

GRANT CANCELLATION OF ADOPTED CHILDREN DUE TO A DECISION TO CANCEL ADOPTION FROM THE PERSPECTIVE OF THE CIVIL CODE

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ABSTRACT : The objective of this research was to find out about the grant cancellation according to the provisions of Article 1688 of the Civil Code regarding the status of objects that have been given by adoptive parents to their adopted children through a grant, whether it can be canceled automatically after a decision of cancellation of adoption and legal consequences of the cancellation of the grant on material rights that have been granted by the adoptive parents to their adopted children. This research used a normative research method with a statutory approach and this was a prescriptive research. The results of this research indicated that Article 1688 of the Civil Code can be used as a basis for applying cancellation of grants by adoptive parents to adopted children, but it does not rule out the possibility that grant cancellation can be submitted for other reasons. After the decision to cancel the adoption of the child, a new legal action arose, which is the cancellation of the grant submitted by the adoptive parents against the adopted child.

KEYWORDS: *Grant cancellation, Adoption of the Child, Material Rights*

I. INTRODUCTION

The family has an important role in human life as social beings and is the smallest group of people, consisting of a father, mother, and child. For couples who feel physically and mentally ready to marry, they will get married as soon as possible so that they can realize the dream of forming a new family (Eoh, 2001). From this statement, it can be concluded that marriage does not only unite two partners, who are a man and a woman, but also ties a sacred covenant in marriage (Saebani, 2011). However, not all married couples can have children. Therefore, the idea arose to have children by adopting a child when the married couple do not have children. The child adopted is someone else's child, then adopted to be their own child. By law, adopted children have the same rights and obligations as biological children.

Adoption is an act of bringing the child of someone else into our own family that there is a family relationship between the person who adopts the child and the adopted child, similar to the relationship between parents and their own biological children (Wignjodipoero, 1992).

However, the relationship between parents and their adopted children does not always run well. Sometimes, there is disharmony between adoptive parents and adopted children, resulting in rifts in the family and it is common for one party to cancel the cancellation of adoption so that the status of both of them is broken. Cancellation of adoption is a legal act to cancel the adoption for certain reasons.

Other issues that occur are related to the rights and benefits that have been obtained by adopted children before the cancellation of adoption, in the form of grants from adoptive parents to adopted children. Based on the provisions of Article 506 and Article 509 of the Civil Code, each object can be in the form of movable and immovable objects. This provision is the object of the grant which provides an explanation that the grant can be in the form of movable property, for example vehicles, securities, etc, as well as immovable goods such as land, buildings, etc. However, after the decision to cancel, there is another problem whether the adopted child has the obligation to return the rights and benefits that have been obtained from the adoptive parents in the form of movable or immovable grants in which with the cancellation of the adoption, the relationship between the adoptive parents and the adopted child is severed. With the disconnection between adoptive parents and adopted children, it brings legal consequences that everything that has been given by adoptive parents to adopted children in the form of grants can be canceled according to the Civil Code.

Based on the background, the problem statements that will be examined in this paper are intended to explain whether the grants given by adoptive parents to their adopted children can be canceled after the decision to cancel the adoption determination according to the Civil Code.

II. METHODS

This type of research in legal research is normative legal research. Normative legal research is research that provides a systematic explanation of the rules governing certain legal categories, analyzes the relationship between regulations, explains areas of difficulty, and possibly predicts future development (Marzuki, 2011).

In this research, the researcher uses a statute approach, which means examining all laws and regulations related to the legal issue being handled (Marzuki, 2019). The nature of this research was prescriptive research which means that the science of law studies the objectives of the law, the values of justice, the validity of legal rules, legal concepts, and legal norms.

III. RESULTS AND DISCUSSION

Grants according to BW are regulated in title X Book III starting from Article 1666 to Article 1693 (Utami, 2016). In Article 1666 of the Civil Code, a grant has the meaning that a grant is an agreement in which a grantor gives away an item for free, without being able to withdraw it, for the benefit of the person who receives the item. The law only recognizes the granting of people who are still alive. A grant is a gift from one person to another which is done when the grantor and grantee are still alive or have not died (Suparman, 1995). A grant has a social function in community, where something that is gifted can be given to anyone, regardless of race, ethnicity, religion and class, so that the grant is considered a solution in the distribution of wealth. In giving a grant, as long as the property given is their own, then the gift is legally valid.

The requirements for grantors and grantees are regulated in the Civil Code as follows (Adhani & Bagiyo, 2020):

- a. The grantor of the grant must be an adult, who is, legally competent, except in the rights stipulated in chapter seven of the first book of the Civil Code (Article 1677 of the Civil Code).
- b. A grant must be made with a notary deed which was originally kept by the notary (Article 1682 of the Civil Code).
- c. A grant binds the grantee or issues a result starting from the gift in firm words received by the grantee (Article 1683 of the Civil Code).
- d. Grants for children who are under parental control must be accepted by the person exercising parental power (Article 1685 of the Civil Code).

Grants are classified as free agreements aimed at only the performance of one party, while the other party does not provide a reciprocity (Syuhada, 2019). This grant can be given by the adoptive parents as the grantor of the grant to their adopted child as the grantee. Grants in the Civil Code are part of contract law and are classified as agreements to give or deliver something. The grant will result in the legal consequence that the gifted property or goods are no longer the property of the grantor (Malahayati et al, 2019)

In principle, an agreement is reciprocal in nature, in which a person undertakes to fulfill the achievement because he/she will receive reciprocity from other parties (Sari & Yunanto, 2018). However, for some reason, sometimes someone cancels what he/she has given to others because of not fulfilling the reciprocity. Even though a grant that has been given to his/her own child has been made a valid deed before a notary, this gift can be revoked or withdrawn. What is meant by revoking or withdrawing it is canceling a grant. In the Civil Code as well as in the Compilation of Islamic Law, a grant may not be withdrawn unilaterally without the consent of the grantee. As for grants that may be withdrawn are grants made by parents to their children as regulated in Article 212 Compilation of Islamic Law.

The types of objects that become the object of the grant according to the Civil Code consist of:

- a. Immovable objects, according to the provisions of Article 506 of the Civil Code, are objects which due to the nature, the intended use, or the stipulation of law, are declared as immovable objects, for example land, buildings, and so on.
- b. Movable objects, according to the provisions of Article 509 of the Civil Code, are objects which due to their nature or due to the stipulation of the law are declared as movable objects, for example vehicles, securities, and so on. Thus, this movable object is a material that can move or be moved.

Any object consisting of movable and immovable property becomes the object of the grant which can be granted by the grantor as adoptive parent to the grantee as adopted child. However, if the terms of the grant have been violated by the adopted child and the conditions for cancellation of the grant deed can be proven by the Plaintiff, the Panel of Judges may cancel the grant deed.

A grant not only gives rights to the adopted child as the grantee, but also contains an obligation. Adopted child as grantee who is proven not to carry out their obligations towards their adoptive parents, the adoptive parents as the grantor of the grant may wish to cancel the grant deed. Article 1688 of the Civil Code regarding the provisions of grants confirms that a gift cannot be revoked and therefore cannot be canceled, except in the following cases:

- a. If the conditions for the gift are not met by the grantee

The purpose of this provision is that the adoptive parents as the grantor of the grant to their adopted child must first determine the conditions that must be carried out by the grantee in accordance with what has been regulated by law. For example, if the adopted child as the grantee is not yet old enough when the grant is given by the adoptive parent, the gift can be canceled.

- b. If the grantee is guilty of committing or participating in an attempted murder or other crime against the grantor

Based on this, an adopted child who has received a grant from his/her adoptive parents, but has committed actions that could threaten the life and safety of the grantor as the adoptive parent, or other actions that violate the law, can be given criminal penalties. Based on this, the adoptive parents can cancel the grant for the adopted child.

- c. If the grantor falls into poverty but the grantee refuses to provide for him/her.

In this provision, items that have been handed over by the grantor as adoptive parent to the grantee as adopted child can be canceled if the grantee refuses to provide support for the grantor when the grantor falls into poverty. The meaning of falling into poverty here is a condition in which a person can no longer meet basic needs (clothing, food, shelter). In addition, the grantor only has income below the minimum wage in an area.

The provision of support by the adopted child as the grantee to the adoptive parents as the grantor of the grant is obligatory in the grant, because this is a form of gratitude from the grantee to the grantor as explained in Article 45 and Article 46 Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Marriage which explains the right of alimony means the rights and obligations that arise between adoptive parents and adopted children. Thus, it is an obligation for adopted children to support their adoptive parents.

Based on the provisions of Article 1688, it can be used as the basis that grants given from adoptive parents to adopted children can be canceled after a decision to cancel adoption has been made. However, it does not rule out that there are other reasons that can be submitted by adoptive parents. These reasons include the actions of adopted children that do not reflect obedience to their adoptive parents, adopted children who are disobedient to their adoptive parents, the behavior of adopted children who are naughty and so on.

The withdrawal of a grant can be carried out by giving a statement of the wishes of the grantor to the grantee of the grant, accompanied by the claim of the goods that have been granted, where each party must pay attention to the rights and obligations of the other. However, in certain legal relationships, there may be a situation where one party does not fulfill their obligations towards the other party. In these conditions, the aggrieved party can claim rights and must comply with the methods specified in the law (Muhammad: 2000).

The filing of a lawsuit occurs because there is a dispute between the interested parties. In preparing a lawsuit, there are several things that need to be considered, namely (Soeroso, 2003):

1. Every person who feels aggrieved can file a lawsuit against the party deemed to have harmed them through the Court.
2. The lawsuit can be filed verbally or in writing. We can ask the head of the District Court for assistance.
3. The lawsuit must be filed by those concerned.
4. A right claim in a lawsuit must be a right claim that has legal interests, which can be granted if its truth can be proven at an examination session.
5. There are no provisions regarding the requirements of the contents of the lawsuit, but we can see in Article 8 paragraph (3) of the Colonial Regulations, Staatsblad Number 52 of 1847 concerning *Reglement op de Burgerlijke Rechtsvordering* which requires that the subject of the lawsuit includes:
 - a. Identity of the parties.
 - b. Concrete arguments about the existence of a legal relationship which is the basis and reasons for the demands. These propositions are better known as the *fundamentum petendi*.
 - c. This demand or petitum must be clear and firm. HIR and Rbg only regulate how to file a lawsuit.

Based on these provisions, the adoptive parents may request the cancellation of the grant by demanding the cancellation of the grant submitted to the District Court, so that the grant that has been given is canceled and returned to them. This has the consequence that as long as there is no decision to cancel adoption, the grants given by adoptive parents will still belong to the adopted child as the grantee. However, when there is a decision to cancel the adoption of a child which results in a disconnection between the adoptive parents and the adopted child, the adoptive parents can withdraw the grant given based on the provisions of Article 1688 of the Civil Code and other reasons that can be used as the basis for the grant cancellation submission. Therefore, a decision to cancel the grant occurs which is a new legal act after the decision to cancel the adoption decision was made.

IV. CONCLUSION

Granting can be withdrawn or canceled by the adoptive parents of their adopted children based on the provisions of Article 1688 of the Civil Code as well as other reasons that can be used as the basis for submitting a grant cancellation. so that a grant cancellation happens which is a new legal act after a cancellation of adoption determination has been made.

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