

The Role of Officials Making Land Deeds in Making Deeds of Land Grants to Recognized Out of Wedlock Children

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Abstract. *This research is to find out and analyze the legal construction, constraints and should PPAT in making a recognized deed of land grants to children out of wedlock. This study uses empirical juridical methods with the main data collection techniques through interviews and literature as supporting data with qualitative descriptive data analysis. The results of the study show that the construction of statutory law and Islamic law allows parents to give their assets to children out of wedlock who are recognized as long as they do not exceed the absolute share of other heirs, namely 1/3 part and are made in the form of an authentic deed. In addition, the transfer of land rights must be registered with the National Land Agency. The obstacle faced by PPATs is that there are still many grants made under the hand and do not present their heirs. In addition, the PPAT in making the grant deed is not in accordance with the form determined by law. In this case the PPAT must ensure that the formal and material requirements for parental grants to children out of wedlock are fulfilled and can translate and accommodate the interests of the parties, thus providing guarantees and legal certainty.*

Keywords: Children; Deeds; Grant; Recognized; Wedlock.

1. Introduction

The existence of a marriage will have legal consequences both for the relationship between the parties who carry out the marriage itself, as well as with other parties who have certain interests. If a child is born from the marriage, a legal relationship arises between the child and his parents. Children as successors of offspring born from legal marriages have the position of a legitimate child. However, children are not always born from a legal marriage, there are also many phenomena that occur in society where children are born outside of legal marriage.

The term child out of wedlock in civil law is called *natuurlijk kind*. According to the Civil Code, there are 2 (two) types of children born out of wedlock, namely children born to fathers and mothers between people where both are not prohibited from marrying and children born to fathers and mothers who are prohibited from marrying according to law or if one of the father or mother in marriage with another person. The second is adultery, namely children born out of wedlock. The child must be recognized by the father or mother so that there is a legal relationship.¹ Even though legally the child has no legal consequences from the actions of his parents, many problems arise as a result of the pregnancy out of wedlock, such as family relations and civil relations between the child and his biological father, and so on from various legal perspectives. The status of a child out of wedlock in Islamic law is included in the lineage of the mother so that the inheritance rights are only obtained from the mother and the mother's family, including all forms of maintenance until the child is an adult is only the responsibility of the mother. Likewise, what is regulated in Article 43 of Law Number 1 of 1974 concerning Marriage which states that children born outside of marriage only have civil relations with their mothers and their mothers' families.² The civil rights of children out of wedlock have a major impact on the child, because they do not get legal protection, such as the maintenance and welfare of the child, including the child's right to inherit from his father.

Children out of wedlock in the Civil Code can have inheritance rights from their father if there is recognition or sanction of the child by their biological father. Legalization of children out of wedlock in the Civil Code is explained in Article 275, namely children out of wedlock can be legalized with an endorsement letter from the Ministry of Justice. As a result of the law from the ratification, the child out of wedlock obtains the same position as children born throughout the marriage. The child obtains status as a legitimate child to his parents as well as to his parents' family.³ This is also in line with the Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the status of children out of wedlock. In order to provide economic protection for children out of wedlock who are recognized for the right to acquire the assets of their parents, parents can provide these property rights in the form of parental grants to children. According to Islamic law, giving grants is used as one way that can be taken, because grants are an important instrument in designing assets. A grant is the gift of property made by a person to another party which is done when he is still

¹Ali Affandi. (1997). *Inheritance Law Family Law Law of Evidence*. Jakarta: PT. Creative Design. matter. 145-146

²Anis Mashdurhatun. (2017). Legal protection for children born from underhanded marriages, *Khaira Ummah Law Journal* Vol. 12 No. 3. p. 571 [urls:http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/jhku/article/viewFile/1886/1430](http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/jhku/article/viewFile/1886/1430) On June 21, 2022 at 11:41 WIB

³J. Satrio. (2005). *Family Law Regarding the Position of Children in the Law*. Bandung: Citra Aditya Bakti. matter. 184

alive and the implementation of the distribution is usually carried out when the grantor is still alive.

Article 1666 of the Civil Code explains that a grant is an agreement whereby the grantor, during his lifetime, freely and irrevocably surrenders something for the benefit of the beneficiary who receives the handover. One object of the grant is a grant on land. Granting of land must be carried out with a PPAT deed as stated in Article 37 and Article 39 Paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration. Article 1682 of the Civil Code also states that no gift except as meant in Article 1687 can be made without a notarial deed, the minuta (original text) must be kept at a notary and if this is not done then the grant is invalid.

In principle, granting a parent to one of their children does not require the approval of their other children, because the parents are free to take legal action against their assets, including giving grants to their children as long as they are fair and equitable. Giving grants to children out of wedlock who have received recognition or children out of wedlock who are recognized can cause several problems, namely the problem of inheritance distribution which is not impossible to trigger protests from children of legitimate marriages. One of the reasons is because there is a possibility in the event that the grantor has passed away and his inheritance is not sufficient to fulfill the absolute portion (*legitime portie*)⁴ which should be obtained by his heirs as stated in Article 924 of the Civil Code.

Therefore, the role of the PPAT as an official authorized to make a grant deed is very important so that there is no commotion in the family just because of property problems. The PPAT as an official authorized to draw up a land grant deed must ensure that the conditions for making a deed of grant from parents to a recognized illegitimate child must be met in accordance with statutory regulations. In addition, the PPAT must have special abilities and skills regarding land so that the deed he makes does not cause problems in the future, considering that the deed he makes is an authentic deed that can be used as evidence.

2. Research Methods

The research approach method used is an empirical juridical method. Empirical juridical research is research conducted by examining secondary data first and then proceeding with conducting research on primary data in the field.⁵The specification of this research uses descriptive analysis, namely research by providing a specific description based on data collected and processed systematically. Sources of data include primary data and secondary data with data collection techniques by interviews and library research. The data analysis

⁴Subekti. (2008). Fundamentals of Civil Law. Jakarta: Intermedia Publisher. matter. 107

⁵Abdulkadir Muhammad. (2004). Law and Legal Research. Bandung: Citra Aditya Bakti. matter. 134

method used is qualitative analysis, namely describing data in the form of good and correct sentences so that they are easy to read and interpret.

3. Results and Discussion

3.1. Legal Construction of Land Grant Deed for Recognized Out of Wedlock Children

Children are a gift from God which is a mandate that must be cared for and cared for by both parents and are entitled to guidance and protection from both parents and must be treated properly in accordance with the Qur'an and hadith because they will be held accountable later in the future (afterlife).⁶Likewise with children out of wedlock. There are 3 (three) types of child status based on birth, namely children born in legal marriages, children born outside of marriage and children born without marriage.⁷Children born out of wedlock are children born from marriages carried out according to their respective religions and beliefs in which the child is legal in the eyes of religion, that is, materially the child is legal, but because the marriage is not registered or recorded at the Office of Religious Affairs or in the Civil Registry Office, then the status of the child is formally invalid. Whereas a child born without marriage is a child born from a relationship between a man and a woman without any marriage ties, then the child born is materially and formally illegitimate. Children out of wedlock in the Civil Code, can have property rights from their father if there is recognition or sanction of the child by their biological father.

One form of legal protection for the welfare of children out of wedlock that is recognized is by providing grants made by parents to their children. Provision of parental grants to recognized illegitimate children can be carried out in accordance with the procedures for grant agreements in general. Grant according to Article 1666 of the Civil Code is an agreement whereby the grantor during his lifetime freely and irrevocably delivers an item to the beneficiary of the grant which is made between people who are still alive. There are several things that need to be considered regarding giving parental grants to recognized illegitimate children.

According to Article 1685 paragraph (1) of the Civil Code, if a grant is given to an immature child who is under the authority of his parents, then the gift must be received by the person exercising parental authority over the child. In addition, according to Article 1685 paragraph (2) of the Civil Code, if a grant is given to a child who is not yet an adult under guardianship or to children under guardianship, then the grant must be received by the person who is the guardian for the child or the guardian. However, this must be proven by the existence of a power of attorney issued by the local District Court in accordance with the domicile in question. In granting parental grants to recognized illegitimate

⁶Taufik. (2010). Recognition of Reasonable Children According to Written Civil Code and Islamic Civil Law. Jakarta: PT Graphics. matter. 12

⁷Ali Affandi. (2000). Inheritance Law Family Law Law of Evidence. Jakarta: Rineka Cipta, p.40

children, they must pay attention to the absolute portion (legitime portie) that should be obtained by their heirs.

Legitime portie according to Article 913 of the Civil Code, namely a part of the inheritance that is given to the heir in a straight line according to the law on how a deceased person is not allowed to determine something, either as an intermediary giver who is still alive as a testament. After the grant agreement occurs, the grant must be stated in the form of an authentic deed. Based on the provisions of Article 1682 of the Civil Code, the delivery of a grant must be made by making a notarial deed, which then the deed must be kept by the notary and if it is not carried out, the grant is invalid.

However, after the issuance of Government Regulation Number 24 of 1997 concerning Land Registration, each grant of land must be made with a PPAT deed as stated in Article 37 and Article 39 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. In Islamic law, a gift means giving direct and absolute property rights to an object while it is still alive without compensation, even if it is from a higher person.⁸ The Compilation of Islamic Law has regulated the provision of grants, namely in Article 210 to Article 214, among others, a person who is at least 21 (twenty one) years of age and of sound mind without any coercion may donate up to 1/3 of his property to another person or institution in the presence of two witnesses to be owned and the object being donated must be the right of the grantor. Grants are non-refundable, except for parental grants to their children. This means that grants can generally be withdrawn if the absolute share of the heirs is not fulfilled and withdrawn by the parents. All grants received from the testator during his lifetime must be included.⁹ In Islamic law, grant agreements can be made verbally, namely by consent granted. If the consent granted has been carried out, the agreement is valid witnessed by at least 2 (two) people.

3.2. Obstacles with Officials Making Land Deeds in Making Land Grant Deeds to Recognized Out of Wedlock Children

Giving parental grants to children out of wedlock which is recognized in practice, it is still found that grant agreements on land are made not in the presence of a PPAT or made privately. In this case the community transfers land rights through private grants in the sense that the grantor grants land rights to the grantee, but the grantee has not transferred land rights with a PPAT deed. Making a grant deed for land must be done before a public official authorized to make an authentic deed as based on the provisions in Article 1682 of the Civil Code. In making a deed, the basis for making an authentic deed is that there must be a

⁸Mardani. (2013). Sharia Economic Fiqh. Jakarta: Kencana Prenada Group. pp 342-343

⁹Yuvita. Parental Grants to Children According to the Perspective of Civil Law. IAIN Bengkulu. Ejournal p. 66
url:<https://ejournal.iainbengkulu.ac.id/index.php/QIYAS/article/download/965/12> accessed on April 19 2022, at 16.00 WIB

wish or will and a request from the parties. If the wishes and requests of the parties do not exist, the PPAT will not make the deed as intended. To fulfill the wishes and requests of the PPAT parties, they can provide advice while still adhering to the applicable legal regulations. When the PPAT's advice is followed by the parties and set forth in the deed, it remains that this is the wish and request of the parties themselves, not suggestions or opinions from the PPAT or the contents of the deed are the actions of the parties, not the actions or actions of the PPAT.

In the event that the PPAT makes a deed of grants on parents' land to recognized illegitimate children, the PPAT will first provide input suggestions to present their heirs as witnesses so that there will be no lawsuits for disputes in the future because grants can be used as an inheritance calculation. Even so, sometimes parents do not want the gift to be known to their heirs. In addition, in making a grant deed, it is not accompanied by formal requirements such as completeness of identity documents,

3.3. The Role of Officials Making Land Deeds in Making Deeds of Land Grants to Recognized Out of Wedlock Children

The Official for Making Land Deeds, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units as described in Article 1 paragraph (1) of Government Regulation Number 24 of the Year 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds. The main task of the PPAT is to carry out some of the land registration activities. To carry out land registration, the PPAT must make a deed as proof that certain legal actions have been taken regarding land rights and/or ownership rights to flats.

The role of the Land Deed Making Officer in making a land grant deed to recognized illegitimate children is translating the will of the grantor with the grant recipient and accommodating the interests of the parties, thereby providing guarantees and legal certainty up to the release of land rights as a result of the grant. This means that the will of the parties who are benefited in a deed of grant is really an embodiment of a PPAT deed that has legal force and can be used as evidence for other parties, and can even be used as legal evidence in court.

Before making a grant deed, the Land Deed Making Officer must ensure that the elements and conditions of the grant are met. If you look at the provisions of grants according to civil law, there are 3 (three) conditions that must be met in granting parental land to recognized illegitimate children, namely the grantor, the grantee and the goods or objects donated. After the legal requirements of the parents' land grant agreement to recognized illegitimate children are met, then the Land Deed Making Officer must put the grant agreement in the form of a PPAT deed.

Regarding the land grant deed, basically the form of the land grant deed has been put into effect by the Government, in this case the National Land Agency as outlined in the Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2012. 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

4. Conclusion

The legal construction of making land grant deeds to recognized illegitimate children, according to applicable laws and regulations as well as Islamic law, namely based on the Compilation of Islamic Law, is permissible as long as it does not exceed the absolute share of the heirs who are entitled to inherit their parents' assets as determined in the laws and regulations -invitation, namely as much as 1/3 of his property witnessed by all his heirs. In addition, the granting of parents' land to recognized illegitimate children must be made in the form of a grant deed made before the Land Deed Making Officer. Constraints in making a land grant deed to recognized illegitimate children include: it is still found that people who make land grant agreements are made not in the presence of a PPAT or made privately and the granting of parental land to children out of wedlock is not witnessed by other heirs. In addition, the making of the land grant deed was not made in accordance with the formal terms and conditions for making a PPAT deed and the formal requirements had not been fulfilled, including the completeness of documents such as proof of identity, proof of PPh and BPHTB deposits. PPAT before making a deed of land grants to children out of wedlock is to ensure that the terms of the grant agreement are met, namely the grantor, grant recipient and the item donated. In addition, the parents' land grant agreement to recognized illegitimate children must be witnessed by other heirs. PPAT is able to calculate the absolute limit of the heirs. After the grant conditions are met, the PPAT must ensure that the conditions for making a grant deed are met, such as the identity of the parties, proof of ownership and proof of payment of PPh and BPHTB deposits. In making a grant deed, the PPAT can translate and accommodate the interests of the parties, thus providing guarantees and legal certainty, because making an authentic deed that has legal force is the responsibility.

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