the law based on grammatical rules. Second , historical interpretation (*wetshistorische interpretatie*), which aims to explore the ratio legis by tracing the history, spiritual atmosphere, legal system, and the direction of legal politics that underlie the formulation of a law.

⁵ Decision Number 267/Pdt.G/2025/PA.Pyb; Decision Number 441/PDT/2023/PT SBY.

⁶ Decision of the Supreme Court of the Republic of Indonesia Number 737 K/Pdt/2023.

C. DISCUSSION

1. Legal Consequences of a Deed of Grant of Inherited Land Made Without the Consent of the Heirs

A grant is a gift made voluntarily by one person to another without any counter-performance, and is carried out while the grantor is still alive, unlike a will which only comes into effect after the testator dies.⁷ Article 1666 of the Civil Code defines a grant as a unilateral agreement made free of charge and irrevocable. From this formulation, several main elements can be drawn: a grant is an agreement without any counter-performance from the recipient; the grantor intends to benefit the recipient; the object includes all kinds of property, both tangible and intangible, fixed and movable; the grant cannot be withdrawn except in certain circumstances according to Article 1688 of the Civil Code; and specifically for land, the grant must be stated in a deed by a Land Deed Making Official (PPAT).⁸ This provision emphasizes that the validity of a grant is highly dependent on the grantor's authority over the object being donated, an issue that is at the heart of the following three court decisions.

In Decision Number 267/Pdt.G/2025/PA.Pyb, a dispute arose between some of the heirs (Plaintiff) and one of the other heirs (Defendant) who controlled the land and house based on a deed of gift from the testator. The Defendant argued that the gift had been known and approved by some of the heirs, one of whom even signed as a witness so that the gift was legally valid, while the Plaintiffs argued that the object was still an inheritance that had not been divided and the gift did not involve all entitled heirs. The Panel also highlighted the unclear nature of the lawsuit regarding the boundaries of the object and the identity of the objecting heir as a formal issue (*obscuur libel*) that affected the admissibility of the lawsuit.

Decision Number 737 K/Pdt/2023 concerning customary land (*Dati*) in Ambon shows another settlement pattern: the grant of joint inheritance land is declared to no longer have binding force after the grantee is given replacement land of equal area, so that the rights of other heirs to the original object can be restored without eliminating the benefits that the grantee has received.

Decision Number 441/PDT/2023/PT SBY, which upheld the Bitar District Court's decision, highlighted the aspect of absolute competence: because the core of the dispute lies in the validity of the gift underlying land ownership, not merely the administrative act of changing the name, the examination of the validity of the gift falls under the jurisdiction of the Religious Court, not the District Court. The panel emphasized that legal certainty over the object must first be determined before the name change process can proceed. Within this framework, Soeroso defines legal consequences as the consequences of an action desired by the perpetrator and regulated by law, in the form of the birth, change, or disappearance of a legal condition or relationship.⁹ These three decisions consistently demonstrate that the main issue lies not in the existence or absence of a gift document alone, but rather in the grantor's authority over the object and its status as undivided joint property.

2. Legal certainty of granting inheritance rights to land made without the consent of the heirs

Inheritance law regulates the transfer of assets from the testator to the heirs, which according to Article 830 of the Civil Code is only open after the testator dies. Heirs are regulated in Article 832 of the Civil Code and are generally classified based on the closeness of blood relations starting from the testator's spouse and descendants (group I) to relatives in the lateral line up to the sixth degree (group IV) with different inheritance portions for each group, and the next group only appears as heirs if the previous group does not exist.

In land law, a gift does not stand alone as a purely civil concept. Article 26 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) includes a gift as one of the acts that transfers ownership rights, so that a land gift has two dimensions at once: a civil dimension, which concerns the validity of the agreement and the authority of the grantor, and an administrative dimension, which concerns proof, the creation of a deed by a Land Deed Official (PPAT), and the registration of the transfer of rights.

The issue becomes complex when the object of the gift is no longer the donor's personal property, but rather part of an undivided inheritance. Physical control over inherited land does not automatically grant the authority to donate the entire object; that authority is limited to the portion to which the donor truly has the right. Therefore, legal certainty should not be measured solely by the existence or absence of a formal gift certificate or deed, but also by whether the document was created by a truly authorized subject and through a process that meets legal requirements.

⁷Chairuman Pasaribu and Suhrawadi K. Lubis, *Law of Contracts in Islam*, Sinar Grafika, Jakarta, 1996, p. 113.

⁸Eman Suparman, *Indonesian Inheritance Law from the Perspective of Islam, Custom and BW*, PT. Refika Aditama, Bandung, 2007, p. 86.

⁹Soeroso, *Introduction to Legal Science*, Sinar Grafika, Jakarta, 2011, pp. 295–296.

The central point of this analysis is that the consent of other heirs is not an absolute requirement for any gift of inherited land. If the inherited land has been legally divided and an heir has received a definite portion, he or she has the authority to donate his or her own portion without requiring the consent of the other heirs. Conversely, if the land remains a single, undivided inheritance, the gift of the entire object by one heir has the potential to exceed his or her authority, and the absence of such consent is a strong indicator of a defect in that authority. In other words, the primary issue is not simply the presence or absence of the signatures of the other heirs, but rather whether the donor has full rights and authority over the object being donated.

This framework aligns with the valid requirements for an agreement in Article 1320 of the Civil Code, namely agreement, capacity, a specific matter, and a lawful cause. Legal capacity must be distinguished from authority over the object: a legally competent heir is still not authorized to grant a portion that is the right of another heir. From the perspective of a lawful cause, concealing the existence of another heir or unilaterally recognizing him as the sole owner when his ownership status has not yet been so raises separate issues regarding the validity of the basis for such legal action.

The role of the Land Deed Making Officer in this context is documentary, not constitutive. The Land Deed Making Officer does not create rights, but rather records legal acts that have occurred between the parties. According to Government Regulation Number 24 of 1997 concerning Land Registration, the Land Deed Making Officer is a requirement for registering the transfer of rights through a gift, so the Land Deed Making Officer is obliged to check the identity, status of rights, and authority of the grantor, including the authority to refuse the deed if the submitted documents do not show that the grantor is the only entitled party. The Land Deed Making Officer's responsibility for negligence in such examination remains separate from the issue of the validity of the gift itself, which is determined by the grantor's substantive authority, not by the formal completeness of the deed alone.

For heirs who do not give consent, their rights are not lost simply because their names are not listed in the deed of gift, as long as their position as heirs and the status of the object as inherited property can be proven. Legal protection can be sought through administrative channels in the form of objections to the registration process, or through judicial channels with a petitum adjusted to the proven defects, for example, stating that the gift is not binding on the part that is not the right of the grantor, without the need to cancel the entire deed if part of the object is indeed legally transferred. The good faith of the grantee also influences the type of protection provided: a recipient who knows that there are other heirs who object is in a weaker position than a recipient who obtained the object through a formal procedure without knowing that there is a dispute.

In assessing such disputes, it is important to distinguish between substantive and administrative defects. Substantive defects occur when the grantor lacks authority over the object or violates the requirements for the validity of a legal act, while administrative defects relate only to the completeness of procedures or recording.¹⁰ This distinction is crucial to avoid misdirected dispute resolution: canceling the registration without determining the rights status only resolves the administrative aspects, while the actual ownership conflict remains.

Given that inheritance land disputes are deeply fraternal, resolution through deliberation or mediation should be attempted first, while continuing to follow up on agreements reached through appropriate legal instruments, such as PPAT deeds and registration, to avoid creating new administrative issues. The issue becomes more complicated if the object of the gift has been transferred to a third party; in such circumstances, protection for the third party must still be tested based on good faith and due care, without sacrificing the rights of the heirs who are actually entitled.

Based on this description, the legal certainty of a gift of inherited land without the consent of the heirs can be tested through three stages: first, determining who is legally entitled to the land; second, determining whether the grantor has the authority to transfer the object; and third, determining the legal consequences for the grantee and the land data. This step-by-step approach prevents erroneous conclusions based solely on a single document. In judicial practice, the Supreme Court has even stipulated that a lawsuit for the annulment of a gift that is not combined with an inheritance lawsuit does not have to involve all heirs as parties, thus opening up space for a resolution that is more focused on the issue of the authority of the gift itself.

Thus, a grant of inherited land rights made without the consent of the heirs cannot be declared valid or void automatically based solely on the absence of such consent. Its validity is determined by the status of the land rights at the time the grant was made and the grantor's authority over the object: if the land has not been divided, a grant of the entire object has no basis for binding the part that does not belong to the grantor; if the land has been divided and the grantor grants his own portion, the lack of consent of the other heirs is not the sole reason for declaring the grant invalid. Legal certainty is only truly achieved if the status of the heirs, the share of rights, the validity of the deed of

¹⁰HR. Ridwan, *State Administrative Law*, Raja Grafindo Persada, Jakarta, 2006, p. 337.

gift, and land registration data are in a consistent legal line in line with the requirements for legal certainty according to Jan M. Otto, namely the availability of clear and consistent legal regulations, implemented consistently by the authorities and the judiciary, and complied with by the community it regulates.¹¹

D. CLOSING

Based on the discussion above, two conclusions can be drawn as follows. First, a deed of gift for inherited land made without the consent of the heirs does not automatically give rise to the legal consequence of invalidating the gift as a whole. A review of Decision Number 267/Pdt.G/2025/PA.Pyb, Decision Number 737 K/Pdt/2023, and Decision Number 441/PDT/2023/PT SBY shows that the legal consequences of a gift depend on the status of the object at the time the gift is made: as long as the land is still a joint inheritance that has not been divided, a gift by one heir of the entire object exceeds his authority and does not bind the portion that is the right of other heirs who do not agree, so that it can be questioned through a lawsuit for cancellation, a declaration of nullity, or restoration of rights. These three decisions also emphasize that the validity of a gift is a separate legal issue that must be examined and decided first before administrative actions on the object, such as changing the name, can be continued.

Second, the legal certainty of a gift of inherited land rights without the consent of the heirs is contextual, not something that can be automatically concluded simply from the presence or absence of such consent. The determining factor is the grantor's authority over the object at the time of the gift, which depends on whether the inherited land has been divided or not. If the land has not been divided, the lack of consent from other heirs is a strong indicator of a defect in authority; if the land has been divided and the grantor donates his own portion, the lack of such consent is not the sole reason to declare the gift invalid. Legal certainty is only truly achieved when the status of the heirs, their respective rights, the validity of the PPAT deed, and the land registration data are in a consistent legal line. Therefore, checking the grantor's authority by the PPAT before the deed is drawn up is key to preventing similar disputes, as well as being a more accurate measure of legal certainty than simply relying on the formal completeness of the deed or certificate.

REFERENCES

Buku

- Pasaribu, Chairuman dan Suhrawadi K. Lubis. *Hukum Perjanjian dalam Islam*. Jakarta: Sinar Grafika, 1996.
- Ridwan, HR. *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada, 2006.
- Salim HS dan Erlies Septiana Nurbani. *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: RajaGrafindo Persada, 2013.
- Soeroso, R. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 2011.
- Suparman, Eman. *Hukum Waris Indonesia dalam Perspektif Islam, Adat dan BW*. Bandung: PT. Refika Aditama, 2007.

Jurnal/Artikel

- Arimurti, Asyura Triana dan Mohamad Fajri Mekka Putra. "Perspektif terhadap Pembatalan Akta Hibah Pejabat Pembuat Akta Tanah atas Hibah yang Tidak Diberikan secara Cuma-Cuma (Studi Kasus Putusan Pengadilan Negeri Kalianda Nomor 31/Pdt.G/2020/PN Kla)." *PALAR: Pakuan Law Review* 8, no. 1 (2022). [kandidat hasil penelusuran – mohon diverifikasi]
- Fardianzah, Amirudin. "Pembatalan Akta Hibah yang Dibuat di Hadapan PPAT oleh Pemberi Hibah." *Kumpulan Jurnal Mahasiswa Fakultas Hukum, Universitas Brawijaya* (2015). [kandidat hasil penelusuran – mohon diverifikasi]

Peraturan Perundang-Undangan

- Indonesia. *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.
- Indonesia. *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, Staatsblad 1847 Nomor 23.
- Indonesia. *Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria*, Lembaran Negara Republik Indonesia Tahun 1960 Nomor 104, Tambahan Lembaran Negara Republik Indonesia Nomor 2043.
- Indonesia. *Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah*, Lembaran Negara Republik Indonesia Tahun 1997 Nomor 59, Tambahan Lembaran Negara Republik Indonesia Nomor 3696.

¹¹Salim HS and Erlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research*, Raja Grafindo Persada, Jakarta, p. 195.

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Putusan Pengadilan

Putusan Nomor 267/Pdt.G/2025/PA.Pyb.

Putusan Nomor 441/PDT/2023/PT SBY.

Putusan Mahkamah Agung Republik Indonesia Nomor 737 K/Pdt/2023.