

Position of Grant Deeds Equated with Inheritance Receipt Analysis Decision No. 1781/Pdt.G/2018/PA. Tmk

Nadya Indah Ayuningthyas¹; Solikhah ¹; Heri Hartanto¹.

1 Master of Notary Study Program, Sebelas Maret University, Indonesia.

E-mail: (nadyaindaha25@gmail.com, solikhah_fh@staff.uns.ac.id,
herihartanto@staff.uns.ac.id)

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Abstract

The Purpose of this research is to examine and analyze deeds of gift from parents to their children regarding all of the parents' assets given to all their children, as well as to examine and analyze the reasons why deeds of gift from parents to their children are considered inheritance. The type of research conducted is normative legal research with a prescriptive nature, the research approaches employed are the statutory approach, the case based approach, the legal sources used are primary and secondary legal sources. The results of the study indicate that: 1) The validity of a deed of gift from parents to their children regarding all of the parents' assets given to all children remains valid and is recognized as an authentic deed. The validity of the deed of gift in the present case is based on the trial record showing that the revocation of the gift never occurred. 2) The author argues that the panel of judges' rationale for treating a gift as an inheritance is, in essence, rooted in the effort to achieve justice among the heirs. This is consistent with the underlying philosophy behind the enactment of Article 211 of the Islamic Family Law Code, which was indeed introduced to legitimize the customary practice of indigenous communities in distributing a parents' assets to their children during the parent's lifetime, with the aim of upholding a sense of justice.

Keywords: Deed of Gift, Inheritance, and Article 211 of the KHI

A. Introduction

Parental assets can in principle be transferred to the child through various legal instruments, such as grants or inheritance. These two instruments have fundamental differences. Grants are executed while the grantor is still alive, while inheritance under Article 830 of the Civil Code (KUHPercivil) only occurs due to death. The civil law framework defines a grant as an agreement to transfer ownership of an object without compensation that is absolute and final while the grantor is still alive.¹

The arrangement regarding grants is also accommodated in the Compilation of Islamic Law (KHI) which is present as a reference for judges of the Religious Court, where Article 171 letter g of the KHI defines a grant in line as the giving of voluntary objects during life without compensation. In practice, the legal act of grant requires formalities in the form of

¹ Oktaviana Adhani and Bagiyo Atmaja, "The Validity of Grant Cancellation Due to Grant-Giving Falling Poor," *Journal of Legal Communication (JKH)* 6, no. 1 (February 2020): 95, <https://doi.org/10.23887/jkh.v6i1.23443>.

an authentic deed. The provisions of Article 1682 of the Civil Code affirm this obligation, where the absence of an authentic deed results in the grant being null and void for the sake of law while positioning the Notary deed as the main evidentiary instrument that binds the parties.²

An authentic deed is a deed made in the form prescribed by the Law by or in the presence of a public official authorized for it at the place where the deed was made. An authentic deed has perfect evidentiary power, including outward, formal, and material evidentiary strength³. The existence of an authentic deed in a grant guarantees legal certainty through three aspects of proof, namely outward, formal, and material. Outwardly, a deed made before an authorized official must be recognized for its validity before it is proven otherwise. Formal validity ensures the correctness of the date as well as the parties to the proceedings, while material validity guarantees that the content of the information of the parties in the deed is true and legally binding. A grant deed not only serves as a condition to show the occurrence of a legal act, but also as a single piece of evidence that has binding power.

In the context of land registration, the Land Deed Making Officer (PPAT) is authorized to issue authentic deeds related to legal acts of land rights, as stipulated in Article 2 paragraph (1) of Government Regulation (PP) Number 37 of 1998.

The practice of land grants from parents to children actually aims to ensure the welfare of children while minimizing inheritance distribution disputes in the future. This will does not always go in harmony in practice, as reflected in the Decision of the Religious Court of Tasikmalaya City Number 1781/Pdt.G/2018/PA.Tmk.

This case involves 5 (five) Plaintiffs, namely FH, TE, IM, RT, and NA with 1 (one) Defendant, namely AM. This case began from the ownership of the property of a married couple, TF and PS who are both now deceased, TF died on May 6, 2018, while PS died on December 27, 2010. TF and PS have 6 (six) children, namely FH, AM, TE, IM, RT, and NA. On April 9, 2004, the joint property belonging to TF and PS was granted to his six children without remaining and was stated in a grant deed document made before Heri Hendriyana, S.H., M.H., PPAT Tasikmalaya City in the form of land covering an area of 355 m² in accordance with the Certificate of Ownership (SHM) Number 249 in the name of FH, land covering an area of 123 m² in accordance with SHM Number 50 in the name of PS, land covering an area of 639 m² in accordance with SHM number 1365, hereinafter referred to as the object of dispute in the name of TF, and land covering an area of 5,600 m² in accordance with SHM number 110 in the name of TF.⁴

The granting of grants made by TF and PS before the PPAT has juridically met the material and formal requirements, thus legally binding the parties and providing a strong legal basis for each grantee. The grant stated in the deed should provide legal certainty that protects the grantees from any lawsuit, including from fellow heirs. This is in line with the

² Leony Cah Intan Sesar Sari and Adam Sani, "PPAT's Responsibility for the Preparation of Grant Deeds that Violate the Provisions of Article 210 of the KHI," *Respublica Law Journal* 23 (1) (December 2023), <https://doi.org/https://doi.org/10.31849/respublica.v23i01.17173>.

³ Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 1981).

⁴ Decision Number 1781/Pdt.G/2018/PA.Tmk.

nature of an authentic deed that has perfect evidentiary power, where the legal acts that have been stated in the deed cannot be changed or withdrawn unilaterally without going through a valid legal cancellation mechanism in court.

For seven years after the signing of the grant deed, the legal position of the children over the object of dispute was in a stable and unquestioned condition. However, the stability that had been built began to be disturbed when new events emerged outside the initial agreement contained in the grant deed. This change in situation marked the beginning of a shift in the understanding of one of the grantees' children towards the rights that had been received.

In 2011-2012 AM sold the grant property that had been given to him. Then there was a dispute over the distribution of the proceeds of the sale of SHM No. 50. The dispute gave birth to an underhanded document entitled "Agreement and Understanding" which was facilitated by MS, a younger brother of the Almh. PS as well as a retired High Judge of the Bandung Court. The agreement and understanding contained the determination of the buyer of SHM No. 50, the distribution of the proceeds of the sale, and a statement that assets other than SHM No. 50 were undivided inheritances. This document was then used by AM as a basis to implicitly postulate the cancellation of the grant and claim SHM No. 1365 as undivided inheritance.

On November 28, 2018, FH, TE, IM, RT, and NA filed a lawsuit with the Tasikmalaya City Religious Court over the control of the SHM grant property number 1365 that had been granted to TE and NA. AM denied the lawsuit by filing a reconvention lawsuit that SHM number 1365 is an inheritance that has not been divided based on the "Agreement and Understanding" document that has been made previously, so AM considers that he has the right to the house.

In the decision, the judge granted the plaintiffs' lawsuit in part and determined the validity of the grant given by TF and PS and punished the defendant to vacate and return the object of the dispute that he controlled. In this case, the fact was found that the grant was never revoked or withdrawn by TF and PS, so the judge with reference to Article 211 of the KHI assessed that the grant given by TF and PS to his children could be counted as an inheritance. The judge's consideration stated that "the grant was never revoked and retracted by TF and PS therefore in accordance with Article 211 of the KHI the grant can be counted as the inheritance of TF and PS to his six children".

Basically, there are several values contained in Article 211 of the KHI, namely: first, through the inheritance system implemented in the form of grants, the grantee obtains authentic evidence of the ownership of inherited property. This is in line with the principle of the state of law (*rechstaat*) in Indonesia and serves to prevent disputes over inheritance rights. Second, this provision has the potential to avoid conflicts between heirs related to the distribution of inheritance. Third, the implementation of the system also encourages the realization of a fairer distribution of inheritance, where girls obtain proportional inheritance rights in accordance with the provisions of the law, so that there is no longer discrimination

based on gender in the distribution of inheritance⁵.

The application of Article 211 of the KHI by the judge raises conceptual problems, considering that grants and inheritance are two different legal acts. Grants are based on the voluntary surrender of rights during life, while new inheritance occurs as a result of death. In Islamic law, the distribution of inheritance has been regulated in detail, both regarding the share of each heir and the order of recipients of inheritance⁶. This provision is contained in the principle of faraidh, where heirs are divided into several categories, namely dzawil furudh, ashabah, and dzawil arham. The clear separation between inheritance and grant in Islamic law shows that each legal act has its own consequences and timing. The judge's consideration based on Article 211 of the KHI in this case seems to eliminate the narrative that inheritance and grant are two different things.

According to Article 53 of Law No. 48 of 2009 concerning Judicial Power, judges are obliged to prepare considerations based on reasons and appropriate legal grounds. The preparation of accountable legal considerations is at least guided by three main aspects: legal logic, judicial ethics, and meticulousness to logic of thinking. Legal considerations that contain weaknesses in reasoning such as conclusions without strong evidence or using biased arguments will result in weak decisions⁷.

In relation to this case, the three aspects above need to be considered in stating a legal consideration referring to Article 211 of the KHI on a lawsuit for possession of the grant object. What basis is used by the judge when using these provisions, while there is a valid grant deed that has been made by the parents during their lifetime by agreement with their children. These three aspects are very crucial to be observed to create a decision that is juridically valid, honest, rational, and accountable.

A previous study on parent-to-child grants has been conducted by Naviri Masma Rahmita and Rachmad Budiono (2017) who analyzed Decision Number 13/Pdt.G/2012/P.A.Pts. The study found that the benchmark of grants that are taken into account as inheritance includes all grants other than the cost of child maintenance and education.⁸

Meanwhile, Amirullah (2022) emphasized the crucial position of KHI as a guideline for judges of the Religious Court. Although not listed in the legislative hierarchy, Article 211 of the KHI is considered to be able to realize justice and the benefit of the community through the categorization of gifts before being counted as inheritance.⁹

⁵ Sakirman, "A Hermeneutic Study of Article 211 of the KHI in Providing Access to Justice related to Grants and Inheritances," *Constitution Journal* 15 (March 2018).

⁶ Muhammad Faisal Tambi, "A Comparative Study of the Distribution of Inheritance According to Islamic Law and Customary Law," *Lex Privatum* VI (November 2018).

⁷ Ahmad Junaedi, "Logic, Ethics, and Deviation of Thinking in Ratio Decidendi: Affirming the Due Process of Law in Judicial Practice," *BSDK Voice*, 8 April 2026, <https://suarabsdk.com/logika-etika-dan-kesesatan-berpikir-dalam-ratio-decidendi-meneguhkan-due-process-of-law-dalam-praktik-peradilan/>. Retrieved July 10, 2026

⁸ Naviri Masma Rahmita and Rachmad Budiono, "A Compilation Analysis of Islamic Law on the Benchmark of Grants That Are Counted as Inheritance," *Legal Horizon Journal* 8, No. 1 (April 2017): 75–85, <https://doi.org/10.26905/Idjch.V8i1.1733>.

⁹ Amirullah Amirullah, Sultan Competition, and Supardin Supardin, "The Existence of Grants Calculated as Inheritance (An Analysis of Article 211 of the Compilation of Islamic Law)," *Al-Qadau Journal: Islamic Family Justice and Law* 8, no. 2 (December 2021): 37–45, <https://doi.org/10.24252/al-qadau.v8i2.22896>.

Based on the description above, the focus of this research is different from previous studies. This study specifically highlights the basis of thinking or *ratio decidendi* of judges in using Article 211 of the KHI, namely when the judge uses the Article, then whether the grant deed that has been made will have a position as authentic evidence or as a beginning of the distribution of inheritance, because these two things have different consequences.

The decision of the Panel of Judges which is based on the provisions of Article 211 of the KHI which at the same time declares the validity of the grant deed that has been made in 2004 before Heri Hendriyana, S.H., M.H. PPAT of Tasikmalaya city raises two important questions, namely, 1) What is the position of the grant deed from parents to children towards all parental property given to all children?, 2) Why can the deed of grant from parents to children be counted as inheritance?

These two questions are important to be explored in order to provide legal certainty on the validity of the grant deed that has been received by the children as grant recipients when the judge bases his consideration on Article 211 of the KHI considering that the public's understanding when committing a legal act that is then poured into an authentic deed is that they get certainty and legal protection when there is a dispute in the future because of the binding and perfect nature inherent in authenticity.

B. Research Methods

1. Types of Research

The type of research carried out is normative legal research which means a process to find legal rules, legal principles, or legal doctrines to answer the legal problems ¹⁰faced.

2. Research Approach

- a. The statute *approach* by examining laws and regulations related to the legal issues being researched such as the Civil Code, KHI, Law Number 48 of 2009 concerning Judicial Power, *Herzien Inlandsch Reglement* (HIR).
- b. Case Approach, in this study the author uses the judge's considerations in the Decision of the Tasikmalaya Religious Court Number 1781/Pdt.G/2018/PA. Tmk as the object of study.

3. Source of legal material

- a. Primary source of legal material

In the form of Civil Code, KHI, Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials, Law Number 48 of 2009 concerning Judicial Power, HIR, and Decision Number 1781/Pdt.G/2018/PA.Tmk.

- b. Secondary source of legal material

In the form of publication manuscripts on law, including scientific books and journals related to grants, grant deeds, Islamic inheritance, and proof in civil procedure law.

C. Results and Discussion

¹⁰ Mukti Fajar and Yulianto Achmad, *Legal Research Dualism: Normative & Empirical* (Yogyakarta: Pustaka Siswa, 2010).

1. Position of the Hibah Deed from Parents to Children Towards All Parental Property Given to All Children

The necessity of making authentic deeds in grants as mandated by Article 1682 of the Civil Code is a form of guaranteeing legal protection for the parties. Theoretically, legal protection is manifested through preventive and repressive mechanisms to ensure legal certainty in society.

According to Mochammad Isnaeni, civil law protection focuses on a proportionate balance between individual rights and public interests through the enforcement of fair norms. This form of protection includes the internal realm that comes from the agreement of the parties and the external realm presented by state regulations.¹¹

Internal legal protection is born implicitly through the agreement clause of the parties. This mutual agreement is made by the parties consciously to anticipate all legal risks that may arise in the future¹². In this regard, referring to the definition of grant in Article 171 g of the Civil Code and Article 1666 of the Civil Code, a grant is classified as an agreement. Therefore, a grant must be subject to the conditions of the validity of the agreement contained in Article 1320 of the Civil Code, which includes several things:

a. Agreements of the Parties

Article 1683 of the Civil Code emphasizes that a grant begins to be binding on the grantor or has legal consequences that begin from the statement of acceptance expressly by the grantee. In this case, the grant deed made before PPAT Heri Hendriyana, S.H., M.H. is evidence that a legal act has been committed by the parents to their six children by mutual agreement. The agreement of the parties in this grant can be seen in the judge's consideration who stated "considering, that based on the evidence of P.15 it is proven that TF and PS had donated property in the form of houses, land and rice fields to all their children on Friday, April 9, 2004".

b. Acting skills

The parties who make the agreement must have legal skills, namely must be of adult age and not under guardianship. Article 39 of Law Number 30 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of Notary stipulates that a person who has reached the age of 18 can appear before a Notary for the preparation of an authentic deed. The granting of a parental grant to his children in this case is given when the children are legally competent. This can be seen in the judge's consideration who stated "considering, that the grant is made when the six children are adults and the legal ability and assets have been received by the six children".

c. Specific objects

The object of the grant is clearly determined, which includes the property of the

¹¹ Moch. Isnaeni, *Introduction to the Law of Property Guarantees* (Surabaya: Revka Petra Media, 2016).

¹² Luthfiatul Fikria, "Legal Protection of the Protection Rights of Talenta Sweet Corn Plant Varieties," *Pro Patria: Journal of Education, Citizenship, Law, Social, and Politics* 6, no. 1 (April 2023): 179–92, <https://doi.org/10.47080/propatria.v6i1.2319>.

parents that is transferred to their six children, including the object of dispute in the form of SHM No. 1365 covering an area of 639 m².

d. Once upon a time that was halal

The transfer of this grant does not conflict with the provisions of applicable law.

The fulfillment of the four legal conditions above binds the parties to implement the agreement on the basis of good faith as stipulated in Article 1338 of the Civil Code. The implementation of good faith is divided into two elements, namely the subjective element that is oriented to the internal honesty of the legal subject and the objective element that functions as an instrument of assessment of the implementation of the agreement. The context of good faith in Article 1338 of the Civil Code refers to the objective element which requires that the implementation of the agreement always heed the norms of propriety and decency. The law does not provide a formulation regarding the limits of propriety and decency, these two concepts are theoretically interpreted as the values of feasibility, propriety, decency, and civility that are desired and upheld by the parties in contracting¹³. In this case, the principle of good faith has been violated by the Defendant by controlling one of the objects of the grant belonging to the Plaintiff.

Then, external legal protection initiated by the government through the issued regulations is basically aimed at conditioning protection for the weak parties. However, the legal protection must be proportionately accommodated as early as possible for other parties¹⁴. The regulation referred to in the grant issue is the existence of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which states that "the transfer of land rights and property rights to flats through buying and selling, exchange, grants, income in the company and other legal acts of transfer of rights, except that the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations" and Article 1682 of the Civil Code which requires a grant to be made by an authentic deed. The two legal instruments are a form of protection provided by the state so that the parties get certainty and legal protection in the event of a dispute in the future.

In relation to this case, the legal facts show that the Plaintiffs based their ownership rights over the object of dispute on the Grant Deed made by Heri Hendriyana, S.H., M.H., PPAT Tasikmalaya City. Juridically, the existence of the deed has given birth to a perfect right for the Plaintiffs over an area of 639 m². However, the judge in his judgment reduced the area of the object of dispute requested by the Plaintiffs based on a photocopy of the grant agreement in accordance with the original legalization on evidence T.7 and in his consideration emphasized that based on the evidence of T.7 it

¹³ Kevin Kurniawan and Hanafi Tanawijaya, "The Legal Validity of Land and Building Grant Deeds According to Civil Law (Case Study of Decision Number: 236/PDT/G/2022/PN. BKS)," *UNES Law Review*, advance online publication, 2023, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2>.

¹⁴ Dika Ratu Maru'atun et al., "Analysis of the Distribution of Inheritance to Heirs According to Civil Law (BW)," *Amendment: Journal of Indonesian Defense, Political and Legal Sciences* 1, no. 3 (July 2024): 350–58, <https://doi.org/10.62383/amandemen.v1i3.449>.

was proven that there had been a grant agreement between TF and PS regarding the object of a plot of land and buildings as stated in SHM No. 1365 with an area of 639 m² which is currently controlled by the Defendant was handed over to Plaintiff II with an area of 240 m² and an area of 240 m² was handed over to Plaintiff V, while the rest of the land and building of 159 m² remained the property of TF and PS.

In the trial process, the existence of evidence is very crucial for the judge to formulate a settlement or decision on a case with legal certainty. Through this stage of proof, the correctness of the law can be tested while ensuring the protection of the rights of the litigants in a balanced manner. In the civil procedure law, it is stipulated that not all events or events in the trial must be proved, the proof is required only on matters or postulates that are the subject of dispute between the parties.

Evidence in civil cases serves as a means for the parties to the dispute to build the judge's confidence in the correctness of their claims. Each evidence submitted must meet the elements of regulatory validity and have sufficient evidentiary binding. Its use in court is a determining factor in testing the truth of a lawsuit. Functionally, this evidence is a bridge to prove the series of facts underlying the birth of the verdict¹⁵. Sourced from Article 1866 of the Civil Code and Article 164 of the *Herzien Inlandsch Reglement* (HIR), the evidence is, written, witnesses, suspicions, confessions, and oaths. Based on this, written evidence is the main evidence in the evidentiary system among other evidences which include authentic deeds and deeds under hand.

The basis for the existence of an authentic deed according to Article 1868 of the Civil Code rests on the authority of public officials to provide certainty and legal protection. In the context of the PPAT deed, this urgency encompasses the regulatory mandate as well as the will of the parties. The power of perfect proof in this authentic deed is supported by three aspects:

a. The Power of Outward Proof

Based on the principle of *acta publica probant sese ipsa*, a deed that physically meets the legal format must be recognized as valid as long as there is no evidence to the contrary.¹⁶

b. The Power of Formal Proof

Provide juridical guarantees that the legal acts and statements of the parties are really outlined in the tanggal and location as stated in the deed.¹⁷

c. Material Proof Strength

Ensure certainty of the truth of the content of the substance of the information submitted by the parties before the authorized officials.¹⁸

Then, regarding deeds under the hand Article 1874 of the Civil Code explains that

¹⁵ Fauziah Lubis and Fahrul Raji Khassa, *Evidentiary Procedure in Civil Procedure Law*, 6, No. 3 (2024).

¹⁶ Sudikno Mertokusumo, *Indonesian Civil Procedure Law Revised Edition* (Yogyakarta: Cahaya Atma Pustaka, 2013).

¹⁷ *Ibid*

¹⁸ Habib Adjie, *Nullity and Cancellation of Notary Deed* (Bandung: Refika Aditama, 2011).

"what is considered to be a written under hand is a deed signed under the hand, letters, lists, letters of household affairs and other writings made without the intermediary of a public official". It can be understood that a deed under hand is a deed made by the parties for a specific purpose without involving an authorized official.

An authentic deed that has met the formal and material requirements will have implications in several ways, namely the deed has met the minimum of proof without the need for support from other evidence, in an authentic deed the value of the power of proof that is perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*), the judge must admit the truth and make the deed the main consideration in formulating the decision of the case, and consider the postulates contained in it as proven facts.¹⁹

In this case, the Defendant denied having signed the grant deed submitted by the Plaintiffs by presenting documentary evidence in the form of a legalized grant agreement made in 2013. The grant agreement was made by TF and PS as their parents on the same object, namely the object of dispute with a reduction in the area of land owned by Plaintiff II and Plaintiff V (object of dispute) which had previously been mutually agreed upon without any cancellation of the grant deed made in 2004. The grant agreement then became the basis for the judge in granting the Plaintiffs' lawsuit but by cutting the area of land originally contained in the 2004 grant deed. In other words, the judge granted the Plaintiffs' lawsuit so that the Defendant vacated and returned the object of dispute by not giving the rights in full according to the lawsuit petition.

In principle, the grant is final and cannot be withdrawn except for the grant from the parent to the child as accommodated in Article 212 of the KHI. The cancellation cannot be done unilaterally, but must be submitted through the lawsuit mechanism to the Religious Court. Based on Article 49 of Law Number 3 of 2006 which has now been updated with Law Number 50 of 2009, the Religious Court holds absolute authority to adjudicate Islamic civil disputes, including grant and inheritance cases.

The authentic deed that has been presented by the Plaintiffs and the field examination that has been recognized by the Panel of Judges itself regarding that the object of the dispute in the field has been in accordance with the Plaintiffs' lawsuit and the information provided by the witnesses should be a mature consideration for the judge to grant the Plaintiffs the distribution of the grant property in accordance with the petition.

With regard to this case based on the evidence in P.19 and P.20 submitted by the Plaintiffs, TF and PS have filed a lawsuit for cancellation of the grant to the Religious Court of Tasikmalaya City on December 24, 2014 in accordance with a copy of Decision Number: 0923/pdt. G/2014/PA.Tmk. Then the cancellation was refiled on August 20, 2015 in the case of Appeal Number: 0107/Pdt.G/2145/PA.Bdg. Panel of Judges in the case of Decision Number: 1781/Pdt.G/2018/PA. Tmk responded to the evidence with a consideration that "considering, that on the basis of evidence P.19 and evidence P.20

¹⁹ M. Yahya Harahap, *Discussion of Problems and Implementation of the Criminal Code* (Jakarta: Sinar Grafika, 2009).

copy of the judgment, which is an authentic deed with the force of perfect and binding proof, that the suit for cancellation of the grant on behalf of TF is inadmissible (N.O) so that it is proved that the cancellation of the grant never occurred".

Based on the above explanation, it can be seen that the grant deed made by TF and PS and their children for all their assets in 2004 is evidence of the occurrence of a legal act of giving property free of charge to parents to their children. However, the existence of the grant deed does not constitute a realization of the legal protection that should be given to the holder of the grant deed as the idea of legal protection Moch. Isnaeni. In this case, internal legal protection in the form of an agreement between the parties in a grant agreement has been tarnished by the Defendant. Then the external legal protection initiated by the Government through Article 1682 of the Civil Code which requires a grant to be carried out with an authentic deed and Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which shows that the transfer of land rights can only be registered through a deed made by PPAT has been denied by the decision of the Panel of Judges which stipulates the distribution of grants at the request of the Plaintiffs and grants the Plaintiffs' lawsuit so that the Defendant vacates the object of the dispute occupied by him.

This shows that the position of the grant deed from parents to children over all parental property given to all children is still valid and valid as an authentic deed and is not interpreted as the beginning of inheritance distribution. The validity of the position of the grant deed in a *quo* case is based on the fact of the trial that the cancellation of the grant never occurred. Therefore, the grant deed cannot legally be set aside or changed in scope by the grant agreement under the hand of 2013. The existence of Article 211 of the KHI should only be positioned as an instrument for calculating inheritance without aborting the status and content of the grant deed itself.

This analysis is in line with the Decision of the Supreme Court of the Republic of Indonesia Number 3917/K/Pdt/1986 which emphasizes that the content of an authentic deed is a pure reflection of the will of the parties. The judge is bound by the truth of the deed as long as the formal and material conditions are met, so it cannot be ruled out without equivalent opposing evidence. This provides perfect evidentiary power and shifts the burden of proof to the party who denies its validity.²⁰

The affirmation of the above jurisprudence is very relevant to maintain the position of the grant deed from the meaning of inheritance that is distributed earlier. In Islamic law, inheritance has the nature *of ijbari*, which is the transfer of inheritance automatically to the heirs when the heir dies. This principle is explicitly seen from the absolute obligation for the heirs to accept the transfer of rights to the inheritance's inheritance in accordance with the portion rate that has been determined by Allah SWT. Based on this principle, a person who is still alive is not required to plan to distribute the inheritance after death, because death automatically triggers the transfer of ownership of the property to the heirs in accordance with the proportions

²⁰ Ahmad Fauziannor et al., *Comparison of the Evidentiary Strength Between an Authentic Deed and a Deed Under Hand in a Civil Dispute*, 3 (2025).

that have been determined by the sharia. Specifically, the certainty of the applicability of the *ijbari* principle is manifested in three ways, namely: the transfer of ownership rights to the inheritance property occurs automatically immediately after the occurrence of the heir's death, the amount or proportion of the property that is entitled to be received by each heir has been determined definitively in Islamic law, and the parties who are entitled to receive inheritance have been determined based on the criteria of blood relationship and legal marital relationship.²¹

2. Parent-to-Child Grant Deed Can Be Counted as Heirs

In judicial practice, judges have the authority to interpret the law. The interpretation of law by judges in the Indonesian judicial system is the authority of judges to overcome the problem of legal voids and unclear norms. Based on the mandate of Article 5 paragraph (1) of Law No. 48 of 2009, it is stated that "Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that lives in society." This obligation is strengthened by Article 10 paragraph (1) of Law No. 48 of 2009, by prohibiting judicial institutions from refusing to examine and decide a case under the pretext of the absence or ambiguity of the law. The regulation encourages judges to pursue legal discovery through legal interpretation methods in order to create a justice, legal certainty and utility.

Considering that in Decision Number 1781/Pdt.G/2018/PA. The panel of judges examined in this article does not explicitly describe the flow of thought, so the author uses the legal interpretation method to identify the construction of implicit reasoning that underlies the judge's attitude. In general, in the judicial process, the fundamental interpretation methods used by judges are grammatical interpretation, historical interpretation, and teleological interpretation.

The application of the grammatical interpretation method is a very fundamental first step in the process of legal discovery. This language or grammatical interpretation is a method that focuses on the meaning of the legal text as expressed, both based on the meaning of everyday language and legal dictionaries. Judges generally use this approach when the sound of a norm is clear enough and does not cause ambiguity, so that the principle of legal certainty can be maintained more optimally. Therefore, the grammatical approach is often the first stepping stone before judges consider using other legal interpretation methods.²² Drs. Dede Ibin, S.H., Deputy Chairman of the Rangkasbitung Religious Court, interpreted the use of the word 'can' in article 211 of the KHI which reads "grants from parents to children can be counted as inheritance" to indicate an alternative or optional nature and not imperative or obligatory. This means that this rule is one of the legal solutions that can be chosen to resolve inheritance disputes. If all heirs agree and no one has a problem with the grant that has

²¹ Dewi Noviarni, "Inheritance in Islamic Law in Indonesia," *'Aainul Haq: Journal of Islamic Family Law* 1 (1) (2021): 71.

²² Abdi Ridho and Rahmayanti, "Analysis of Legal Interpretation Methods in Problem Solving: The Use of Grammatical, Systematic, and Teleological Methods," *Lexoria (Journal of Indonesian Legal Pluralism)* 2, No. 1 (2026): 31.

been received by one of them, then the remaining inheritance can be directly distributed to all heirs according to their respective portions.

However, if there are heirs who object to the past grant, then the value of the grant that has been received will be recalculated as part of the inheritance. The solution is to combine the value of the grant into the total inheritance to see the original portion that everyone should receive. If the value of the grant that was previously received turns out to be less than the inheritance allotment, the heir only needs to accept the shortfall. On the other hand, if the value of the grant exceeds the inheritance allotment that should have been, then the excess is taken back to be distributed to the heirs to other heirs whose portion is still lacking.²³ Thus, the word 'can' in the text of the article becomes the starting point or the initial gate for the birth of judge's discretion. However, the relaxation of the meaning of the word logically requires the judge not to stop at the written text, but to move forward to trace the background of its formation through a historical approach.

The historical interpretation method is an approach in which judges interpret an article or regulation by examining the history of its formation. If you look at the background of the formulation of the KHI itself, it is known that the existence of the KHI describes the form of the government's response to all the unrest that occurs in the community over the various decisions of religious courts for similar cases.

Teleological or sociological interpretation is an interpretive approach in law that determines the meaning of a law based on societal goals. Through this method, the meaning of a regulation is examined from the perspective of social needs, so that the interpretation process is able to bridge and reduce the gap between written legal theory and practice in the field. This means that legal interpretation should not be rigid, but must consider how existing regulations can be harmonized with changes in social relations and current contextual situations.²⁴

In the aspect of Islamic law in Indonesia, the urgency of the teleological interpretation is found in a clear example of the inclusive nature of Islamic teachings that are highly adaptive to local cultural elements. When Islam spreads to new areas, this teaching does not necessarily erase old traditions that are already rooted in society. Islam provides a space for harmonious adaptation with the local culture, as can be seen in the Islamic style in Indonesia. The combination of Islamic values and local culture in legal practice is sought to harmonize with each other.

This can be seen from some of the habits of indigenous peoples that have existed for a long time in dividing family property while the parents are still alive. As happened

²³ Amrie Hakim, "Parents' Grants to Their Children and Their Relation to Inheritance," *Hukumonline.com*, 16 April 2012, <https://www.hukumonline.com/klinik/a/hibah-orang-tua-kepada-anak-anaknya-dan-kaitannya-dengan-waris-cl5203/>. Retrieved July 10, 2026

²⁴ Triveni Chrisna Dwipayani and Nyoman Satyayudha Dananjaya, "Interpretation of the Meaning of Perfect Evidence of Notary Deeds from the PERSPECTIVE of Proof," *Acta Comitas: Journal of Notary Law* 10, No. 01 (2025): 54.

in Serapuh Asli Village, Tanjung Pura District, Lalat Regency.²⁵ Then the provision of grants as a substitute for inheritance carried out by some residents of Pematang Panjang village, Fifty Pesisir district, Batu Bara regency is a common thing given to heirs while the heir is still alive while still paying attention to the value of justice.²⁶ In line with the tradition of the people in Sumatra, the tradition of distributing property before the parents die also occurs in the indigenous people of Java with several processes. The inheritance process before death is carried out by three events, namely through *twisting*, *molding*, and *endasan*.^{27s}

The existence of space for voluntary acceptance and mutual agreement among families shows that KHI in the field of inheritance is formed based on social reality. In addition, the formulation of Article 211 of the KHI is intended for a noble purpose, namely to distribute economic justice and maintain peace among children in line with the principle of balance in Islamic law. In line with this, Azhar Basyir as quoted by Mahsun Fuad stated that the practice of distributing property like this is legal according to Islamic law. The main reason is because the action is driven by the good intentions of parents to prevent the appearance of injustice in the family during the distribution of inheritance in the future.²⁸

Based on the results of the analysis through the grammatical, historical, and teleological interpretations above, it was found that in essence the formulation of KHI was intended as a regulation to create justice while preventing conflicts in the family. However, when it clashed with Decision Number 1781/Pdt.G/2018/PA. Tmk, these legal interpretations are not reflected in the ruling.

This study found that *the a quo* decision had several legal defects, namely:

First, the deviation of the philosophy of Article 211 KHI. As previously explained, the background behind the formulation of Article 211 KHI is to legitimize the custom of indigenous peoples in distributing parental property to children before the parents die because they want justice and so that conflicts do not occur among children. In this decision, justice and anticipation of conflict will not be achieved because when the judge refers to Article 211 of the KHI, the judge does not calculate the value of the grant that has been received and then divided based on the law of faraidh.

Second, the judge has set aside the evidentiary value of the authentic deed. In this decision, the judge has set aside the grant deed that had been made in 2004 only to base the division on the agreement under hand without any valid cancellation of the authentic deed.

²⁵ Silvia Damayanti, Sudianto, and Diyan Yusri, "The View of the Langkat Regency Mui on the Practice of Parent-to-Child Grants (Case Study in Serapuh Asli Village, Tanjung Pura District, Langkat Regency)," *Jsl: Journal Smart Law* 3(2) (2025).

²⁶ Rizky Muhammad and Syaddan Dintara Lubis, "Practice of Grant As A Replacement Of Heritage: Study In Pematang Panjang Village, Fifty Coast Subdistrict, Batu Bara District, North Sumatra Province," *Rewang Rencang : Lex Generalis Law Journal* 5.,No.6 (2024).

²⁷ Agus Wantaka, Abdul Rosyid, and Eka Sakti Habibullah, "The Division of Inheritance in the Perspective of Islamic Law and Javanese Customary Law (Comparative Study)," *Proceedings of Al Hidayah Ahwal Ash-Syakhshiyah* 01, No. 1 (January 2019).

²⁸ Then Sukrizal Watoni, "The Position and Application of the Compilation of Islamic Law as a School of Fiqh in Indonesia," *Darussalam Journal: Constitutional Law Thought and Legal Comparison* 5, No. 1 (2025).

Third, this judgment contains a *contradiction in terminis*, where the judge stated that he granted the Plaintiffs' lawsuit, but the determination of the division of property over the object of dispute in his judgment actually refers to the agreement under the Defendant's hands.

In this case, Article 211 of the KHI which is used in the judge's consideration as it reads "considering, that it turns out that the grant has never been revoked or withdrawn by TF and PS therefore in accordance with Article 211 of the KHI the grant can be counted as the inheritance of TF and PS to their six children" has become the main source of all the confusion in the legal reasoning of the panel of judges. The unclarity of the norms in the article which does not provide a qualitative indicator regarding the qualification of grants that can be withdrawn as inheritance triggers the emergence of undirected discretion of the judge. This unlimited discretion has a chain effect, namely the panel of judges overrides the perfect evidentiary value of the grant deed to grant the agreement under hand made in 2013 without any valid cancellation of the authentic deed. This ultimately gives birth to a fundamental contradiction between legal considerations and judgments.

In this context, Abdul Ghofur Anshori provides the casuistic parameters regarding the conditions under which a grant from the parents can be counted as an inheritance, including:

- a. Inheritance limitations: the assets left behind are very few, so if a grant received by one of the children is not counted as an inheritance, the other heirs do not get a proportionate share of the inheritance.
- b. Economic gap of heirs: The grantee already has sufficient availability of assets, while other heirs are in an inadequate condition, without the calculation of the grant as inheritance, the act of granting has the potential to cause economic inequality between the heirs.²⁹

If the above caustic parameters are associated with the verdict in this case, these parameters are not reflected in the legal considerations. In this decision, the panel of judges did not elaborate on the data on the remaining assets of the parents and the judge did not conduct a qualitative assessment of the economic condition of the Plaintiffs and Defendants. Therefore, such interpretation practices give birth to confusion in the principle of legal certainty.

Gustav Radbruch stated that laws must be formulated clearly, consistently, and predictably. Furthermore, Radbruch explained that there are four pillars that are closely related to the essence of legal certainty, namely positive law, laws based on empirical reality, norm formulation must be clear to minimize uncertainty in the law enforcement process³⁰, and have legal stability.³¹

In the context of Article 211 of the KHI in Decision Number 1781/Pdt.G/2018/PA.

²⁹ Abdul Ghosfur Anshori, *Philosophy of Grants and Wills Law in Indonesia* (Yogyakarta: Gajah Mada University Press, 2022).

³⁰ Mohammad Wangsit Supriyadi et al., *Gustav Radbruch's Fundamental Thoughts and Contributions to the Development of Science and Law*, 07, No. 1 (2025).

³¹ Gustav Radbruch, *Legal Purpose*, translated by Shidarta (Jakarta: Gramedia Pustaka Utama, 2012).

Tmk, the use of the Article does not reflect the concept of legal certainty initiated by Radbruch. As previously explained, the establishment of Article 211 KHI was initially intended to provide legal certainty as an umbrella for the practice of distributing parental property to children initiated by indigenous peoples' customs. Such a goal, on the one hand, has indeed been achieved. However, on the other hand, the norm creates legal uncertainty regarding the criteria and limits on when a grant is considered as an inheritance, because they are two different concepts. A grant is a legal act that occurs while the parents are still alive and the distribution is based on the will and wisdom of the parents, while the inheritance is only legally valid when the parents have died with the provisions of the portion of the distribution that has been stipulated in Islamic inheritance law.

Based on the search for Decision Number 1781/Pdt.G/2018/PA. Tmk, the author considers that the pretext of the Panel of Judges in calculating grants as inheritance is essentially rooted in efforts to realize justice among the heirs. This is in line with the basic philosophy of the establishment of Article 211 of the KHI which is indeed presented to legitimize the custom of indigenous peoples in distributing parental property to their children during life with the aim of maintaining a sense of justice and preventing conflicts between children in the future. The author sees that the Panel of Judges' efforts in applying the principle of justice are influenced by the status of the parties who are family members. This is reflected in the ruling, where the judge tried to take a middle path, namely on the one hand still recognizing the existence of the grant deed belonging to the Plaintiffs. However, on the other hand, it stipulates the physical division of the object of dispute based on a grant letter under the hand submitted by the Defendant so that the other heirs do not lose their rights.

Apart from these familial reasons, the author considers that the application of Article 211 KHI by the Panel of Judges is merely used as an instrument to resolve family conflicts through the division of part of the land to the parties. Nevertheless, the application of this norm should not ignore the evidentiary hierarchy in the civil procedure law, especially by ignoring the power of perfect proof of the grant deed submitted by the Plaintiffs.

D. Conclusions and Recommendations

The position of the grant deed from the parent to the child against all parental property given to all children is still valid and valid as an authentic deed. The validity of the position of the grant deed in *a quo* case is based on the fact of the trial that the cancellation of the grant never occurred. Therefore, the grant deed cannot legally be set aside or changed in scope by the grant agreement under the hand of 2013. The existence of Article 211 of the KHI should only be positioned as an instrument for calculating inheritance without aborting the status and content of the grant deed itself.

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legitimize the custom of indigenous peoples in distributing parental property to their children during life with the aim of maintaining a sense of justice and preventing conflicts between children in the future. The author sees that the Panel of Judges' efforts in applying the principle of justice are influenced by the status of the parties who are family members. This is reflected in the ruling, where the judge tried to take a middle path, namely on the one hand still recognizing the existence of the grant deed belonging to the Plaintiffs. However, on the other hand, it stipulates the physical division of the object of dispute based on a grant letter under the hand submitted by the Defendant so that the other heirs do not lose their rights.

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Accordingly, the Author assesses that the Panel of Judges does not provide concrete, specific, or measurable legal considerations for the reason for the use of Article 211 of the KHI, but only based on the formalities on the existence of the article. If the Panel of Judges consistently wants to apply Article 211 of the KHI, the Panel of Judges should conduct a mathematical calculation by taking into account the total heritage property first and then apply the distribution in accordance with the provisions of *the faraidh*.

With regard to the above, there is a recommendation to the Supreme Court of the Republic of Indonesia and the Minister of Religion should issue technical guidelines or implementation guidelines regarding the application of Article 211 of the KHI or improve the norms of KHI in the future. The guidelines need to clearly affirm that:

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