

## The Implementation of Land Rights Grant to Adopted Children by Their Adopting Parents

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**Abstract.** *The purpose of this research for: 1. To find out the implementation of land rights grants to adopted children in terms of customary law, Islamic law, civil law. 2. To find out the legitimacy of grants of land rights given to adopted children by adoptive parents. 3. To find out the legal implications of grants to adopted children regarding land rights that will be withdrawn by their adoptive parents. Research methods it uses The approach in this study uses an empirical juridical approach. Empirical juridical research is a problem approach regarding matters that are juridical in nature and the existing facts regarding matters that are juridical in nature. Empirical legal research or sociological research is legal research that uses primary data. The research results determine that: 1) Implementation of land rights grants to adopted children in terms of customary law, Islamic law, and civil law: a. The implementation of grants according to customary law is carried out according to what is customary or customary in each region in Indonesia. b. Implementation of grants according to Islamic law. Based on the Compilation of Islamic Law Article 210 Compilation of Islamic Law grants made must comply with the provisions of that article. c. Implementation of Grants According to Civil Law. Implementation of grants according to civil law is carried out according to Article 1666 of the Civil Code. 2) Legitimacy of Adoptive Children Against Grants of Land Rights Granted by Adoptive Parents. Adoption of a child also has an impact on inheritance, changing the status of a child who is adopted to become a child of adoptive parents brings juridical consequences to inheritance. This means that the adoption of a child results in a mutual inheritance relationship between the adopted child and his adoptive parents and vice versa. In line with what has been described above, adopted children have legal force and are entitled to grants given or inheritance given by their adoptive parents if the adoption is carried out according to statutory procedures. 3) Legal implications of grants to adopted children against land rights which will be withdrawn by their adoptive parents. Basically the Civil Code does not prohibit a person from giving his inheritance to his adopted child according to the provisions of the Civil Code. Whereas in Islamic law.*

**Keywords:** Adopted; Children; Grants; Parents.

## 1. Introduction

The existence of children in the family is something that is very meaningful and is the hope of everyone who builds a family. Child has a different meaning for everyone. Children are the continuation of the lineage, as an investment in the future, and children are the hope to be relied on when they are old. Families that do not have children and really want children usually adopt children. Adoption of children must be carried out in accordance with applicable laws and regulations. An adopted child is a child whose rights are transferred from the sphere of authority of the parents, legal guardians or other persons who are responsible for the care, education and upbringing of the child into the family environment of the adoptive parents based on court decisions and decisions.<sup>1</sup>

Children as successors of offspring born from legal marriages have the position of a legitimate child. Legitimate children as referred to in Article 42 of Act No. 1 of 1974 concerning Marriage as amended in the Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage are: "Children born in or as a result of a legal divorce."<sup>2</sup>

Illegal children who are interpreted as *argumentum acontrario* are children who are not born in or as a result of a legal marriage. A child who is born under any circumstances, if he is born alive then he is a legal subject whose interests need to be protected. This is emphasized in Article 2 of the Civil Code (KUHPerdata) which is known as the principle of legal fictie. In Article 2 of the Civil Code it is stated that: "A child who is in the womb of a woman is considered to have been born, if the interests of the child so desire. Dead when he was born, it is considered that he never existed."<sup>3</sup>

Protecting that the adopted child continues to get his rights over the assets left by his adoptive parents, the adoptive parents make a grant or will. A testamentary grant is a way for the owner of the property to express his final wish during his lifetime regarding the distribution of his inheritance to the heirs, which will only take effect after he dies. In Article 957 of the Civil Code it is stated: "A testamentary grant is a special testamentary determination, by which the one who bequeaths to someone or more gives some of his goods of a certain type, for example, all of his movable or immovable goods, or gives usufructuary rights over all or part of his inheritance". Dividing inherited property objects by way of a will is usually meant for avoid causing disputes among heirs.<sup>4</sup> Grant according to Article 1666 of the Civil Code (KUHPerdata), is an agreement whereby the benefactor, at the time of his life, freely and irrevocably surrenders something for the purposes of the beneficiary who accepts the delivery.

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<sup>1</sup>Ahmad Kamil, *Child Protection and Adoption Law in Indonesia*, (Raja Grafindo Persada: Jakarta, 2010) p. 72

<sup>2</sup>R. Subekti, *Civil Code*, (Pradnya Paramita: Bandung, 2002) p. 91

<sup>3</sup>Eman Suparman, *Indonesian Inheritance Law*, (Mandar Maju, Bandung, 2005) p. 92

<sup>4</sup>Oemarsalim, *Fundamentals of Inheritance Law in Indonesia*, (Bina Literacy: Jakarta, 2010) p. 81

Based on the description above, this study aims to: To find out the implementation of land rights grants to adopted children in terms of customary law, Islamic law, and civil law. To find out the legitimacy of grants of land rights given to adopted children by adoptive parents. To find out the legal implications of grants to adopted children on land rights that will be withdrawn by their adoptive parents.

## 2. Research Methods

*This research method uses* is a type of empirical juridical research. Empirical juridical research is a problem approach regarding matters that are juridical in nature and the existing facts regarding matters that are juridical in nature. Empirical legal research or sociological research is legal research that uses primary data.<sup>5</sup> *Research Specifications* is analytical descriptive, namely to describe, find legal facts as a whole, and systematically examine the arrangements regarding grants to adopted children and their legal powers and the juridical implication is that there is a request to return the land that has been granted to the adopted child by his adoptive parents then explain in detail in sentences.<sup>6</sup> *Types and Data Sources*, a. Primary data. Primary data, namely data obtained directly from the first source related to the issues to be discussed by conducting well-structured interviews with parties related to the requisition of land that has been granted to adopted children by their adoptive parents.<sup>7</sup> b. Secondary Data. Secondary data was obtained by conducting library research on the research materials used which included primary legal materials, secondary legal materials and tertiary legal materials, namely: 1). The primary legal materials are: Civil Code, Act No. 1 of 1974 concerning Marriage as amended in Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection). 2). Secondary legal material. Secondary legal material, namely non-binding legal material which provides an explanation regarding primary legal material which is the result of processing the opinions or thoughts of experts or experts who study a particular field in particular which will provide directions to the author including legal books, legal materials law sourced from literature, scientific journals and writings on the internet. 3). Tertiary legal materials.

## 3. Results and Discussion

### 3.1. Implementation of Land Rights Grants to Adoptive Children by Adoptive Parents to Their Adopted Children

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<sup>5</sup>Ronny Hanitijo Soemitro, 2011 Legal and Jurimetric Research Methodology, Ghalia Indonesia, Jakarta. p. 10

<sup>6</sup>Ibid., p. 128

<sup>7</sup>Ibid., p. 129

Based on the customary law in force in Indonesia related to grants and inheritance, this is explained simply by dividing the inheritance over the lifetime of the owner and his family. This was revealed by Hilman Hadikusuma that the grant was given when the grantor was still alive. It was further explained that this grant was a voluntary gift to another person without compensation. The purpose of giving grants according to adat indirectly is to avoid disputes, disturbances or disputes regarding the distribution of parental assets for the future. Benefits from the point of view of customary law are generally given in the form of gifts to children with the consideration that children will receive their rights in the future. For example, the right to cultivate agricultural land for cultivation, livestock or housing.<sup>8</sup>

Customary law has become a tradition or custom among Indonesian people, in the parental, matrilineal, and patrilineal family systems, where gifts are given when the child grows up and forms an independent family. According to customary law, an adult is understood as a married person (male or female) who leaves the mother's or father-in-law's and father-in-law's house to start a family. Based on the explanation above, the gift given in 1992 to M (adopted child) was in accordance with customary law norms, the maturity of a child in receiving a grant has been fulfilled as referred to in customary law provisions, in addition to that, the grant of a plot of land,

### **3.2. Implementation of Grants According to Islamic Law**

According to Article 211 of the Compilation of Islamic Law: grants awarded parents to their children can be counted as inheritance. Indeed, the principle of implementing parental grants to children is appropriate with the guidance of Rasulullah SAW. According to the Compilation of Islamic Law Article 171 letter (g) it is said that a gift is the giving of something voluntarily and without reward from someone to another person who is still alive to be owned. Furthermore, according to Article 210 of the Compilation of Islamic Law in paragraph (1) it states that a person who is at least 21 years old, has common sense without coercion can donate up to 1/3 of his property to another person or institution in the presence of two witnesses to owned. Furthermore, paragraph (2) states that the property donated must be the right of the grantor. Thus if someone donates property that is not his right, then the gift becomes void.<sup>9</sup> Based on the explanation above, if you look at the results of the author's research, the adoption of the adoptive parents to their adopted children is in the form of a piece of land which is inherited from their adoptive parents to be used after marriage. Basically, it is legal when viewed from the perspective of Islamic law and can be done because the grant given by the adoptive parent is followed by an agreement, that if he has received the grant, it is his inheritance and the adopted child promises not to ask for a share of the inheritance later if the grantor dies.

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<sup>8</sup>Hilman Hadikusuma, 2011, Indonesian Inheritance Law According to legislation, Customary law, Hindu-Islamic Religious Law, Bandung, PT. Aditya image. Thing. 71

<sup>9</sup>Habiburrahman, 2011, Reconstruction of Islamic Inheritance Law in Indonesia, (Jakarta: Kencana Perdana Media Group, Eds. I, cet. I), p. 82

### **3.3. Implementation of Grants According to Civil Law**

A grant is a voluntary gift of something to someone who is made when the grantor is still alive to give something/his property to the recipient of the grant according to Article 1666 of the Civil Code, which is an agreement whereby the grantor, during his lifetime, is free and irrevocable, surrendering something for the needs of the beneficiary who accepts the surrender:<sup>10</sup>Grants must be made authentically with a Notary Deed. Article 1682 of the Civil Code "No grant except as referred to in Article 1687 can be made without a notarial deed, the minut (original text) must be kept at the notary and if this is not done then the grant is invalid." Included as things that are excluded in Article 1687 are grants on tangible movable objects or letters of credit that will be paid upon submission, do not require a notarial deed and are valid if the gift is simply handed over to the recipient of the grant.<sup>11</sup>

### **3.4. Legality of Adopted Children Against Grants of Land Rights Granted by Adoptive Parents**

Based on the Civil Code (KUHPerdata) or BW, there are no provisions governing adoption or adopted children, only provisions regarding the recognition of children out of wedlock. This provision has absolutely nothing to do with adoption issues. However, because the demands of the community, even though the Civil Code does not regulate this issue of adoption, while adoption itself is very common in society, the Indonesian government issued a legal basis for the procedure for adopting children in Indonesia, which is basically regulated in several laws and regulations.<sup>12</sup> According to the author, based on the results of the author's research to obtain the description above, the adopted child named Mayang Kornelis in his appointment does not have strong legal force in accordance with applicable regulations, so this also has an impact on grants that are considered as inheritance for gifts given from other people. The adoptive parents, the author analyzes that in the process of adoption.<sup>13</sup>

In the author's opinion, regarding grants or inheritance, there is also an obligation to certify grants, in law policy the legal needs of the community have been fulfilled, because starting from the procedure (process) for making a grant deed, the grant must go through a notarial deed, the original of which is kept by the notary concerned with Article 1682, namely: "No gift, except for what is stated in article 1687, can, under the threat of cancellation, be made otherwise with a notarial deed, the original of which is kept by the notary." has been declared received by the recipient of the grant, or with an authentic deed has been authorized by another person. It can be concluded that an authentic deed is a letter made by or before a

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<sup>10</sup>Tamakiran, 2008, Principles of Inheritance Law According to Three Legal Systems. Bandung: Jaya Pioneer. Thing. 31

<sup>11</sup>Oemarsalim, 2010. Fundamentals of Inheritance Law in Indonesia, Jakarta, Bina Script. Thing. 93

<sup>12</sup>Eman Suparman, 2007, Indonesian Inheritance Law, In Perspective, Custom, and BW, (Bandung: PT Refika Aditama, et. 2nd, page 17

<sup>13</sup>Ali Afandi, Inheritance Law, Family Law, Proof Law According to the Civil Code, Bina Literacy: Jakarta, 2004. p. 72

public official who has the authority to make the letter, with the intention of making the letter as evidence.

### **3.5. Legal Implications of Grants to Adoptive Children Against Land Rights That Will Be Withdrawn By Adoptive Parents**

Based on the history of Islamic law, in this case related to adopted children, during the time of the Prophet Muhammad was sent as the Messenger of Allah, he used to have an adopted son, Zaid Bin Haritsah. At that time, because the adopted child was judged as a biological child, Zaid was called by the people as Zaid Bin Muhammad, until the verse above was revealed which canceled the adopted child as a biological child, and Zaid was still called Zaid Bin Haritsah. Since then, the adopted child has remained the biological child of his biological parents, only the care and daily living expenses have been transferred to the adoptive parents.<sup>14</sup>It was narrated from Saad Bin Abi Waqas that Rasulullah saw said: "Whoever recognizes (father) who is not his own father, or builds a maula who is not his own maula, then he will get the curse of Allah swt, angels and all humans. Allah is not pleased to accept his repentance and ransom. (HR Bukhari and Muslim). The Prophet said: "There is no man who recognizes a father who is not his own father while he knows (it), but he has been kufr". (HR Bukhari and Muslim). The Prophet said: "Whoever recognizes a father who is not his own father, while he knows that he is not his father, heaven is forbidden for him." (HR Bukhari and Muslim).

According to the author from the perspective of Islamic law, the relationship between adopted children and their adoptive parents is that adoptive parents are other people, and cannot replace the position of biological parents. When he gets married, he must have guardianship with his biological parents, he cannot have guardianship with his adoptive parents. When dividing the inheritance also only related to biological parents. Adopted children cannot inherit their adoptive parents. Vice versa, adoptive parents cannot become the heirs of their adopted children, in inheritance law, according to the provisions of Article 209 KHI if the adoptive parents die, then the adopted child will receive a mandatory will. Likewise, if the adopted child dies, the adoptive parents will receive a mandatory testament.<sup>15</sup> Grants in the Civil Code are an inbreng (income) which takes into account the gift of goods made by the person who left the inheritance when he was still alive to the heirs. All grants that have been given by the heir to the heirs in a straight line down (grandchildren and so on) unless the heir expressly frees them from income, as if it were an advance (advance) on the heirs' share in the heir's inheritance.<sup>16</sup>If this calculation is carried out, then the gifts that were previously made by the person

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<sup>14</sup>Abdul Wahab Khallaf, 2017, *Fiqh of the Four Schools: Practical Volume 2*, Saudi Arabia: Ummul Qura. Thing. 45

<sup>15</sup>Elfrida Ade Putri, 2020. *Book of Islamic Civil Law*, Deepublish, Yokyakarta. Thing. 90

<sup>16</sup>Muhammad Husni, 2019, *The Status of Testament Grants According to Islamic Law and Civil Law*, Journal of Sharia Studies, Vol. 15 No. 2

who left the inheritance while he was still alive, are considered as giving up front (voorschot) from the heir's share in the inheritance.<sup>17</sup>

According to the author, the Civil Code does not prohibit a person from donating his inheritance to his adopted child, but the Civil Code recognizes the principle of *Ligitime portie*, namely the portion of inheritance that has been determined to be the rights of the heirs in a straight line and not can be written off by the person who left the inheritance. This is confirmed in Articles 913-929 of the Civil Code. Based on Article 916 (a) of the Civil Code, the heir may only give his inheritance by means of a testamentary grant or appointment as heir in an amount that does not exceed the *Ligitime Portie*.

The implication then arises with the existence of contradictions in norms in Islamic law, regarding grants as stipulated in the Al-Quran which explains and details in detail the laws relating to grants. In Indonesia, the legal basis used as a guideline in terms of grants and determination of heirs for people who are Muslim is Presidential Instruction, Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). Inheritance or inheritance is the property left by the heir, either in the form of objects that belong to him or his rights.<sup>18</sup>

The author looks at the legality of giving grants to adopted children Based on the provisions of Article 38 paragraph (1) PP 24/1997, the making of the deed was attended by the parties who carried out the legal action concerned and witnessed by at least 2 (two) witnesses who met the requirements to act as a witness in the legal act. It is further explained in Article 40 PP 24/1997, no later than 7 (seven) working days from the date the deed in question is signed, the PPAT is required to submit the deed he made along with the relevant documents to the Land Office to be registered and the PPAT is required to submit a written notification regarding the submission of the deed to the Land Office to the parties concerned.

#### **4. Conclusion**

Implementation of land rights grants to adopted children in terms of customary law, Islamic law, and civil law: a. The implementation of grants according to customary law is carried out according to what is customary or customary in each region in Indonesia. b. Implementation of grants according to Islamic law. Based on the Compilation of Islamic Law Article 210 Compilation of Islamic Law grants made must comply with the provisions of that article. c. Implementation of Grants According to Civil Law. Implementation of grants according to civil law is carried out according to Article 1666 of the Civil Code. Legality of Adopted Children Against Grants of Land Rights Granted by Adoptive Parents. Adoption also has an impact on inherited property, changing the status of the child who is adopted to become the child of the adoptive parents brings juridical consequences to the inheritance, meaning that adoption results in a mutual inheritance relationship between the adopted child

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<sup>17</sup>Aprilianti, 2015, *Inheritance Law According to the Civil Code*, Revised Edition, Bandar Lampung, Justice Publisher. Thing. 57

<sup>18</sup>Ria Rahmi Wati, 2011, *Islamic Inheritance Law*, Bandar Lampung, Sinar Sakti. Thing. 67

and his adoptive parents and vice versa. In line with what has been described above, adopted children have legal force and are entitled to grants given or inheritance given by their adoptive parents if the adoption is carried out according to statutory procedures. Legal Implications of Grants to Adoptive Children Against Land Rights That Will Be Withdrawn By Adoptive Parents. Basically the Civil Code does not prohibit a person from giving his inheritance to his adopted child according to the provisions of the Civil Code. Whereas in Islamic law, grants to adopted children can be given, but these grants cannot be given as a form of inheritance because adopted children and adoptive parents do not inherit from each other because adopted children and adoptive parents do not have a kinship relationship.

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