

The Existence of Cancellation of Grant in Religious Courts: A Legal Analysis and *Maqashid Sharia* of The Decision Number 6481/Pdt.G/2021/Pa.IM

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ABSTRACT

Grants are given to others with no hope of existence, reward, or whatever, and are done willingly, without counter-performance from the party that gives. The giver still lives. Grants cannot be cancelled except for the grant parent to child matter, as mentioned in the hadith of the Prophet, KUHPER, and the Compilation of Islamic Law. The purpose of this study is to analyse the juridical aspects of Islamic Law, Positive Law and *Maqashid Syariah* above the judge's decision in the case number 6481/Pdt.G/2021/PA.IM regarding the case cancellation grant. The research method used by the author, which involves descriptive research, is one of the forms of research that includes qualitative research. The data used in the study are qualitative. Qualitative data, namely data presented in verbal form, is not in a numerical form. Among others, search and collect data with classification, including primary data and secondary data. In research, the author uses interviews, documentation and observation for data collection. The results of the research from the judge's considerations in deciding case number 6481/PDT.G/2021/PA.IM regarding the case cancellation grant, the panel of judges' opinion is that the lawsuit plaintiff must state No cannot be accepted. This is in accordance with Circular Letter Supreme Court Number 3 of 2018, letter A, number 4. In the formulation of the law of the religious chamber that the lawsuit whose object of dispute is still a debt guarantee and the judge does not use other legal considerations, in fact the judge in deciding a case should be based on the law and/or statutory regulations related to the lawsuit, such as Article 212 of the KHI which allows parents to withdraw their gifts and Article 1688 of the Civil Code.

Keywords: Cancellation of Grants, Civil Law; Compilation of Islamic Law; *Maqashid Syariah*; Religious Court Decisions

A. INTRODUCTION

In a way, a general grant is the main contract, the problem of giving treasure owned by somebody to others while he is alive, and without a hope of an afterlife reward. If somebody gives his wealth to others to utilise, but does not give them the right ownership, the treasure is called a loan.¹ Grants are given to others with no hope of existence, reward, or whatever, and are done willingly, without counter-performance from the party receiving the gift, and the giver is still alive.² Until now, this is still valid in Indonesia, based on one law which governs grants, meaning grants are also regulated by both Islamic law and civil law, based on the Civil Code and the Compilation of Islamic Law. Basically, the arrangement problem is granted according to the third system law, based on the similarities of the own elements, although in several matters, each other also contains differences.

In the case of cancellation, a grant based on decision Number 6481/Pdt.G/2021/PA.IM. The judge looked at the need for a comprehensive view of the law, not second referenced to the Circular Letter. The Supreme Court, as Indonesia adheres to the Civil Law legal system, means that the law is primarily sourced from statutory regulations. *Codified* legal texts are used when deciding cases. Civil law emphasises this. Bookkeeping law in the form of codification, such as the Civil Code, Criminal Code, Criminal Procedure Code, Commercial Code, and so on. Codification aims to ensure that the law is definite, systematic, and can be predicted.

The provisions for cancellation of gifts are explained in Islamic law, positive law and compilations of Islamic law. Islamic law prohibits taking back a gift that has been given as explained in the hadith narrated by Bukhari which means: "Muslim bin Ibrahim has told us, Wuhaib has told us, Ibn Thawus has told us from his father, from Ibn Abbas ra that the Prophet SAW said: "The person who takes back his gift is like a dog that vomits then licks its vomit again." (HR. Bukhari). (Dar Touq Al-Najah, Juz 9 Number 2589).

According to Islamic law, basically all agreements that are made voluntarily, such as grants, can be revoked, though not all granted grants can be revoked by the giver of the grant. In case of withdrawal, the return grant needs agreement from the party, the grant recipient, or the base agreement court.³ The majority of scholars forbid the withdrawal of return grants, although the grant happens between you and your husband or wife. Except for a father who gives gifts to his son, the grant may be taken back.⁴

¹ Sayyid Sabiq, *Fiqih Sunnah 14 Terj: Mudzakir* (Bandung: PT. Al-Ma'arif, 1987), 61.

² Andrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftaranya* (Jakarta: Sinar Grafika, 2018), 99.

³ Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat, Dan BW* (Bandung: Reafika Aditama, 2007), 81.

⁴ Sayyid Sabiq, *Fiqih Sunnah* (Jakarta: Pena Pundi Aksara, 2009).

Article 212 of the Compilation of Islamic Law states that gifts cannot be withdrawn, except for gifts from parents to their children.⁵ In the Civil Code, the discussion regarding grants is contained in articles 1666 to 1693. Meanwhile, the discussion regarding the withdrawal of grants is contained in the fourth part regarding the withdrawal and cancellation of grants, which is stated in the following articles:

Article 1688

In principle, a grant agreement cannot be revoked or cancelled by the grantor; there are three exceptions, namely:

1. If the conditions of the gift are not fulfilled by the recipient of the gift.
2. If the person who is given the gift is guilty of committing or participating in an attempted murder or other crime against the person who gave the gift.
3. If the grantor falls into poverty, while the grantee refuses to provide support to the grantor.

From the perspective of *Maqashid Syariah*, judges are deemed necessary to look at it from the perspective of Islamic law aspects contained in *Maqashid Syariah*, namely *Hifz. al-Din* (protection of religion), *Hifz al-Nafs* (protection of the soul), *Hifz al-Nasl* (protection of offspring), *Hifz al-'Aql* (protection of the mind), *Hifz al-Mal* (protection of property).

Based on the description above, further research is needed to determine the matters that form the basis of the lawsuit for cancellation of the grant in decision Number 6481/Pdt.G/2021/PA.IM. From the problem, the writer is interested in analysing how the existence of grants between the law of Islam, the positive law, and the maqashid sharia above Decision Number 6481/PDT.G/2021/PA.IM.

B. RESEARCH METHODS

Judging from the type of research, this is a writing that focuses on descriptive research, which is one of the types of research included in qualitative research. Descriptive research is a research strategy in which the researcher investigates events and phenomena in the lives of individuals and asks one or a group of individuals to describe their lives. This information is then retold by the researcher in a descriptive chronology. The characteristic of descriptive research itself is that the data obtained is in the form of words and images, rather than numbers like quantitative research. In this study, the data collection methods used by the author were interviews, documentation, and observation. In qualitative research, to analyse the data obtained through interviews, observation, and documentation, analysis is carried out through the process of interpreting the data obtained. Data analysis is the process of

⁵ Aulia Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga* (Yogyakarta: PT. Pustaka Baru, 2022), 230.

systematically searching for and organising data obtained from interviews, field notes, and other materials so that it is easily understood and the findings can be communicated to others.⁶

C. RESULTS AND DISCUSSION

1. The Existence of Cancellation of Grants Between Islamic Law, Compilation of Islamic Law, Civil Code and *Maqashid Syariah*

a. Grants according to Islamic Law in Insight into the Quran

The Qur'an, as the main source of Islamic law, regulates various forms of giving, good to relatives, the poor, neighbours, and the public at large. Verses about donations, alms and ihsan give a strong runway for practice grants, good from side value, ethics, and regulatory.⁷ Although not explained in the terminology of jurisprudence explicitly, the Qur'an contains several framing principles that are practised in public.

In a way, a general grant is the main contract, the problem of giving treasure owned by somebody to others while he is alive, and without a hope of an afterlife reward. If somebody gives his wealth to others to utilise, but does not give them the right ownership, it is called a loan.⁸

Grants are judged as Sunnah in Islam. In the Qur'an, it encourages man to do Good with the method of help, and one of the forms of help is give treasure to others who really need it, the word of Allah in QS Al-Maidah verse 2:

يَأَيُّهَا الَّذِينَ آمَنُوا لَا تُحِلُّوا شَعِيرَ اللَّهِ وَلَا الشَّهْرُ الْحَرَامُ وَلَا الْهَدْيُ وَلَا الْقَلَبُ وَلَا أَمِينُ الْبَيْتِ الْحَرَامِ
يَبْتَغُونَ فَضْلًا مِّنْ رَّبِّهِمْ وَرَضُوا نَّا وَإِذَا حَلَّتُمْ فَاصْنَطِدُوا وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ أَنْ صَدُّوكُمْ عَنِ
الْمَسْجِدِ الْحَرَامِ أَنْ تَعْنَدُوا وَتَعَاوَنُوا عَلَى الْبَرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدُوانِ وَاتَّهُوا اللَّهُ أَنَّ
اللَّهُ شَدِيدُ الْعِقَابِ

"O you who believe, do not You violate the symbols of Allah, and do not violate honor sacred months, do not (disturb) the animals and animals qalaa -id, and do not (also) disturb the people who visit the House of Allah currently they look for blessings and pleasure from His God and when You has completing the pilgrimage, then it's okay hunting. And don't once in a while (your) hatred towards something people Because they obstruct you from Masjidilharam, pushing you to persecution (of them). And please help you in (doing) virtue

⁶ Rusandi and Rusli, "Merancang Penelitian Kualitatif Dasar/Deskriptif Dan Studi Kasus," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 2, no. 1 (2019): 2-3.

⁷ Yusuf Al-Qardhawi, *Daur Al-Qiyam Wa Al-Akhlaq Fi Al-Iqtishad Al-Islami* (Cairo: Dar as-Syuruq, 2020), 112.

⁸ Sabiq, *Fikih Sunnah 14* Terj: Mudzakir, 174.

and piety, and do not mutual help in committing sins and transgressions. And be pious to Allah, verily Allah is a great, heavy tormenter." (QS Al-Maidah verse 2)

Grants are also known as goodness (al birr), as explained in the word Allah Almighty Al Baqarah letter paragraph 177:

.... وَأَنَى الْمَالَ عَلَى حُبِّهِ ذُو الْفُرْبِيِّ وَالْيَتَمِّيِّ وَالْمَسْكِينِ وَابْنَ السَّبِيلِ.....

"..... and give the treasure he loves to relatives, children orphans, poor people, travellers, beggars, and (freed) slave slaves..."

This verse describes that giving treasure is part of *al-birr*, namely form kindness. This has become a moral basis for grants.

Grants must be based on willingness (taraddi) as mentioned in the Quran Anissa 's letter paragraph 26:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَنْقُضُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَّحِيمًا

"O you who believe, do not you eat treasure your fellow man with an invalid way (not true), except in the form of commerce on base, like the same as between you. Don't you kill yourself. Indeed, Allah is Most Merciful to you."

Grants are given to others with no hope of existence, reward, or whatever, and do in a way like willing, if the grant is not based on voluntary so the grant is considered cancelled, and granting without there is counter-performance from the party recipient giving, and giving that is held at the time giver. Still life.⁹

Grants do not have a relation with death, because a grant is made when the giver of the grant is still alive and already implemented the handover to the recipient grant when the giver of the Still life. Until the moment this is still valid in Indonesia, valid more from one law, which govern grant, meaning grants are also regulated by both Islamic law and civil law, based on the Civil Code and the law custom. Basically arrangement problem is granted according to the third system law, based on the similarities of the own elements, although in several matters, each other also contains differences. As for a harmonious grant, according to the majority of scholars exist four that is:¹⁰ *First*; The person who gives (Al Wahid). *Second*; People are given (Al- mauhub). As for the person who is given give can just give. *Third*; Objects given to Al Mauhub. *Fourth*, Sighat is consent and qabul.

⁹ Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftaranya*, 99.

¹⁰ Wahbah Az-Zuhaili, *Fiqih Islam Wa-Adillatuhu*, 5th ed. (Jakarta: Gema Insani Daru Fikir, 2011), 525.

b. Cancellation of Grants According to Islamic Law in the Hadith of the Prophet Muhammad SAW

The prohibition of taking back a gift that has been given has been explained in the hadith below: "Muslim bin Ibrahim has told us, Wuhaib has told us, Ibn Thawus has told us from his father, from Ibn Abbas ra that the Prophet SAW said: "The one who takes back his gift is like a dog that vomits and then licks up its vomit." (Narrated by Bukhari) (Dar Touq Al-Najah, Juz 9 Number 2589).

According to Islamic law, basically all agreements made voluntarily, such as making a gift, can be revoked, although not all gifts can be revoked by the donor. If the withdrawal of a gift requires the consent of the party receiving the gift, or the basis for court approval.¹¹ Most scholars forbid the withdrawal of gifts, even if the gift occurred between brothers or husband and wife. Unless a father makes a gift to his child, the gift may be taken back.¹² As in the hadith of the Prophet Muhammad; "Yazid has told us, told us Husain Ibn Dzakwan, from Umar bin Syu'aib, from Thawus, from Ibn Umar and Ibn Abbas that the Prophet SAW said: It is not halal for a Muslim to give something and then take it back, except for a father who takes back what he gave to his child." The parable of a person who gives and then takes it back is like a dog that eats until it is full, then vomits, then eats its vomit again. (HR. Ahmad bin Hambal). (Musnad Imam Ahmad bin Hanbal, Number 2119) From these two hadiths, it can be concluded that revoking a gift is prohibited. A person who revokes a gift is likened to a dog eating its vomit. However, there is an exception, namely a gift from a parent to a child, which can be revoked. This is permissible considering the service our parents have given us. Therefore, if a parent revokes the property they have given their child, the revocation is justified.¹³

c. Cancellation of Grants According to the Compilation of Islamic Law

The Compilation of Islamic Law is a reference for Muslims in civil matters in Indonesia. The provisions regarding gifts are contained in Book II, Chapter VI of the Compilation of Islamic Law, namely Articles 210 to 214. Article 210, paragraph 1 states that the person who gives a gift must be at least 21 years old, of sound mind, without any coercion, and the assets that can be given are a maximum of 1/3 of the total assets to another person or institution in the presence of two witnesses, and the assets given are the rights of the donor.¹⁴

¹¹ Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat, Dan BW*, 81.

¹² Sabiq, *Fiqih Sunnah*, 61.

¹³ Robiah Awaliyah and Nadjematal Faizah, "Tinjauan Yuridis Perkara Pembatalan Hibah (Studi Kasus Putusan Nomor 467 K/Ag2017)," *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam* 4, no. 2 (2020): 116–21.

¹⁴ "Instruksi Presiden Republik Indonesia No 1 Tahun 1991 Tentang Kompilasi Hukum Islam".

If the amount donated exceeds 1/3 of the donor's assets, the donation can be revoked because it does not meet the requirements for a donation. Furthermore, Article 210, paragraph 2 states that "the property donated must be the property of the donor." This article means that the donor must be the legal owner of the property donated.

Article 211 explains that gifts given by parents to their children can be counted as inheritance. Gifts can be given to anyone regardless of race or ethnicity. The explanation of Article 211 of the Compilation of Islamic Law quoted from Drs. Dede Ibin, SH (Deputy Chairperson of the Rangkasbitung Religious Court), in his article entitled "Gifts, their function and correlation with inheritance", states that the meaning of "can" contained in the article does not mean obligation, but is an alternative that can be taken to resolve inheritance disputes. If the heirs do not dispute the gifts that have been given, then the inheritance that has not been donated can be distributed to the heirs according to their respective portions. However, if some heirs dispute the gifts that have been given to other heirs, then the gifts can be counted as inheritance. By calculating the gifts that have been received, with the portion of the inheritance that should be received.

Furthermore, Article 212 states that gifts cannot be withdrawn, except for gifts from parents to their children.¹⁵ This is in light of the services of parents who have cared for and loved us. In the case that the author stated above, which is the main problem in this research, the withdrawal of gifted assets is a prohibited act; however, in this case, a child who has been disobedient to his parents and has committed injustice to his parents, namely, not allowing his parents to live in their house that has been donated. In this case, parents can withdraw the assets they have donated to their daughter; this is based on Article 212 of the Compilation of Islamic Law. This article is a solution to the problem of the case above. So the withdrawal or cancellation of the gift is done by stating the will of the person who gave the gift, followed by a demand for the return of the goods that have been donated, and the cancellation of this gift can be done by filing a lawsuit with the local Religious Court or in the jurisdiction where the person who gave the gift resides.¹⁶

Article 213 explains that gifts given when the donor is ill and near death must obtain the approval of the heirs. Article 214 then regulates the technicalities of gifts made by Indonesian citizens while residing in a foreign

¹⁵ Muthiah, *Hukum Islam Dinamika Seputar Hukum Keluarga*, 230.

¹⁶ Zuhrotunnisa, "Cancellation of Grants" (Syarif Hidayatullah State Islamic University Jakarta, 2017).

country. The requirement that Indonesian citizens must fulfil is to prepare a letter of gift before the local Consulate or Embassy of the Republic of Indonesia, as long as the contents do not conflict with the provisions of the Compilation of Islamic Law.¹⁷

d. Cancellation of Grants According to the Civil Code

Civil law is a legal relationship between individuals that regulates the rights and obligations of individuals within family relationships and within society. Civil law in Indonesia originates from the Dutch Burgerlijk Wetboek (Code of Civil Procedure), which is enforced based on the principle of concordance. The Civil Code consists of four books:

- 1) Book I, about People
- 2) Book II, on Materiality
- 3) Book III, on Contracts
- 4) Book IV, on Proof and Expiration

In the Civil Code, the discussion regarding grants is contained in articles 1666 to 1693.¹⁸ Meanwhile, the discussion regarding the withdrawal of grants is contained in the fourth part regarding the withdrawal and cancellation of grants, which is stated in the following articles:

Article 1688

In principle, a grant agreement cannot be revoked or cancelled by the grantor; there are three exceptions, namely:

- 1) If the grantee does not fulfil the conditions of the grant. The meaning of paragraph (1) is that in making a grant, there are conditions that must be fulfilled by the grantee. For example, if the grantee is not/does not exist at the time the grant is made (has died/has not been born), then the grant can be cancelled.
- 2) If the person who is given the gift is guilty of committing or participating in an attempted murder or other crime against the person of the donor. The purpose of paragraph (2) is that a grant can be cancelled by the grantor if the grantee has committed acts that could threaten the life and safety of the grantor.
- 3) If the grantor becomes poor, while the grantee refuses to provide maintenance to the grantor. The meaning of paragraph (3) is that a grant can be cancelled by the grantor if the grantee refuses to provide maintenance to the grantor, when the grantor becomes poor, or his/her economy declines.

¹⁷ Awaliyah and Faizah, "Tinjauan Yuridis Perkara Pembatalan Hibah (Studi Kasus Putusan Nomor 467 K/Ag2017).": 118.

¹⁸ Subekti, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Balai Pustaka, 2014).

Although actually assisting in the form of maintenance is not mandatory in granting, it is a form of humanity and a form of gratitude and gratitude to the grantor.¹⁹

Article 1689

"In the first case, the item gifted remains with the grantor, or he may ask for the item back, free from all encumbrances and mortgages that may be placed on the item by the grantee, as well as the proceeds and fruits that have been enjoyed by the grantee since he failed to fulfil the terms of the gift. In that case, the grantor may exercise his rights against third parties who hold the immovable property that has been gifted as against the grantee himself."

Article 1690

"In the last two cases mentioned in Article 1688, the transfer of the donated goods or mortgages and other material encumbrances, which may have been placed on the goods by the recipient of the gift before the demand for cancellation of the gift has been registered alongside the announcement mentioned in Article 616, cannot be contested. All transfers, mortgages, or other material encumbrances made after the registration by the recipient of the gift as mentioned above are void if the demand resulting from the withdrawal is denied."

In this paragraph, it is explained that the two objects that have been gifted can remain with the final recipient if they have been previously registered. And if later the claim is made again by the grantor and it is granted, then all the actions of the grantee are deemed to be null and void.

Article 1691

"The recipient of the gift is obliged, in the case mentioned in the previous article, to return the gifted property, along with its proceeds and income, as of the day the lawsuit is filed, or if the property has been sold, to return its price at the time the lawsuit was filed, along with the proceeds and income from that time. In addition, he is obliged to provide compensation to the donor for mortgages and other encumbrances that he has placed on immovable property, also before the lawsuit is filed."

Article 1692

"The legal claim referred to in the previous article shall be terminated upon the lapse of one year, calculated from the occurrence of the event which is the reason for the claim, and which the grantor is aware of. Such legal claim may not be brought by the grantor against the heirs of the recipient of the gift, nor by the

¹⁹ Meylita Stansya Rosalina Oping, "Pembatalan Hibah Menurut Pasal 1688 Kitab Undang-Undang Hukum Perdata," *Lex Privatum* 5, no. 7 (2017): 29–35.

heirs of the grantor against the recipient of the gift, except in the latter case, if the claim is brought by the grantor, or if this person has died within one year after the occurrence of the alleged event.”

Article 1692 explains that the legal provisions against the recipient of a gift are terminated upon the lapse of one year from the date of the event that gave rise to the claim. Legal action cannot be taken by the heirs of the grantor unless the original grantor has filed a lawsuit or has died within one year of the allegation.²⁰

Based on the regulations above, the author thinks that the cancellation of the gift that has been submitted by the Plaintiff Umar Bin Dakim as the parent of Casini Binti Umar in this case as the Defendant, is appropriate and meets the requirements as regulated in the hadith of the Prophet Muhammad SAW, the Compilation of Islamic Law and the Civil Code.

That, in its consideration, the panel of judges who decided on case Number 6481/Pdt.G/2021/PA.IM, namely based on the object (in the form of land measuring 210 m²), in this case has been and is still being used as collateral for credit by the Defendant at PD BPR BKK PK Balongan Sukra Branch with Credit Agreement Letter Number: 022101006609. Therefore, in this case, according to the panel of judges, the lawsuit is premature.

The next legal consideration is the Supreme Court Circular Letter Number 3 of 2018 number III letter A number 4. which essentially states that a lawsuit where the object of the dispute is still a debt guarantee, a lawsuit regarding joint property where the object of the dispute is still used as a debt guarantee or the object contains an ownership dispute due to a second transaction and so on, then the lawsuit regarding the object must be declared unacceptable.

Meanwhile, according to the author, in this case the panel of judges should look at other legal considerations, namely based on the hadith of the Prophet Muhammad SAW which means: "Yazid told us, Husain Ibn Dzakwan told us, from Umar bin Syu'aib, from Thawus, from Ibn Umar and Ibn Abbas that the Prophet SAW said: It is not lawful for a Muslim to give a gift and then withdraw it, except a father who withdraws what was given to his son". Based on this hadith, it is clearly permissible for a father to withdraw his gift, clearly and firmly in Article 212 of the Compilation of Islamic Law states that gifts cannot be withdrawn, except for gifts from parents to their children. This means that the gift may be withdrawn because the one who gave the gift is a parent of his daughter. And the reason the parents want to withdraw their gift is because,

²⁰ Awaliyah and Faizah, "Tinjauan Yuridis Perkara Pembatalan Hibah (Studi Kasus Putusan Nomor 467 K/Ag2017)": 121.

after their parents gave the gift in the form of the land assets mentioned above, the behavior and actions of the daughter who had been given the gift often did not reflect herself as a child who was devoted to her parents, namely often saying harsh words, scolding and expelling her parents along with his wife and two grandchildren from the house where the object of the dispute was. Furthermore, the child did not recognise the grantor as her biological parents and even tried to expel her parents to leave the house as soon as possible. That the grantor, with a very old age of 72 years, to support his life, did not receive any material assistance from the grantee, and even his child, as the grantee was burdened with financing the lives of two grandchildren named Putri Selvi and Danurenda (the biological children of the grantee)

Based on the actions taken by the grant recipient, it is clear, according to the author, that they have fulfilled the provisions for cancellation of the grant as regulated in Article 1688, paragraph 2 and paragraph 3 of the Civil Code.

e. Judge's Decision in Grant Cancellation Case Number 6481/PDT.G/2021/PA.IM reviewed from the perspective of Maqasid Syariah

Review of the Judge's decision based on *the Mashlahah*, which is used as an effort to *istimbat* Islamic Law. If you encounter a problem, you can use the theory of *mashlahah* as the barometer. The scholars limit freedom of reason in the study of *mashlahah*, by establishing several criteria; the *mashlahah* is rational (*ma'qul*) and relevant (*munasib*) with the established legal cases. Both *Mashlahah* must be acceptable to rational thinking. The three *Mashlahah* must be in accordance with the intent of *the sharia* in determining law, and do not conflict with the arguments, either with the arguments' textual evidence and the basic principles of thought substantially. In the concept of *maslahah mursalah* requires the protection of the soul, the protection of the assets of husband and wife and what is considered good by reason, in line with the objectives of *Islamic law* in determining the law, but there is no *Sharia* guidance take it into account, and there is no *Islamic guidance* that rejects it. In this case, the Judge is deemed necessary to look at it from the perspective of Islamic law aspects contained in *the maqosid of sharia*, namely *Hifz al-Din* (protection of religion), *Hifz al-Nafs* (protection of the soul), *Hifz al-Nasl* (protection of offspring), *Hifz al-'Aql* (protection of the mind), and *Hifz al-Mal* (protection of property).²¹ *Maslahah* review as a result of the decision of the Indramayu Religious Court number 6481 / PDT.G / 2021 / PA.IM which rejected the lawsuit from Umar Bin Dakim as the plaintiff, now in terms of life and economy Umar Bin Dakim cannot carry out activities as usual which he often does every day because of his increasingly

²¹ Amir Syarifudin, *Ushul Fiqih Jilid 2* (Jakarta: Kencana, 2014), 366.

old age and now reaching the age of 73 years, of course it is considered very necessary to have a decent place to live, support from children, after the plaintiff gave a grant in the form of land assets, the behavior and actions of Casinah Binti Umar as the defendant often do not reflect herself as a child who is devoted to her parents, namely often saying harsh words, rebuking and expelling her father and his wife and two grandchildren from the house where the object of the dispute is, even saying that Umar Bin Dakim would be better off dead. Clearly, the child has been considered disobedient to his parents, Umar Bin Dakim filed a lawsuit. The verdict of the lawsuit did not provide any benefits or advantages for Umar Bin Dakim. In the case of cancellation of the grant, the judge did not use the consideration of *maslahah mursalah* in determining the law. Firstly, *maslahah mursalah* should be of real benefit; there are no arguments against it. Second, *maslahah mursalah* that should benefit mursalah, who can confirm the vague thing. Third, *maslahah* that should nature general. *Maslahah mursalah* is permitted as a legal method that takes into account benefits that have general access and unlimited, unbounded interests. In other words, *maslahah mursalah* is an interest that is decided freely, but is still tied to the basic concept of sharia. Because sharia itself is appointed to provide benefits to society in general and functions to provide benefits and prevent harm (damage).

2. Considerations in Making a Decision Case Number 6481/PDT.G/2021/PA.IM About Case Cancellation of Grant

The results of the research from the judge's considerations in deciding case number 6481/PDT.G/2021/PA.IM regarding the case cancellation grant, the panel of judges' opinion that the lawsuit plaintiff must state no cannot be accepted. This is in accordance with Circular Letter Supreme Court Number 3 of 2018, number III letter a, number 4. In the formulation of the law of the religious chamber, the lawsuit whose object of dispute is still a debt guarantee. A lawsuit for joint property whose object of dispute is still pledged as a debt guarantee, or the object contains an ownership dispute due to a second transaction, and so on, then the lawsuit over the object must be declared inadmissible. In the decision to cancel the gift, the judge only considered the Supreme Court Circular, and did not use other legal considerations, in fact, the judge in deciding a case must be based on the law and/or regulations related to the lawsuit, in the case of gifts, for example, in the Compilation of Islamic Law and the Civil Code have regulated related articles regarding gifts. According to Article 212 of the Compilation of Islamic Law, it is very firmly stated that gifts cannot be withdrawn, except for gifts from parents to their children. The hadiths that explain the reprehensibility of withdrawing assets that have been donated show the prohibition of withdrawing gifts or other

sadaqah, which have been given to others. The ability to withdraw a gift only applies to parents who give something to their children, so that parents, when giving gifts to their children, pay attention to the values of justice. In terms of the giver grant is parents, whereas the recipient grant is his son, then according to Compilation of Islamic Law on Grants, the grant can still be revoked. Regarding this matter This Compilation of Laws Islam does not give a clear When something is granted to a child taken into account for inheritance. The majority of scholars think that revoking a gift is permissible as long as it is a gift from parents to their children. This was written by Mummad Sayyid Sabiq in Fiqih Sunnah Volume 3, page 19.

According to Article 1688 of the Civil Code, if the conditions of the grantor are not fulfilled by the recipient grant. In case these donated items still stay with the grantor, or He may request the return of goods that are free from all possible mortgages placed on goods by the recipient grant, as well as results and fruits that have been enjoyed by the recipient grant since he is absent in fulfil conditions of the *grant*. In case thus granting may operate their rights to party the third is holding something that is not there moves that has been granted as to the recipient grant alone.

The person who is given a *grant* is guilty with do or following something, such as business murder or other crimes against the self-grantor. In case these goods that have been granted No may be disturbed, sue If goods that want to or have moved hand over, hypothecated or burdened with right other objects by the recipient *grants*, except if a lawsuit for cancel granting That Already submitted to and registered in court and entered in announcement the in Article 616 of the Civil Code. All transferor hand, mortgage or other charges incurred by the recipient *grant* after registration, the is cancel if a lawsuit is won.

If the person who was given a grant fell into poverty, while those who were given a *grant* reject for give living to give him a living. In case these goods that have been handed over to the grantor will be given to the recipient, the grant No give livelihood. So that the *grant* which has given can be revoked or withdrawn, returned because he did not give maintenance.²² That in the case of the cancellation of the grant filed by his own parents, namely Umar Bin Dakim to his child, namely Casinah Binti Umar, on the basis that the child often scolded his father and even often said that it would be better for Umar to die, and then Umar was given a place to live in the kitchen which was indeed very inappropriate and was not even given access to the main room of the house, therefore based on the actions carried out by

²² Meylita Stansya Rosalina Oping, "Cancellation of Grants According to Article 1688 of the Civil Code" (Sam Ratulangi University, 2017), 1.

his child, Umar Bin Dakim filed a Grant Cancellation Lawsuit to the Indramayu Religious Court. Which is very unfortunate in this case the Judge did not provide and or consider for the Plaintiff or Umar Bin Dakim to provide evidence in the trial, regarding the facts that actually happened and befell Umar Bin Dakim as the biological father, the judge only argued and considered that the Deed of Grant had been guaranteed by Casinlh Binti Umar and was still in the collateral of the PD BPR PK Balongan Bank, Sukra Branch. The judge had a too narrow view and did not see other legal considerations related to the Lawsuit as the researcher has explained above. According to the regulations, Umar Bin Dakim has fulfilled the elements to file a cancellation of the grant to the Indramayu Religious Court, with reference to Article 1688 of the Civil Code paragraph 1 (one) and/or paragraph 3 (three), then the actions of the Defendant or Casinlh Binti Umar who did not fulfill his promise and did not provide maintenance to the Plaintiff or Umar Bin Dakim have fulfilled the requirements to be revoked and canceled or withdrawn the grant from the Plaintiff to the Defendant, this is in line with the rules in the Decision of the Supreme Court of the Republic of Indonesia No. 419 K/Pdt/1986 dated September 30, 1988, namely: Regarding grants with the aim that the recipient of the grant must support (maintain/care for) the Grantor, especially if sick, old, and so on. Then the Grant can be cancelled if the recipient of the grant does not carry out these obligations, and according to Article 212 of the Compilation of Islamic Law, it is very firmly stated that grants cannot be withdrawn, except for grants from parents to their children.

D. CONCLUSION

The conclusion of this study shows that the judge's decision in the case of the cancellation of the gift Number 6481/Pdt.G/2021/PA.IM, which declared the lawsuit inadmissible, was based solely on SEMA No. 3 of 2018 because the object of the gift was still used as collateral for the debt. This consideration does not reflect a comprehensive legal approach, considering that there are provisions of Islamic law, the Compilation of Islamic Law, and the Civil Code that explicitly provide grounds for parents to withdraw gifts given to children, especially when the recipient of the gift demonstrates disobedience, neglects moral obligations, and does not provide support to parents who are in a weak condition. Furthermore, from the perspective of Maqāṣid Syariah, the decision does not fulfil the principle of benefit, especially the protection of the life, property, and honour of parents who are vulnerable parties in this case.

Based on these findings, this study recommends that judges in similar cases apply more careful legal considerations by integrating the Supreme Court's (SEMA), the Compilation of Islamic Law (KHI), the Civil Code, and Islamic legal principles,

including the hadith that permits the withdrawal of gifts by parents. A Maqāṣid approach based on Sharia is also important to ensure the protection of the vulnerable and the realisation of public welfare. Policymakers need to consider harmonising regulations regarding gifts, particularly in the context of family relationships, to create legal certainty and uniformity in decisions. The public, especially parents who will provide gifts, is advised to create a written agreement regarding the obligations of the gift recipient to avoid future disputes. Further research can be directed at comparative studies of gift annulment decisions in various courts to assess the consistency of the application of legal norms and the use of the maqāṣid approach in judicial practice.

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