THE JUDGE'S REJECTION OF THE HEIRS' LAWSUIT THE CANCELLATION OF GRANTS FROM THE PERSPECTIVE OF ISLAMIC LAW (KHI) AND CIVIL LAW (KUHPER)

(Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang)

THESIS

By:

MOCHAMAD RISKANA BARKAH

SIN 200201110034

ISLAMIC FAMILY LAW STUDY PROGRAMME

SYARIAH FACULTY

MAULANA MALIK IBRAHIM MALANG STATE ISLAMIC UNIVERSITY

2024

THE JUDGE'S REJECTION OF THE HEIRS' LAWSUIT THE CANCELLATION OF GRANTS FROM THE PERSPECTIVE OF ISLAMIC LAW (KHI) AND CIVIL LAW (KUHPER)

(Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang)

THESIS

By :

MOCHAMAD RISKANA BARKAH

SIN 200201110034

ISLAMIC FAMILY LAW STUDY PROGRAMME

SYARIAH FACULTY

MAULANA MALIK IBRAHIM MALANG STATE ISLAMIC UNIVERSITY

2024

STATEMENT OF AUTHENTICITY

In the name of Allah,

With awareness and a sense of responsibility for scientific development, the author states that the thesis entitled:

THE JUDGE'S REJECTION OF THE HEIRS' LAWSUIT REGARDING THE CANCELLATION OF GRANTS FROM THE PERSPECTIVE OF KHI AND KUHPERDATA

(Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang)

If this thesis research report is found as the result of plagiarism of other people's work in part or in whole, then the thesis as a prerequisite for obtaining a bachelor's degree is declared null and void.

Malang, 4 Oktober 2024
Author,

Mochamad Riskana Barkah
SIN 200201110034

APPROVAL SHEET

After reading and correcting the thesis of Mochamad Riskana Barkah SIN: 200201110034 Study Program Islamic Family Law Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang entitled:

THE JUDGE'S REJECTION OF THE HEIRS' LAWSUIT REGARDING THE CANCELLATION OF GRANTS FROM THE PERSPECTIVE OF KHI AND KUHPERDATA

(Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang)

then the supervisor declares that the thesis has met the scientific requirements to be submitted and tested by the Board of Examiners.

Malang, Oktober 2024

Supervisor I	Supervisor II
Abdul Haris, M.HI	Sohibul Hairi, M.Pd
NIP198806092019031006	NIPT 202304011007

Acknowledged,
Head of Islamic Family Law Department

Erik Sabti Rahmawati MA, M.Ag
NIP 197511082009012003

LEGITIMATION SHEET

Board of Thesis Examiners Mochamad Riskana Barkah SIN: 200201110034 Islamic Family Law department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang entitled:

THE JUDGE'S REJECTION OF THE HEIRS' LAWSUIT THE CANCELLATION OF GRANTS FROM THE PERSPECTIVE OF ISLAMIC LAW (KHI) AND CIVIL LAW (KUHPER)

(Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang)

Has been declared passed in the thesis examination session held on the date of 21 of Oktober 2024

Board of Examiners:

1. Erik Sabti Rahmawati, M.A., M.Ag (.....) Chairman
   NIP197511082009012003

2. Abdul Haris, M.HI (.....) Secretary
   NIP198806092019031006

3. Jamilah, M.A., Ph.D (.....) Examiner
   NIP 197901242009012007

Malang, November 2024

Dean,

Prof. Dr. Sudirman, MA., CAHRM
NIP 197708222005011003

MOTTO

فَاٰتِ ذَا الْقُرْبٰى حَقَّهٗ وَالْمِسْكِيْنَ وَابْنَ السَّبِيْلِ ذٰلِكَ خَيْرٌ لِّلَّذِيْنَ يُرِيْدُوْنَ وَجْهَ اللّٰهِ وَاُولٰٓئِكَ

هُمُ الْمُفْلِحُوْنَ

Meaning :

“ So give your close relatives their due, as well as the poor and the needy) traveller. That is best for those who seek the pleasure of Allah, and it is they who will be successful”.

(QR. Ar-rum 38)

ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيم

Alhamdulillah, all praise is due to Allah who has bestowed all His favours and blessings on all of us, especially on the author so that he can complete his thesis entitled 'The Judge's Rejection of the Heir's Lawsuit Regarding Grant Cancellation in Perspective of KHI and the Civil Law (Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang) properly.

Shalawat and salam may remain poured out to the Prophet Muhammad SAW who has guided us to the path that Allah has blessed, namely the religion of Islam, may we be classified as believers and get his intercession on the final day of Judgment. Aamiin.

The author expresses his deepest gratitude to all those who have helped and supported the author in completing this thesis, both through guidance and direction and some discussion results from various parties, so with all humility the author expresses his gratitude to:

1. Prof. Dr H. M. Zainuddin, MA. as the rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. Sudirman, MA. as the dean of the Faculty of Shari'ah, Maulana Malik Ibrahim State Islamic University Malang. As well as the author's guardian lecturer during his studies at the Faculty of Sharia, Islamic University.

3. State University of Maulana Malik Ibrahim Malang. Thank you to him for providing guidance, advice, and motivation while studying.
4. Hj Erik Sabti Rahmawati, MA, M.Ag as the head of the Islamic Family Law Study Programme at Maulana Malık Ibrahim State Islamic University Malang.
5. Faridatus Suhadak, M.HI. as the secretary of the Islamic Family Law Study Programme at Maulana Malık Ibrahim State University Malang.
6. Abdul Haris, M.HI and as the author's supervisor who has devoted time to provide direction and motivation in completing the writing of this thesis.
7. Sohibul Hairi, M.Pd, as the author's English supervisor who has devoted time to provide direction and motivation in completing the writing of this thesis.
8. All lecturers of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang who have provided learning to all of us. With sincere intentions, may their deeds all be part of worship to get the pleasure of Allah SWT.
9. The author's entire family, beloved father Dr Mochamad Mochtar, SH. M, Si. Beloved mother Yunanik, S.E, brother Mochamad Yuris Wicaksono, sister Arina Rachma Khumairoh, and Mochamad Salimuddin Taftazani Thank you for your prayers, efforts, and support that always accompany the author in every step.
10. All friends in the Islamic Family Law Study Programme, especially (Salwa, Atirah, Mila, Adnan, Zahra) who became my study partners while at this university and who gave me many experiences and lessons as friend

11. The author, myself. Thank you for completing your responsibilities. Thank you for doing your best for this research. Thank you for continuing to move forward. Thank you for achieving more or less new things. So proud of you.

With the completion of this thesis report, it is hoped that the knowledge we have gained during college can provide charitable benefits for life in this world and the hereafter. As a human being who is never free from mistakes, the author really hopes for forgiveness as well as criticism and suggestions from all parties for future improvement efforts

Malang, 7 October 2024

Author,

Mochamad Riskana Barkah

SIN 200201110034

TRANSLITERATION GUIDENCE

In writing scientific papers, the use of foreign terms is often inevitable. In general, according to the General Guidelines for Indonesian Spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following table presents the transliteration guidelines as a reference for writing scientific papers.

There are several provisions in transliteration that can be used in writing scientific papers. Whether it is national or international standards or requirements specifically used by certain publishers. The transliteration guideliness used in the scientific work of sharia students of UIN Malang are based on the provisions of the 2022 thesis writing guidelines for the Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, namely transliteration based on the Surat Keputusan Bersama (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b/U/1987, as stated in the A Guide Arabic Transliteration, INIS Fellow 1992.

A. CONSONANT

The list of Arabic letters and their transliteration into Latin letters can be seen on the following page**:**

Arab	**Indonesia**	**Arab**	**Indonesia**
ا	‘	ط	ṭ
ب	B	ظ	ẓ

ت	T	ع	‘
ث	Th	غ	Gh
ج	J	ف	F
ح	ḥ	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W

س	S	ه	H
ش	sh	ء	H
ص	ṣ	ي	Y
ض	ḍ		

Hamzah (ء) at the beginning of a word follows its vowel without any sign. If the hamzah (ء) is located in the middle or at the end, it is written with a sign (').

B. VOKAL

Arabic vowels, like Indonesian vowels, consist of single vowels or monoftongs and double vowels or diphthongs.

Single Arabic vowels whose symbols are signs or harakat, are transliterated as follows:

Arabic Letters	Name	Latin Letters	Name
اَ	Fatḥah	A	A
اِ	Kasrah	I	I
اُ	Ḍammah	U	U

Arabic double vowels whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters, namely:

Sign	Name	Latin Letters	Name
اَيْ	Fatḥah and ya	Ai	A and I
اَوْ	Fatḥah and wau	Iu	A and U

Example :

Kaifa: كَيْفَ

Haula: هَوْلَ

C. MADDAH

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs, namely:

Long vowel (a) = â For example قال becomes qâla

Long vowel (i) = î For example قِي ل becomes qîla

Long vowel (u) = û For example دون becomes dûna

Example:

Māta: مَاتَ

ramā: رَمَى

qīla: قِيْلَ

yamūtu: يَمُوْتُ

D. TA MARBUTAH

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fatḥah, kasrah, and ḍammah, is transliterated as [t]. Whereas the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h]. If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha. Example :

rauḍah al-aṭfāl: رَوْضَةُ الأَطْفَالَ

al-madīnah al-fāḍīlah: المَدِيْنَةُ الفَضِيْلَةُ

al-hikmah: الحِكْمِةُ

E. SYADDAH (TASYDID)

Syaddah or tasydīd which in the Arabic writing system is symbolised by a tasydīd sign (ّ), in this transliteration is symbolised by a repetition of letters (double consonants) marked with a syaddah sign. Example:

Rabbanā: رَبَّنَا

Najjainā: نَجَّيْنَا

al-haqq: الحَقُّ

al-hajj:

nu'ima: نُعِّمَ

'aduwwu: عَدُوٌّ

If the letter ى is tasydīd at the end of a word and is preceded by a letter with the letter kasrah (ـِ), then it is transliterated as maddah (ī). Example:

'Alī (not 'Aliyy or 'Aly)

'Arabī (not 'Arabiyy or 'Araby)

F. SYMBOLS

The article in the Arabic writing system is symbolised by a letter (alif lam ma'arifah). In this transliteration guideline, the article is transliterated as usual, al-, both when it is followed by shamsiah letters and qamariah letters. The article does not follow the sound of the letter directly following it. The article is written separately from the word that follows it and is connected with a horizontal line (-). For example:

al-syamsu: الشَّمْسُ

al-zalzalah: الزَّلْزَلَة

al-falsafah: الفَلْسَفَة

al-bilādu: البِلاَدُ

G. HAMZAH

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolised, because in Arabic writing it is an alif. For example:

ta'murūna: تَأمُرُوْنٌ

al-nau': النَّوءُ

syai'un: شَيْءُ

Umirtu: شَيْءُ أُمِرْتُ

H. WRITING OF ARABIC WORDS COMMONLY USED IN THE INDONESIAN LANGUAGE

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardised in the Indonesian language. Words, terms or sentences that are already common and part of the Indonesian language repertoire, or are often written in Indonesian writing, are no longer written according to the above transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, special and general. However, when these words are part of a series of Arabic texts, they must be transliterated as a whole. Example:

Fī ẓilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafẓ lā bi khuṣūṣ al-sabab

I. LAFẒ AL-JALĀLAH (الله)

The word 'Allah' preceded by particles such as jarr and other letters or as *muḍāf ilaih* (nominal phrase), is transliterated without the letter hamzah. Example:

dīnullāh : دِيْنُ اللهِ

As for the ta marbūṭah at the end of a word that is based on lafẓ al-jalālah, it is transliterated with the letter [t]. Example:

hum fi raḥmatillāh: هُمْ فِيْ رَحْمَةِ اللَّهِ

J. CAPITAL LETTERS

Although the Arabic writing system does not recognise capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the article (al-), the initial letter of the proper name, not the initial letter of the article, is written in capital letters. If it is at the beginning of a sentence, then the letter A of the article is capitalised (Al-). The same provision also applies to the initial letter of the title of the reference preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi'a linnāsi lallażī bi Bakkata mubārakan Syahru Ramaḍān al-lażī unzila fīh al-Qur'ān

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiż min al-Ḍalāl

TABLE OF CONTENTS

Contents

Table List

ABSTRAK

Mochamad Riskana Barkah NIM 200201110034, 2024. **Penolakan Hakim Terhadap Gugatan Ahli Waris Terkait Pembatalan Hibah Perspektif Kompilasi Hukum Islam (KHI) dan Kitab Undang-Undang Perdata (KUHPer) (Studi Putusan No. 2629/Pdt.G/2021/. Pa Kab Malang).** Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang Dosen Pembimbing: Abdul Haris , M.A

Kata Kunci: Pembatalan Hibah, Kompilasi Hukum Islam (KHI), Kitab Undang-Undang Perdata (KUHPer), Ahli waris

Hibah adalah pemberian harta ataupun benda kepemilikan kepada orang lain secara sukarela. Pengaturan hukum hibah di Indonesia terdapat dalam Kompilasi Hukum Islam (KHI) pada pasal 210 sampai dengan 214 dan Kitab Undang-Undang Hukum Perdata (KUHPerdata) pada pasal 1666 sampai dengan 1693, di mana dalam prakteknya aturan KHI digunakan di Pengadilan Agama, sedangkan untuk KUHPerdata digunakan di Pengadilan Negeri.

Penelitian ini bertujuan untuk menganalisis akibat hukum dari pembatalan hibah yang objeknya melebihi porsi (*legitimie portie)* serta hukum pembatalan hibah di Indonesia perspektif KHI dan KUHPer. Penelitian ini menggunakan metode penelitian normatif dengan metode pendeketan perundang-undangan. Adapun sumber data pada penelitian ini berupa Putusan No. 2629/Pdt.G/2021/. Pa Kab Malang, KHI, KUHPer, jurnal dan buku yang relevan.

Hasil penelitian menunjukkan bahwa akibat hukum pada putusan perkara no. 2629/Pdt.G/2021.Pa Kab Malang yang diputuskan oleh hakim tidak dapat diterima sedangkan dalam sudut pandang KHI dan KUHPer gugatan yang diajukan seharusnya dapat diterima ditinjau dari syarat dan aturan yang berlaku mengenai pembatalan hibah di Indonesia. Tidak dapat diterimanya gugatan pada Putusan No. 2629/Pdt.G/2021/. Pa Kab Malang dikarenakan apabila hakim memutuskan perkara gugatan tersebut akan menimbulkan putusan *ultra petitum* di mana dalam satu perkara terdapat lebih dari satu pokok gugatan diantaranya pada putusan no. 2629/Pdt.G/2021/. Pa Kab Malang berisikan gugatan penetapan ahli waris, pembatalan hibah tanah objek segketa, dan pembatalan jual beli tanah objek sengketa dan juga terdapat tuntutan yang diajukan oleh para penggugat tidak sesuai atau tidak sejalan yang membuat gugatan tersebut kabur (*obscuur libel)*.

ABSTRACT

Mochamad Riskana Barkah NIM 200201110034, 2024. **The Judge's Rejection of the Heir's Lawsuit the Cancellation of Grants in Perspective of Islamic Law (KHI) and Civil Law (KUHPer) (Study of Decision No. 2629/Pdt.G/2021/. Pa Kab Malang).** Thesis, Islamic Family Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang Supervisor: Abdul Haris, M.A

Keywords: Grant Cancellation, Compilation of Islamic Law (KHI), Civil Law (KUHPer), Heirs

Grant is a voluntary gift of property or objects of ownership to another person. The legal arrangements for grants in Indonesia are contained in the Islamic Law in articles 210 to 214 and the Civil Law in articles 1666 to 1693, where in practice the Islamic Law rules are used in the Religious Courts, while the Civil Law is used in the District Court .

This research aims to analyze the legal consequences of the cancellation of grants whose objects exceed the portion (*legitimie portie)* and the law of grant cancellation in Indonesia from the perspective of Islamic Law and Civil Law. This research uses normative research method with statutory approach method. The data sources in this research are Decision No. 2629/Pdt.G/2021/. Pa Kab Malang, Islamic Civil Law, Civil Law, relevant journals and books .

The results showed that the legal consequences of the decision in case no. 2629/Pdt.G/2021.Pa Kab Malang, which was decided by the judge, were unacceptable, while from the Islamic Civil Law and Civil Law point of view, the lawsuit filed should be acceptable in terms of the applicable terms and regulations regarding the cancellation of grants in Indonesia. The inadmissibility of the lawsuit in Decision No. 2629/Pdt.G/2021/. Pa Kab Malang because if the judge decides the lawsuit case, it will lead to an *ultra petitum* decision where in one case there is more than one point of claim, including in decision no. 2629/Pdt.G/2021/. Pa Kab Malang contains a lawsuit for the determination of heirs, the annulment of the grant of the object of the dispute, and the annulment of the sale and purchase of the disputed object of land and there are also claims filed by the plaintiffs that do not match or are not in line which makes the lawsuit vague (*obscuur libel)* .

صلخص البحث

محمد ريسكانا باركاه، رقم التسجيل 200201110034، 2024. رفض القاضي لدعوى الورثة المتعلقة بإلغاء الهبة من منظور قانون الأحوال الشخصية الإسلامي والقانون المدني (دراسة حالة الحكم ،أطروحة، برنامج دراسات قانون الأسرة الإسلامي .(Pdt.G/2021/. Pa Kab Malang/رقم 2629 .كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: عبد الحارث، ماجستير

كلمات مفتاحية: إلغاء الهبة، تجميع القانون الإسلامي، القانون المدني، الورثة

الهبة هي منح الممتلكات أو الأشياء المملوكة للآخرين طوعًا. يتم تنظيم قانون الهبة في إندونيسيا في في (KUHPerdata) في المواد 210 إلى 214 وفي القانون المدني (KHI) تجميع القانون الإسلامي في المحاكم الدينية، بينما يتم استخدام القانون KHI المواد 1666 إلى 1693، حيث يتم استخدام قواعد .المدني في المحاكم العامة

تهدف هذه الدراسة إلى تحليل الآثار القانونية لإلغاء الهبة التي يتجاوز موضوعها الحصة الشرعية (KHI) وكذلك قانون إلغاء الهبة في إندونيسيا من منظور تجميع القانون الإسلامي (legitimie portie) .تستخدم هذه الدراسة منهج البحث النظري مع منهج الاقتراب التشريعي .(KUHPer) والقانون المدني ،KHI ،Pdt.G/2021/. Pa Kab Malang/أما مصادر البيانات في هذه الدراسة فهي حكم رقم 2629 .المجلات والكتب ذات الصلة ،KUHPer

Pdt.G/2021.Pa Kab Malang/أظهرت نتائج البحث أن الآثار القانونية في قرار القضية رقم 2629 والقانون المدني (KHI) الذي قرره القاضي غير مقبولة، بينما من وجهة نظر تجميع القانون الإسلامي كان يجب قبول الدعوى المقدمة بالنظر إلى الشروط والقواعد السارية بشأن إلغاء الهبة في (KUHPer) يرجع إلى أنه Pdt.G/2021/. Pa Kab Malang/إندونيسيا. عدم قبول الدعوى في قرار رقم 2629 حيث (*ultra petitum*) إذا قرر القاضي في هذه القضية، فإنه سيصدر قرارًا يتجاوز الطلبات المقدمة Pdt.G/2021/. Pa/تحتوي القضية على أكثر من موضوع دعوى واحد، بما في ذلك قرار رقم 2629 الذي يتضمن دعوى تحديد الورثة، إلغاء هبة الأرض موضوع النزاع، وإلغاء بيع وشراء Kab Malang الأرض موضوع النزاع، وأيضًا توجد مطالبات قدمها المدعون غير متوافقة أو غير متسقة مما يجعل .(*obscuur libel*) الدعوى غامضة

CHAPTER I
INTRODUCTION

A. Background

The reality in social life between one individual and another is not the same, especially in matters of property or economic problems. Each individual must understand the conditions of social life that occur in the surrounding environment. Each individual has a different life, some in terms of wealth are classified as high, sufficient, and even some are classified as low. Therefore, to cover the gap in property problems, people or individuals who have enough property sometimes give gifts in the form of their property to people who have the ability in property problems classified as low.[1]

Giving property to others as a gift is one of the legal actions commonly known in Islamic law and the Civil Law as grant or voluntary giving as a gift. Literally grant means grace, charity, gift, or favour. Meanwhile, terminologically, hibah means the process of giving property voluntarily from the owner of the grant (*wahib)* to the person who is given a grant (*Mawhub-lah)* in the presence of ijab and qabul.[2]

Grants are one way of distributing assets as well as inheritance and waqf. According to Subekti, the grant is included in a free agreement where the word 'free' is aimed at only one party's achievement, while the other party does not have to provide a counter-achievement in return or it can be called a unilateral

[1] Muhammad Amiruddin, Nasrullah Sapa, and Abdul Syatar, "*Uncovering Wasathiyah Values On Sharia Banking,*" Al-Mashrafiyah: Jurnal Ekonomi, Keuangan, Dan Perbankan Syariah 4 (October 16, 2020): 15, https://doi.org/10.24252/al-mashrafiyah.v4i2.14676.
[2] Rachmat Syafe'i, *Fiqih Muamalah*, 6th ed. (Bandung: CV Pustaka Setia, 2001).

agreement..[3] Meanwhile, according to Sayid Sabiq, a grant is a contract that involves a person giving something of his property to another person while he is still alive, without exchanging it.[4] If a person only allows others to use his property and does not give his property, then this is not a grant but a loan.

As one of the living creatures created by Allah SWT, death is a destiny that has been determined by Him and cannot be changed by humans. Humans when living in the world have rights and obligations that they must fulfill where these rights and obligations must be completed before they die, one of which is the division of property. If the division of property is not resolved properly, various problems will arise in the future.

Various problems arising from the division of property in community life appear in various forms, ranging from the breakup of friendship between siblings, fighting over property, and attempted murder of heirs. In addition, Indonesian people tend to lack understanding related to the division of property such as the division of property by way of grants. Grants can be made when the grantor (*wahib*) is still alive, in contrast to inheritance where the condition of the testator gives his property in the condition of the testator has passed away.

Granting in the form of grants is often a conflict both from the grant goods given and the transfer of ownership, to the validity of the grant agreement or transaction and the withdrawal of the grant. As for the problems that often occur in

[3] R Subekti, *Aneka Perjanjian*, 6th ed. (Bandung: Penerbit Alumni, 1984) 94.
[4] Zulkarnain Abdurrahman, *"Penarikan Kembali Hibah Orang Tua Terhadap Anak Dalam Pandangan Para Ulama,"* Jurnal Pemberdayaan Masyarakat 6, no. 1 (May 27, 2018): 11, https://doi.org/10.37064/jpm.v6i1.4991.

the community, namely the transfer of land rights through grants, this happens because there are parties who feel aggrieved. The party who feels aggrieved here feels that he owns the grant object or inherits the grant object.

Based on 2019 data, Minister of Agrarian and Spatial Planning (ATR)/ Head of the National Land Agency (BPN) Sofyan Jalil stated that the number of land dispute cases in BPN was 8,900 cases. Details that have been recorded are 8,959 cases, according to the head of BPN among these cases have been decided and newly registered. Of the 8,959 cases, 56% are disputes between communities, between neighbors and neighbors, and boundary disputes. For land grant problems that entered the Malang Regency Religious Court from 2020-2023, there were 351 cases, while the problem of grant cancellation was 6 cases.[5]

According to the Compilation of Islamic Law (KHI) article 171 letter (g), it is explained that a grant is the giving of an object voluntarily and without reward from someone to another person who is still alive to be owned. Then the distribution of grant assets according to the Compilation of Islamic Law (KHI) article 210 paragraph (1), namely a person who is at least 21 years of age of sound mind without coercion can grant as much as 1/3 of his property to another person or institution in the presence of two witnesses to be owned'. Furthermore, paragraph (2) states 'the property granted must be the right of the grantee'.[6] So if there is someone who grants property that is not his right, then his grant becomes void.

---

[5]"Direktori Putusan," accessed February 2, 2024, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeec0cdaa64dc04afb4313334363435.html.

[6] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya* (Jakarta: Mahkamah Agung RI, 2011), 116.

In addition to being contained in the Islamic Law (KHI), grants are also regulated in the Compilation of Civil Law (KUHPer). According to the Compilation of Civil Law (KUHPer) article 1666, a grant is an agreement by which a grantee hands over an item freely, irrevocably, and gives the use value of the item to the grantee.[7] For the grant itself, the law only recognizes grants between living persons. Grants in the Compilation of Civil Law (KUHPer) are a component of agreement law and are classified as agreements to give or deliver something (*Aprirotin*). Basically, an agreement is reciprocal, where a person accepts and fulfills the performance caused by him agreeing to the contra-performance of the other party. Sometimes for some reason, a person cancels or withdraws what is given to another person due to non-fulfilment of the achievement, as well as this grant.

Cases that often occur in grant problems are cases of grant cancellation because the party receiving the grant does not meet the requirements in carrying out the grant that has been given. A grant cannot be withdrawn or canceled, except in the cases contained in Article 1688 of the Civil Law, namely (1) if the conditions of the grant are not fulfilled; (2) the grantee commits a crime with the intention of killing the grantor; (3) if the grantor falls into poverty while the grantee refuses to provide maintenance.[8] In the Compilation of Islamic Law (KHI) it is also regulated that grants cannot be withdrawn or cancelled, as contained in article 212 which reads 'Grants cannot be withdrawn, except for grants from parents to their

[7] R Subekti and R Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (PT Pradnya Paramita, 2014)306.
[8]Subekti and Tjitrosudibio, *Kitab Undang-Undang Perdata* (PT Pradnya Paramita, 2014) 309.

children'.[9] The Compilation of Sharia Economic Law also regulates the withdrawal of grants contained in articles 716 to 730 which explain that the withdrawal of grants can be made by the grantee provided that the recipient agrees to the withdrawal of the grant and with a court decision. [10]

The phenomenon of grant annulment issues in court often arises in civil disputes, especially in the distribution of inheritance. A grant, a gift of property from one person to another while still alive, becomes a topic of dispute when a party who feels aggrieved or does not get a fair share of the grant files a lawsuit for annulment to the court. Grant annulment can occur for several reasons, such as coercion, fraud, or imbalance between the grantor and grantee. In addition, in some cases, annulments are made because they violate the rights of the legal heirs, especially if the grant reduces their rights, for example, if the grant exceeds the maximum limit allowed by law in the context of inheritance.

The court is then tasked with examining whether or not the grant has met the legal requirements. If a procedural violation is found, or if the grant was made under circumstances that disadvantage certain parties, then the grant can be annulled. However, the litigation process is often lengthy and complex, given various factors, including legal evidence, witnesses, and interpretation of applicable regulations. In general, the issue of grant annulment in court reflects how the law tries to protect the rights of individuals while maintaining a balance in the division of assets between the parties involved.

---

[9] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya,* (Mahkamah Agung RI, 2011) 117.

[10] Mahkamah Agung, *Kompilasi Hukum Ekonomi Syariah* (Mahkamah Agung RI, 2011), 201.

Grant cancellation can be carried out by the Religious Court, which has the duty, authority, examine, decide, and settle at the first level between people who are Muslims based on the law of the Republic of Indonesia Number 3 of 2006 concerning Religious Courts law.[11] Based on the laws mentioned above, it can be concluded that grant cases whose legal subjects are between people who are Muslims are resolved in the Religious Court. Grant cases that often enter and are disputed to be settled in the Religious Court are about grant cancellation.

Malang Regency Religious Court in 2021 there is a civil case regarding the cancellation of grants, the case was filed at the Malang Regency Religious Court with case number: 2629/PDT. G/2021/ Pa Kab Malang, In this case, the person who filed for the cancellation of the grant did not come from the grantee (stepchildren) or the grantor but from other parties who were the heirs of the grantor. The lawsuit filed by the heirs of the grant was in the form of a cumulation (combined) lawsuit between the cancellation of the grant, the cancellation of the sale and purchase, and the determination of the heirs.

The plaintiffs who filed the lawsuit were 4 people and the defendants were 5 people, the lawsuit was addressed to the grantee and the buyer of the grant land sold by the grantee. The heirs filed a lawsuit for the cancellation of the grant because the amount of the grant exceeded the predetermined portion (*legitimatie porchie*) and the object of the disputed land grant was traded without the knowledge of the heirs. The Religious Court has the authority to resolve such disputes in accordance

[11] "UU No. 3 Tahun 2006," Database Peraturan | JDIH BPK, accessed February 22, 2024, http://peraturan.bpk.go.id/Details/40154/uu-no-3-tahun-2006.

with the provisions contained in Article 50 paragraph 2 of Law No. 3 of 2006 concerning Religious Courts and can combine together with cases of cancellation of sale and purchase and determination of heir rights. However, the lawsuit was filed at the Malang Regency Religious Court in case number: 2629/PDT. G/2021/ Pa Kab Malang stated that the lawsuit could not be accepted because the Malang Regency Religious Court did not have the authority to hear the case so in this case the heirs felt disadvantaged.

The focus of this research is to analyze the legal review of the cancellation of grants to stepchildren by heirs as seen from Islamic law and civil law and how the judge's considerations applied in deciding the issue of grant cancellation are appropriate or inappropriate in decision number: 2629/PDT .G/2021/ Pa Kab Malang.

A. Problem Statement

1. What are the legal consequences of the cancellation of a grant whose object exceeds the legitieme portie in decision number 2629/PDT .G/2021/ Pa Kab Malang?
2. What is the law on the cancellation of grants by heirs in terms of the Compilation of Islamic Law and the Civil Law?

B. Purpose of Research

Based on the formulation of the problem above, the objectives of this research are as follows:

1. To describe the legal consequences arising from the cancellation of a grant whose object exceeds the legitieme portie in decision number 2629/PDT .G/2021/ Pa Kab Malang.
2. To analyze the law of grant cancellation in terms of the Compilation of Islamic Law (KHI) and the Civil Law (KUHPer).

C. Benefits of the Research

1. Theoritical Benefits

The existence of this research is expected to increase knowledge for the academic community at the Faculty of Sharia in particular and Maulana Malik Ibrahim State Islamic University Malang in general. This research is also expected to provide information and insight for the wider community about how the law of grant cancellation is viewed from the Compilation of Islamic Law (KHI) and the Civil Law (KUHPer) and can be used as a reference for further research.

2. Practical Benefits

The results of this research in the form of a thesis are used to fulfill one of the requirements to obtain a Bachelor of Law degree at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.

D. Definition Operational

In order to provide understanding to the reader, the author presents several understandings related to the title of this research:

1. Hibah is the giving of property or objects of ownership to others voluntarily. The implementation of the grant is carried out when the grantor is still alive. Grants can be given to other people, families, and adopted children.[12]
2. In the KBBI, a dispute is defined as something that causes a difference of opinion, a quarrel over a small matter can also cause a big matter.[13] In general, a dispute is a case that arises between two or more parties, due to a dispute or loss experienced by one of the parties.
3. The heir is a person who has a family relationship with the testator is entitled to get his inheritance and is not hindered by law to become an heir. In the Civil Law, there are two types of heirs, namely heirs based on blood relations or marriage and heirs based on wills. [14]

E. Previous Research

Previous research is research that has been completed by researchers before the author, the purpose of the existence of previous research is as a reference in research by looking at the differences and similarities between research written by the author and research that has previously been carried out based on studies in research discussions. As a comparison, the author takes several studies that have similarities in the type of problem and discussion with the aim of proving that this research has not been carried out by previous

[12] Muhammad Ajib, *Fiqih Hibah Dan Waris*, Pertama (Jakarta: Rumah Fiqih Publishing, 2019), 8.
[13] "Hasil Pencarian - KBBI VI Daring," accessed February 29, 2024, https://kbbi.kemdikbud.go.id/entri/sengketa.
[14] Diana Zuhroh, *"Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama,"* Al-Ahkam 27, no. 1 (June 9, 2017): 43, https://doi.org/10.21580/ahkam.2017.27.1.1051.

researchers. So the author found several research results related to the discussion that will be researched, namely:

First, Rahmat Rizqy K and Mohammad Miftahus Sa'di, ‘Analysis of Grants and Their Colleration with Inheritance and Cancellation of Grants According to Indonesian Legislation’. Journal of Sharia Economic Law, College of Islamic Economics, 2021. This article contains a discussion of the relationship between grants and inheritance and the cancellation of grants according to laws and regulations. The research method used is normative juridical research with a statutory approach. The results of this study are the relationship between grants and inheritance in the compilation of Islamic law and customary law have in common, namely grants given by parents to children can be counted as inheritance. Whereas in the Civil Law, grants given to heirs are considered as granting inheritance in advance. In the cancellation of grants, according to the Compilation of Islamic law and KUHPer it is not allowed to cancel grants that have been given to others. However, in KHI, grants that are cancelled are only grants given by parents to their children. Whereas in civil law, a grant can be canceled if the person receiving the grant does not meet the requirements.

Second, Zulkifli ZA and Sakka Pati's ‘Juridical Review of Grant Deeds to Heirs without the Consent of Other Heirs’ (Journal of UNES Law Review Vol. 6 No.1, 2023). This article contains a discussion of the legal deed of grant deed made authentically by a notary/PPAT without the knowledge of the heirs. The research method used is normative by using statutory approach and conceptual approach. The results of this study indicate that a grant deed made authentically

to an heir without the consent of the other heirs is considered valid if there has been no court decision to cancel the grant deed. In court decision number 911/Pdt.G/2021/PA.Mks, it was stated that the defendant's exception was partially granted and partially rejected. In the main case, it was stated that the plaintiff's claims could not be accepted and charged the plaintiffs to pay court costs. PPAT is also civilly responsible for grant deeds to heirs without the knowledge of other heirs for losses received by other heirs if related to their intentions, negligence, and negligence in making grant deeds deviating from formal and material requirements.

Third, Alyatama Budify, Jelitamon Ayu Lestari Manurung, and Satria Braja Harianja, 'Cancellation of Grant Deed in Pematangsiantar District Court: Review of Decision Number 33/PDT.G/2019/PN.PMS)'. SIGn Journal of Law, Vol. 2, No. 1, 2020. This article contains a discussion of how the rights and obligations of grantors and grantees in grant cancellation and the suitability of Pematangsiantar District Court Decision No. 33/Pdt.G/2019/Pn.PMS with applicable legislation. The research method used is normative legal research. The results of this study indicate that the grantor has rights and obligations in accordance with Articles 1669, 1671, and 1672 of the Civil Law and can cancel the grant if the grantee does not fulfill the obligations specified in the grant deed or the provisions in Article 1688 of the Civil Law. The grantee's obligation in the event of grant cancellation is to return the grant object in its original state in accordance with Article 1691 of the Civil Law and accompanied by a legal decision. In the analysis of the decision of this case, the judge granted some of

the claims including the cancellation of the grant because the grantee violated one of the conditions contained in Article 1688 of the Civil Law, namely not helping the needs and caring for the grantor. The judge's decision in this case, is in accordance with the applicable laws and regulations.

Fourth, Apri Rotin Djusfi and Jumadi Winata, 'Settlement of Grant Disputes According to the Civil Law'. Journal of Law, Teuku Umar University Aceh, 2019. This article contains a discussion of how to withdraw or cancel a grant deed according to the Civil Law and dispute resolution according to civil law. This type of research is a type of normative research. The results of this study indicate that the cancellation of a grant made by the grantee to withdraw the grant that has been given can occur if there are elements referred to in the Civil Law article 1688. Where the withdrawal of the grant is one party must retain its rights and the other party is burdened to perform an obligation. Furthermore, the injured parties can claim their rights if one party does not fulfill its obligations towards the other party. In carrying out the granting process, it must be accompanied by a grant deed in accordance with Article 1682 of the Civil Law so as not to cause a grant dispute. In the event of a dispute in civil law, legal efforts can be made through litigation and non-litigation.

Table 1.

Previous Research

No.	Researcher's name	Title	Equations	Differents
1.	Rahmat Rizqy K and Mohammad Miftahus Sa'di,	"An Analysis of Hibah and its Colleration with	1. Using a statutory	1. There is a cancellation of grants according

No.	Researcher's name	Title	Equations	Differents
	(Journal of Sharia Economic Law, College of Islamic Economics, 2021)	Kewarisan and Cancellation of Hibah According to Indonesian Legislation".	research approach 2. The essence of the discussion on the cancellation of grants according to the Compilation of Islamic Law and the Civil Law.	to customary law while the author only uses the perspective of KHI and the Civil Law.
2.	Zulkifli ZA and Sakka Pati (Journal of UNES Law Review Vol. 6 No.1, 2023)	"Juridical Review of Deed of Grant to Heirs without the Consent of Other Heirs"	1. The core of the discussion is about the review of the cancellation of grants that exceed 1/3 of the grant. 2. Using normative research and a statutory approach.	1. Discusses the law of grant deeds made authentically through a notary / PPAT without the knowledge of the heirs, while the author in the subject matter is only proven by SHM.
3.	Alyatama Budify, Jelitamon Ayu Lestari Manurung, and Satria Braja Harianja (SIGn Journal of Law, Vol. 2, No. 1, 2020)	"Cancellation of Grant Deed in Pematang Siantar District Court: Review of Decision Number 33/PDT.G/2019/PN.PMS)"	1. Using normative research 2. Discusses the cancellation of grants according to the Civil Law.	1. Grant cancellation only refers to the Civil Law while the author refers to the Civil Law and KHI.
4.	Apri Rotin Djusfi and Jumadi Winata, (Journal of Legal Science, Teuku Umar University Aceh, 2019)	"Grant Dispute Resolution According to the Civil Law".	1. Discussion on the cancellation of grants according to the Civil Law 2. Using normative research with a statutory approach.	1. Discusses the settlement of civil disputes while the author does not cover the settlement of civil disputes, only focusing on the cancellation

No.	Researcher's name	Title	Equations	Differents
				of grants in civil law and KHI.

From the table above, it can be concluded that there are similarities and differences between some of these previous studies and the research conducted by the author. As in the research topic, the object used, the research method, the perspective used, and the focus of the research. So that it can be emphasized again, that in this research, the author focuses on analyzing the legal review of the judge's rejection of the heir's lawsuit regarding the cancellation of the grant and how the judge's consideration is applied in deciding the issue of grant cancellation in decision number: 2629/PDT .G/2021/ Pa Kab Malang, as well as the legal consequences arising from the cancellation of the grant.

Then the author also analyses the legal rules governing *ultra petittum* and identifies the legal consequences of *ultra petitum*. This discussion is certainly an important point as new research conducted by the author, has also not been carried out by previous researchers.

F. Research Method

1. Type of Reseacrh

This research is included in the type of normative research or literature study because this research was conducted using literature in the form of laws, books, journals, and others. According to Soerjono Soekanto, explaining normative legal research is legal research in its implementation by examining

library materials (secondary data).[15] Normative research aims to provide a juridical opinion in the event of a legal vacuum, vagueness, and conflict of norms. Normative legal research also plays a role in maintaining the critical aspects of legal science.

Peter Mahmud Marzuki explained that normative legal research is a process of looking for legal regulations, legal principles, and legal doctrines to answer the legal problems at hand.[16]

2. Research Approach

The research approach used in this research is a statutory approach (*statue approach)*, according to Peter Mahmud Marzuki this research approach is carried out by examining and analyzing all laws and regulations related to the legal issues handled.[17] Legislation is an approach that uses legislation or regulations related to the legal issues to be studied as the main basis. A normative research must certainly use a statutory research approach because what will be studied are various legal rules that are the focus as well as the central theme of a study. In this research, the legislation used by the author is the Compilation of Islamic Law (KHI) and the Civil Law (KUHPer).

3. Types of Data and Legal Materials

This research falls into the category of normative legal research that relies on library sources as its main foundation. In normative research, data and information are obtained through library references. Therefore, the term often

[15] Soerjono Soekanto, *Pengantar Penelitian Hukum,* 3rd ed. (Jakarta: Universitas Indonesia Press, 1986), 51.
[16] Peter Mahmud Marzuki, *Penelitian hukum* (Jakarta : Kencana, 2005), 35.
[17] Marzuki, *Penelitian hukum* (Jakarta 2005), 102.

used is research material, which in this case is legal material. The legal materials used in this research consist of three types, namely primary legal materials, secondary legal materials, and tertiary legal materials.[18]

a. Primary Legal Material

Primary legal materials are legal materials that are authoritative, which means that they have authority.[19] Primary legal materials consist of legislation, referring to the core information used in conducting research, which has a binding and authoritative nature in a legal context, which in this study uses decision No. 2629/PDT.g/2021/ PA.Kab. Malang, the Civil Law (KUHPer), and the Compilation of Islamic Law (KHI).

b. Secondary Legal Materials

Secondary legal materials are legal references used to provide further support and explanation of primary legal materials, namely in the form of journals, books, interviews, and articles relevant to the research topic.[20] The regulations related to this research are the Compilation of Islamic Law, the Civil Law.

c. Tertiary Legal Materials

Tertiary legal materials refer to references that provide explanations related to primary and secondary legal materials, such as large Indonesian dictionaries, online sources, and news that can be accessed through websites.[21]

---

[18] Soerjono Soekanto, *Pengantar Penelitian Hukum,* Cet. ke-3 (Universitas Indonesia, 2014), 52.
[19] Marzuki, *Penelitian hukum* (Jakarta 2005), 142.
[20] Marzuki, *Penelitian hukum* (Jakarta 2005), 141.
[21] Soerjono Soekanto, *Pengantar Penelitian Hukum,* (Universitas Indonesia, 2014).

4. Legal Material Collection

The data collection method is a method used to collect data related to research, both written and unwritten. The data collection method used in this research is a literature study, namely by collecting legal materials in the form of laws and regulations, judges' decisions, law books, and previous research that has relevance to the research topic.

5. Analysis of Materials

The data processing section explains the procedures for processing and analysing legal materials, in accordance with the approach used. Data management is usually carried out through stages: data checking (editing), classification (classifying), verification (verifying), analysis (analysing) and making conclusions (concluding).

G. Research Systematisation

In writing this research, the author divides it into 5 sub-sections using the following systematics:

Chapter I Introduction

This thesis begins with an introduction to the background of the problems raised by the author, problem formulation, research objectives, theoretical framework, research methods, and writing systematics that serve to provide an overview of the research to be carried out.

Chapter II Literatur Review

This section contains presentations related to previous research related to research in order to compare the author's research with previous research. As

well as presenting the theoretical foundation which contains an overview that discusses grants and their cancellation, heirs, and disputes.

Chapter III Result And Discussion

This section contains an explanation of the results of the research conducted by the author, including how the land grant dispute case and the consideration of the religious court judge in resolving case number: 2629/PDT .G/2021/ Pa Kab Malang. Then how the law of grant cancellation is reviewed from the Compilation of Islamic Law (KHI) and the Civil Law (KUHPer).

Chapter IV Closing

The closing section contains conclusions from the results of research conducted by the author. There are also suggestions that contain academic recommendations for institutions and researchers themselves as well as future research.

CHAPTER II

LITERATUR REVIEW

A. Grant

The word hibah comes from Arabic and has been adopted into the Indonesian language. This word is masdar from wahaba-yahibu-hibatan which means giving or giving. Etymologically, hibah means passing or channelling from the hand of the giver to the hand of the given. In the Big Indonesian Dictionary (KBBI) grant means transferring the right to something to another person.[22] According to the Dictionary of Quranic Sciences, a grant is a gift to someone during his lifetime, with no expectation of return or a bond either verbally or in writing.[23]

The legal basis for grants in the Al-Quran surah Al-Baqarah verse 177:

لَيْسَ الْبِرَّ اَنْ تُوَلُّوْا وُجُوْهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلٰكِنَّ الْبِرَّ مَنْ اٰمَنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ وَالْمَلٰۤىِٕكَةِ وَالْكِتٰبِ وَالنَّبِيّٖنَۚ وَاٰتَى الْمَالَ عَلٰى حُبِّهٖ ذَوِى الْقُرْبٰى وَالْيَتٰمٰى وَالْمَسٰكِيْنَ وَابْنَ السَّبِيْلِۙ وَالسَّاۤىِٕلِيْنَ وَفِى الرِّقَابِۚ وَاَقَامَ الصَّلٰوةَ وَاٰتَى الزَّكٰوةَۚ وَالْمُوْفُوْنَ بِعَهْدِهِمْ اِذَا عٰهَدُوْاۚ وَالصّٰبِرِيْنَ فِى الْبَأْسَاۤءِ وَالضَّرَّاۤءِ وَحِيْنَ الْبَأْسِۗ اُولٰۤىِٕكَ الَّذِيْنَ صَدَقُوْاۗ وَاُولٰۤىِٕكَ هُمُ الْمُتَّقُوْنَ

Meaning: *"Righteousness is not in turning your faces towards the east or the west. Rather, the righteous are those who believe in Allah, the Last Day, the angels, the Books, and the prophets; who give charity out of their cherished wealth to relatives, orphans, the poor, ˹needy˺ travellers, beggars, and for freeing captives; who establish prayer, pay alms-tax, and keep the pledges they*

[22] "Hasil Pencarian - KBBI VI Daring," accessed February 24, 2024, https://kbbi.kemdikbud.go.id/entri/hibah.
[23] Ahsin W. Al-Hafidz, *Kamus Ilmu Al-Quran* (Jakarta: Amzah, 2006), 99.

make; and who are patient in times of suffering, adversity, and in ˹the heat of˺ battle. It is they who are true ˹in faith˺, and it is they who are mindful ˹of Allah˺."[24]

The opinions of the four imams of the madhhab regarding the definition of grants, namely according to the Hanafi madhhab, a grant is giving the right to own an object without the condition that it must be compensated, the grant is made when the grantor is still alive. According to the Maliki school of thought, a grant is the same as a gift. Depending on the intention of the grantor, if the grantor intends to solely expect the pleasure of Allah and His reward, the Maliki school defines grants and gifts as similar, namely giving ownership of goods without compensation to the person being given. According to the Hambali madhab, a grant is defined as giving ownership of a known asset, something that can be handed over, the law is not obligatory and is done while still alive. According to the Shafi'i madhhab, there are differences regarding the definition of hibah and sadaqah.[25] If the gift is intended for the sake of kindness, not out of love, the intention is to honor and not to gain the pleasure of Allah, get His reward, and be accompanied by ijab qabul then the gift is called hibah. Meanwhile, if the gift is given with the intention of obtaining the pleasure of Allah and obtaining His reward without being accompanied by ijab qabul then it is called sadaqah.

[24] Mushaf Al-Maqbul Al-Qur'an Dan Terjemahannya, 1st ed. (Bandung: Cahaya Kreativa Utama, 2018), 27.
[25] Ajib, *Fiqih Hibah Dan Waris*, (Jakarta: Rumah Fiqih Publishing, 2019), 10.

In the Civil Law Article 1666 states that: “grant is an agreement by which the grantor during his lifetime freely and irrevocably, surrenders an object for the needs of the grantee who accepts the submission.[26] According to the Compilation of Islamic Law Article 171 letter g, a grant is a gift of an object voluntarily and without reward from a person to another person who is still alive to be owned..[27]

A grant occurs because there is a giver, a receiver, and an item that is granted. Each of these values has the following conditions:

a. Shigat hibah, are the words spoken by someone when making a grant process.[28] Because a grant is a kind of contract, the shigat of the grant consists of ijab and qabul. Ijab is the words spoken by the grantor, while qabul is spoken by the person receiving the grant. Maliki and Shafi'i are of the opinion that every grant must have ijab and qabul, and a grant is not valid without both types of grant shigat..
b. The grantor is the legal owner of the donated goods who at the time of the granting is in good health, both physically and mentally. The item that is granted is an item that is owned by the grantor. Therefore, Islamic law regulates the requirements for the grantor and the goods granted as follows:

[26] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (PT Pradnya Paramita 2014), 94.
[27] Mahkamah Agung RI*, Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, (Mahkamah Agung RI, 2011) 107.
[28] Kamaruddin, *“Hukum Hibah Dan Permasalahannya,”* Al-’Adl 1, no. 1 (2008):3

1) The grantor must be the owner of the item being granted. This means that it is not valid if something that is granted is not the perfect property of the grantor.
2) The grantor is not in a condition of being restricted in his/her authority due to a cause that makes his/her authority restricted.
3) He must have reached the age of puberty, because a child is not yet eligible to do the specified grant contract.[29]
4) The item that is granted already exists in the real sense when the granting process is carried out. It is not valid to give something that does not exist.
5) The object of the gift must be one that is permitted by religion. It is not permissible to give something that cannot be possessed, such as giving a drink that is intoxicating.
6) The property that is donated must be clearly separated from the grantor's property..[30]

   As for the pillars that must be fulfilled during the granting process, according to the majority of scholars, there are four pillars of grants, namely:[31]

   a) Wahib (the grantor)
   b) Mauhub lahu (the grantee)
   c) Mauhub (the item to be donated)

[29] Abdul Rahman Ghazaly, Ghufron Ihsan, and Sapiudin Shidiq, "*Fiqih Muamalat*", 1st ed. (Jakarta: Kencana Prenada Media Group, 2010), 160.
[30] Syaikh Sulaiman Ahmad Yahya Al-Faifi, *Ringkasan Fikih Sunnah Sayyid Sabiq*, 1st ed. (Jakarta: Pustaka Al-Kautsar, 2013), 939.
[31] Syafe'i, *Fiqih Muamalah*, (Bandung : CV Pustaka Setia, 2001) 244.

d) Shigat (contract)

Cancellation of grants according to Article 212 of the Compilation of Islamic Law states that grants cannot be withdrawn, except for grants from parents to children.[32] Cancellation or withdrawal of a gift (hibah) is a prohibited act even if the grant is made between two brothers or husband and wife. The only grants that may be withdrawn are grants made or given by parents to their children.

The prohibition of taking back a grant that has been given is explained in the hadith below:

وَعَنْ اِبْنِ عَبَّاسٍ رَضِيَ اَللَّهُ عَنْهُمَا قَالَ : قَالَ اَلنَّبِيُّ صلى الله عليه وسلم (اَلْعَائِدُ فِي هِبَتِهِ كَالْكَلْبِ يَقِيءُ، ثُمَّ يَعُودُ فِي قَيْئِهِ) مُتَّفَقٌ عَلَيْهِ

From Ibn Abbas R.A that the Prophet said: *"The one who withdraws his gift is like a dog who vomits and then licks up his vomit." (Mutafaqun Alaih)*[33]

From the hadith above, in Islam it is not allowed to withdraw grants that have been given to others, except for parents who withdraw grants given to their children. In the Civil Law, the discussion of grants is contained in articles 1666 to 1693. Meanwhile, the discussion regarding the withdrawal and cancellation of grants has been contained in Article 1688 of the Civil Law. The article

[32] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, (Mahkamah Agung RI 2011)117.
[33] Muhammad Fuad Abdul Baqi, *Al-Lu'lu' Wal Marjan*, 2 (Dar Al-Fikri, n.d.), 161.

explains that grants cannot be revoked and canceled, except in three cases, namely:

1. If the conditions of the grant are not fulfilled by the grantee. The purpose of paragraph (1) is that in making a grant there are conditions that must be carried out by the grantee with what has been regulated by law. For example, if the grantee does not exist when the grant is made, then the grant can be canceled.
2. If the grantee is guilty of committing or participating in an attempt to commit murder or any other crime against the grantor. The purpose of this paragraph is that a grant can be canceled by the grantor if the grantee has committed acts that can threaten the life and safety of the grantor.
3. If the grantor falls into poverty, and the grantee refuses to provide maintenance to the grantor. The meaning of this verse is that a grant can be canceled by the grantor if the grantee refuses to provide maintenance assistance to the grantor, when the grantor has fallen poor or declined economically. Although actually giving maintenance to the grantor is not mandatory in a grant, but it is a form of humanity.

There are several things that can cause the invalidation or cancellation of grants in the Civil Law, namely:

1. Article 1682 of the Civil Law explains that grants of immovable property such as land and buildings must be made by an authentic deed. An authentic deed is an important document that has legal force for the granting of goods or land to others. If the land granted is in the form of certified land, then the

grant is made in front of a Land Deed Official (PPAT) in the area where the land is located. [34]

2. Article 1667 paragraph 2 regarding grants can only be made to goods whose existence exists when the grant occurs.[35] The grant must be clear and visible to the grantee, but if the item to be granted does not yet exist, it means that the item cannot be seen, and items that cannot be seen are considered wishful thinking.
3. Article 1668 which discusses the grantor may not promise that he retains the power to exercise his right to the goods granted, such grants just regarding the goods are considered invalid.[36]
4. Article 1670 describes grants that make a condition that the grantee will pay off debts or other expenses in addition to what is stated in the deed of grant or in the list of attachments.[37]
5. Article 914, regulates the absolute share for heirs in a straight line down. If the testator leaves one legitimate child, they are entitled to half of the total inheritance, but if the testator leaves two legitimate children, each of them is entitled to 2/3

In addition, KHI article 210 explains that the granting of grants cannot exceed 1/3 of the grantor's total assets.[38] Grants that exceed the predetermined

[34] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*,(PT Pradnya Paramita 2014) 308.
[35] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, 306.
[36] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, 306.
[37] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* 306 .
[38] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya,* 116.

maximum limit are considered unfair and can be canceled because they interfere with the absolute rights of the heirs. This can lead to conflicts between the grantee and the heirs of the grantee caused by gifts that exceed the level and without the consent of the heirs. As in Article 213 KHI, it is stated that "grants given when the grantor is in an illness that is close to death, then the approval of the heirs must be obtained".[39]

This provision is strengthened by Article 726 of the Compilation of Sharia Economic Law which explains the same thing if someone gives a grant to one of his heirs when that person is sick and then dies, the grant is not valid unless there is consent from the other heirs.[40] However, if the bequest is made to someone other than the heirs and the bequest does not exceed one-third of the estate, then the bequest is valid. But if the grant exceeds one-third and the heirs do not agree to the grant, the grant is still valid, for one-third of the entire estate and the person given the grant must return the excess of one-third of the property. By referring to these provisions, it can be concluded that the granting of grants to grantees requires the consent of the heirs so that there is no cancellation at a later date.

B. Land Dispute

A dispute is a situation in which there is a dispute between parties with different interests, the resolution of which can be pursued through the court or outside the court. Land rights disputes can arise due to a lawsuit from a person

[39] Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, (Mahkamah Agung RI, 2011)117.

[40] Mahkamah Agung RI, *Kompilasi Hukum Ekonomi Syariah*, (Mahkamah Agung RI, 2011), 204.

or legal entity that contains legal claims due to legal actions that have harmed the land rights of the plaintiff.[41]

Land dispute cases are divided into several types of disputes, conflicts, or land cases submitted or complained about and handled by the national land agency. The outline is grouped into :[42]

a. Land tenure without rights, namely differences in perceptions of values or opinions, interests regarding the status of control over certain land that is not or has not been attached to rights (state land) or has been attached by certain parties.
b. Boundary disputes, namely differences in perceptions, values, or opinions, value of interests regarding the location, boundaries, and area of land parcels recognized by one party that have been determined by the national land agency or in the process of boundary determination.
c. Inheritance disputes, namely differences in perceptions, values or opinions, interests regarding the status of control over certain land originating from inheritance.
d. Multiple sales, namely, differences in perceptions, values or opinions, interests regarding the status of control over certain land obtained from buying and selling to more than one person.

[41] Elza Syarief, *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan* (Jakarta: Kepustakaan Populer Gramedia, 2012), 50.
[42] "*Jenis-Jenis Sengketa Pertanahan* - Pengacara Kasus Sengketa Tanah," accessed October 3, 2024, https://kantorpengacara-ram.com/jenis-jenis-sengketa-pertanahan/.

e. Multiple certificates, namely, differences in perceptions, values or opinions of interests regarding a particular land plot that has more than one land title certificate.
f. False sale and purchase deed, namely differences in perception, value, or opinion of interests regarding a certain land parcel due to the existence of a false sale and purchase deed.
g. Overlapping, differences in perceptions, values, or opinions of interests regarding a particular land parcel due to overlapping land ownership boundaries.
h. Court decisions, namely differences in perceptions, values, or opinions, interests regarding decisions of judicial bodies relating to the subject or object of land rights or regarding the procedures for issuing land rights.

C. Heirs

The law of inheritance or inheritance comes from Arabic warisa yarisu is a law that regulates the transfer of ownership rights of inherited property from the person who inherits to the heirs.[43] In the book of fiqh, the science of inheritance is also called fara'idh science. In the science of inheritance there are several terms, namely, muwarits (people who inherit), tirkah (goods left behind), and heirs (people who receive inheritance)..[44]

In language, heir means family. Whereas in terms of heirs are people who receive or have inheritance rights from the estate. In the KBBI, heirs are defined

[43] Ajib, *Fiqih Hibah Dan Waris*, (Jakarta Rumah Fiqih Publishing, 2019) 31.
[44] Saifullah Basri, "*Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam,*" Jurnal Kepastian Hukum dan Keadilan 1, no. 2 (July 12, 2020): 40, https://doi.org/10.32502/khdk.v1i2.2591.

as people who are entitled to receive inheritance.[45] In the Compilation of Islamic Law, heirs are defined as people who at the time of death have a blood relationship or marital relationship with the testator, are Muslims and are not prevented by law from becoming heirs.[46] Meanwhile, in the Civil Law, heirs are blood relatives both legal according to the law and outside of marriage and husband and wife. From the above understanding, it can be concluded that the heirs are people who are entitled to get the property left by the testator with family and marriage ties.

The groups of heirs contained in KHI Article 174.[47] The group consists of blood relations and marital relations. There are 2 groups in blood relations, namely groups based on gender, male groups comprised of fathers, sons, brothers, uncles, and grandfathers. While the female group consists of mothers, daughters, and grandmother's sisters. Heirs from marital relations consist of widows and widowers. The division of inheritance in the compilation of Islamic law in articles 176 to 182 stipulates that there are 6 parts, namely ½, ⅓, ⅔, ¼, ⅙, and ⅛.

Whereas in the Civil Law there are 4 classes of heirs, namely:

1) Group I, which is the family in a straight line downward consisting of husband or wife and children.[48]

---

[45] "Hasil Pencarian - KBBI VI Daring," accessed February 24, 2024, https://kbbi.kemdikbud.go.id/entri/ahli%20waris.
[46] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, (Mahkamah Agung RI, 2011)107.
[47] Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, (Mahkamah Agung RI, 2011) 108.
[48] Maman Suparman, *Hukum Waris Perdata*, 1st ed. (Jakarta: Sinar Grafika, 2015), 26.

2) Group II, namely the family in a straight line up consisting of parents and siblings of the heir, in accordance with articles 854, 857, and 856.[49]
3) Group III, namely the family in a straight line up after the father and mother of the heir.
4) Group IV, uncles and aunts heirs both on the father's and mother's side, descendants of uncles and aunts, saidara grandparents and grandmothers and their descendants.

The division of inheritance according to civil law by prioritizing the top group, if the heirs in the first group do not exist, the inheritance will be given to the second group, and so on.

[49] Suparman *Hukum Waris Perdata*, (Jakarta: Sinar Grafika) 30.

CHAPTER III

GRANT CANCELLATION FROM THE PERSPECTIVE OF KHI AND KUHPER

A. Grant Cancellation in Indonesia (KHI and KUHPer)

The legal arrangements for grants in Indonesia are contained in the Compilation of Islamic Law (KHI) and the Civil Law (KUHPerdata) where in practice the KHI rules are used in the Religious Courts, while the KUHPerdata is used in the District Court. The rules of grants in Indonesia according to Islamic law are regulated in the KHI second book on inheritance law precisely in chapter VI regarding grants, from article 210 to article 214 KHI. As for the rules of grant law according to civil law which is intended for non-Muslim communities, it is regulated in the Civil Law (KUHPerdata), which can be seen in the third book on engagement, chapter X regarding grants, starting in article 1666 to article 1693 of the Civil Law (KUHPerdata). [50]

The Compilation of Islamic Law (KHI) is a reference for Muslims in civil law in Indonesia. Article 210 paragraph 1 states that the person who grants must be at least 21 years old, of sound mind, without coercion, and the property granted is at most ⅓ of his total property to other people or institutions in the presence of two witnesses and the property granted is the right of the grantee (KHI article 210). If what is granted is more than ⅓ of the grantor's property, then the grant can be canceled because it does not meet the conditions of the grant.

[50] Rizqi Saniyyah Putri and Ahmad Sholikhin Ruslie, *"Penarikan Kembali Harta Hibah Sebagai Harta Waris Menurut Khi Dan Kuhperdata*," Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance 3, no. 2 (January 20, 2023),

Furthermore, Article 210 paragraph 2 states "that the property that is granted must be the right of the grantor". In this article, what is meant is that the grantor must be the legal owner of the donated item. [51]

Article 211 explains that grants given by parents to their children can be taken into account as inheritance. Grants can be given to anyone regardless of race and ethnicity. If the heirs do not question the grant that has been given, then the inheritance that has not been granted can be distributed to the heirs according to their respective portions. But if there are some heirs who question the grants that have been given to other heirs, then the grant can be calculated as an inheritance. By calculating the grant that has been received with the portion of the inheritance that should be received. Article 212 states that grants cannot be withdrawn except for grants from parents to their children. This is considering the services of parents to their children.

Civil law is an individual law that regulates the rights and obligations of individuals between one another in family relationships and community relations. In the Civil Law, the discussion of grants is contained in Articles 1666 to 1693. Meanwhile, the discussion regarding the withdrawal and cancellation of grants has been contained in Article 1688 of the Civil Law.[52] The article explains that grants cannot be revoked and canceled, except in three cases, namely:

---

[51] Mahkamah Agung RII, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya* (Mahkamah Agung RI, 2011) 117 .

[52] Ahmad Muzayyin, Mawardi Mawardi, dan Syarifuddin Syarifuddin, *"Pembatalan Hibah Perspektif Hukum Islam Dan Kuhper Di Desa Kedungdowo Kecamatan Arjasa Situbondo,*" Al-Hukmi : Jurnal Hukum Ekonomi Syariah Dan Keluarga Islam 3, no. 2 (November 10, 2022),

1. If the conditions of the grant are not fulfilled by the grantee. The purpose of paragraph (1) is that in making a grant there are conditions that must be carried out by the grantee with what has been regulated by law. For example, if the grantee does not exist when the grant is made, then the grant can be canceled.
2. If the person to whom the grant is made is guilty of committing or participating in an attempt to commit murder or any other crime against the grantor. The purpose of this paragraph is that a grant can be canceled by the grantor if the grantee has committed acts that can threaten the life and safety of the grantor.
3. If the grantor falls into poverty, and the grantee refuses to provide maintenance to the grantor. The meaning of this verse is that a grant can be canceled by the grantor if the grantee refuses to provide maintenance assistance to the grantor, when the grantor has fallen poor or declined economically. Although actually giving maintenance to the grantor is not mandatory in a grant, but it is a form of humanity.

Furthermore, Article 1682 explains that grants of immovable property such as land and buildings must be made by an authentic deed. An authentic deed is an important document that has legal force for the granting of goods or land to others. If the land granted is in the form of certified land, then the grant is made in front of a Land Deed Official (PPAT) in the area where the land is located. Article 1667 paragraph 2 states that the grant is made when the goods

or the form of the goods granted exist and are not mere wishful thinking.[53] Article 1668 which discusses the grantor may not promise that he remains empowered to use his right to use the goods granted, such grants just regarding the goods are considered invalid. Article 1670 explains about grants that make conditions that the grantee will pay off debts or other expenses in addition to what is stated in the deed of the grant or the list of attachments.

B. Sitting of the Case (No. 2629/PDT.G.2021.Pa Kab Malang)

Understanding the reasons why the Panel of Religious Judges rejected the plaintiff's claim in its entirety, it is necessary to first examine the case or case chronology reflected in decision number 2629/PDT.G/2021/PA. Malang District. On April 19, 2021, where the plaintiffs filed a lawsuit which was then registered at the Registrar of the Malang Regency Religious Court on April 21, 2021. In the lawsuit, the plaintiffs presented the main arguments that formed the basis of their request. The plaintiffs are the successor heirs of the inheritance owned by a husband and wife named P. Pyah and Siti Maimunah, before marriage Siti Maimunah was a widow with one child named Siti Rohmah. Over time Siti Rohmah married someone named Sawawi, then had a child named Tuki alias H. Bisri and Fatimah, while P. Pyah and Siti Maimunah were blessed with 1 (one) only child named Yusuf who was the only heir. Furthermore, on August 28, 1970, Siti Maimunah passed away first, while on May 04, 2005, P. Pyah passed away.

[53] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (PT Pradnya Paramita, 2014) 307.

As time passed, Yusuf grew older and married a woman named Mutmainah and had 5 (five) children, namely the Plaintiffs and co-Defendant IV. Yusuf during his lifetime lived in the house now occupied by Plaintiff IV until his death on December 24, 2018, while his wife died on August 25, 2014. During his lifetime P. Pyah owned a piece of paddy field land in Village Letter C Book No.660 Parcel No.30, Class SII, with an area of 3180 M2 with the following boundaries :

Northside: Land owned by H. Saroni

West Side: Land owned by H. Sodik / HJ. Marsini

South Side: Land of H. Rus and public road

East: Land owned by H. Matasik is now a disputed land.

In 1960 P. Pyah told H. Bisri to work on the disputed land so that he could take care of it and collect the results, but not to own it. After P.Pyah died, Yusuf began to ask about the disputed land that H.Bisri was working on, but at that time H. Bisri did not want to give up the land because he still needed it for his daily needs, so Yusuf did not ask again.

In 2017 Yusuf fell ill and needed a lot of money and then asked again about the disputed land that was cultivated by H. Bisri with the need for medical expenses, but was rejected by H. Bisri. As a result of this rejection, Yusuf reminded H. Bisri firmly that the land he was working on had been very long. After asking about the disputed land, Yusuf went home empty-handed. In mid-2017, Yusuf sought information and checked the condition of the land at the Putat Lor Village Office, and the village office gave an excerpt from the village Letter

C book. Looking at the quotation, Yusuf was informed that the land had changed ownership in the village letter c book no. 660 Persil no.30, class SII, area 31820 M2. With information: Grant to Siti Maimunah Binti H. Bisri, address Putat Lor Village, Gondanglegi Subdistrict, Malang District, 31820 M2, in 1980. Seeing this information, Yusuf was unwilling because as the only child of P.Pyah, he was not informed at all by either his father or the village officials, who did it secretly and granted the entire land.

Since the dispute H. Bisri has been sickly, often leaving the hospital because he made grants that violated the rule of law through his step-grandfather P.Pyah. In 2018 Yusuf passed away, before passing away Yusuf gathered his children and told the chronology of the origin of the land ownership, and Yusuf gave a message to his children that must be carried out by his heirs, namely the Plaintiffs and co-defendant IV that Yusuf was not willing and pleased if the disputed land was only owned by the Defendant without the knowledge and without the permission of Yusuf as the only heir, and filed a lawsuit at the Malang Regency Religious Court. In order to fulfill this mandate, the Plaintiffs as the children of Yusuf filed a lawsuit for inheritance to the Malang District Religious Court. Then co-Defendant IV who is also an heir was not willing to participate in filing a lawsuit because of his close relationship with the Defendant.

Before this case was filed with the Religious Court of Malang District H.Bisri passed away, so he was not sued in this case. The Plaintiffs were further surprised to learn that the land had now been granted to his son (Co-Defendant I) and sold to another party (Co-Defendant II), without the involvement,

permission, and knowledge of the Plaintiffs. This proves that the granting and sale of the disputed land was detrimental to the rights of the Plaintiffs.

C. Judges' Consideration of (Decision No. 2629/PDT.G/2021/PA. Kab Malang)

The Panel of Religious Judges considered the lawsuit filed by the Plaintiffs, namely, considering that the subject matter of the lawsuit in the case a quo is an inheritance lawsuit. So the basis of the argument of the lawsuit (*fundamentum petendi*), the scope must include the existence of the heir, the existence of heirs, and the inheritance. As stipulated in Article 49 paragraph (3) of law No. 7 of 1989 concerning religious courts and the second amendment to law No. 50 of 2009 which is then outlined in the lawsuit (*petitum*). This is considered to have been fulfilled because the *fundamentum petendi* of the lawsuit has described the existence of an inheritance event, but it is also argued in the basis of the argument of the lawsuit about the existence of a grant event against the inheritance which is the object of the dispute so that this, when associated with the subject matter of the case, is seen between the two as incompatible (not supporting). In addition, the panel of judges considered that in the lawsuit the Plaintiffs also requested that the court cancel the implementation of the grant of the disputed object which had been carried out on 1980.

These demands when related to the subject matter of the case, the panel of judges considered that they could fulfill the principle of *ultra petitum*, namely, demands exceeding what is the basis of the subject matter of the case. In addition, the judge considered posita number 14 and number 22 which were

considered contradictory because, on the one hand, it was argued that the grant on the disputed object was made by H. Bisri through the heir, namely P.Pyah, but on the other hand, it was also argued that the grant on the disputed object was made by (H. Bisri to his daughter Siti b. H. Bisri) Furthermore, in posita number 3 the panel of judges considered that the *petitum* of the lawsuit did not support each other because Yusuf who was argued to be the only child was not asked to be determined as the heir of the heir in the case a quo. Based on these considerations, the panel of judges thought that the Plaintiffs' lawsuit must be declared formally defective and unacceptable (*niet ontvankelijk verklaard*).

D. Legal Effects of Grant Cancellation in Indonesia (Decision No. 2629/PDT.G/2021/PA. Kab Malang) (KHI, KUHPER, JUDGMENT)

Legal consequences are consequences that arise because of an action, by applicable rules. For example, an agreement between two parties who are legally capable can give birth to an agreement. Legal consequences can also occur due to a lawsuit to cancel a legal act, for example, a lawsuit to cancel a grant, which will have legal consequences on the grant property.[54] The legal consequences of grant assets requested for annulment in a court with a lawsuit to annul the grant object that exceeds the provisions, the ownership of the property will return to the owner or heirs of the property or remain in the control of the grantee depending on the judge's ruling by considering the statements of the parties to the dispute, witnesses, and evidence submitted by the party.

[54] Israviza Notaria, *"Akibat Hukum Pembatalan Akta Hibah Yang Objeknya Harta Warisan Yang Belum Dibagi Kepada Ahli Waris Dan Melebihi Legitieme Portie Berdasarkan Putusan Mahkamah Agung Nomor 2954 K/Pdt/2017,*" Indonesian Notary 2, no. 3 (September 30, 2020), diakses 22 September 2024 https://scholarhub.ui.ac.id/notary/vol2/iss3/17.

The legal consequences of canceling the grant decided by the judge in (Decision No. 2629/PDT.G/2021/PA. Kab Malang) are unacceptable (*Niet Ontvankelijke Verklaard*) and result in losses suffered by the plaintiff. The verdict delivered by the judge stated that the cancellation of the grant from the plaintiff was unacceptable and legally valid based on Article 178 Paragraph (3) *Het Herzien Indonesich Reglement* (HIR) which reads "Judges are prohibited from making decisions on cases that are not demanded, or giving more than what is demanded".[55]

From the point of view of the rules in the Compilation of Islamic Law (KHI) and the Civil Law (KUHPerdata), the cancellation of the grant submitted by the Plaintiff in his lawsuit (Decision No. 2629/PDT.G/2021/PA. Kab Malang) is valid, because in the Compilation of Islamic Law (KHI) in article 171 letter c it is stated that the heir is a person who at the time of death has a blood relationship or marital relationship with the testator, is Muslim and is not prevented by law from becoming an heir. Furthermore, Article 210 paragraph (1) of the Compilation of Islamic Law (KHI) explains that the person who grants must be at least 21 years old, of sound mind, without coercion, and the property granted is as much as ⅓ of the entire property to other people or institutions in

[55] JDIH Mahkamah Agung RI, *"Herzien Inlandsch Reglement (H.I.R) Reglemen Indonesia Yang Diperbaharui (R.I.B.)* diakses September 22, 2024 (85) ,https://jdih.mahkamahagung.go.id/legal-product/herzien-inlandsch-reglement-hir/detail .

the presence of two witnesses and the property granted is the right of the grantee.[56]

Meanwhile, the rules of the Civil Law (KUHPerdata) in article 1688 explain that grants cannot be revoked and canceled, except in three cases, namely: 1. If the conditions of the grant are not fulfilled by the grantee, one of which is article 914 which discusses the legitimie portie regarding the absolute share for the heirs in a straight line down. If the testator leaves one legitimate child, they are entitled to half of the total inheritance, but if the testator leaves two legitimate children, each of them is entitled to 2/3; 2. If the grantee is guilty of committing or participating in an attempt to commit murder or another crime against the grantee; 3. If the grantor falls into poverty, while the grantee refuses to provide maintenance to the grantor.

Based on the explanation above, it can be seen that the lawsuit related to the annulment of the grant from the perspective of the Compilation of Islamic Law (KHI) and the Civil Law (KUHPer) is valid because many rules and conditions when the grant cannot be fulfilled. However, during the court process, it can be seen that the lawsuit cannot be accepted by the Panel of Judges, because in the contents of the lawsuit, there is an *ultra petitum* that causes the lawsuit to be formally defective so that the judge cannot accept the lawsuit.

---

[56] Mahkamah Agung RI, *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya* (Mahkamah Agung RI, 2011) 116.

E. Factors of *Ultra petitum* in the Decision (No. 2629/PDT.G.2021.Pa Kab Malang)

Ultra petitum petitum is a legal term consisting of two syllables, namely ultra and *petitum*. The word ultra has the meaning of very, extreme, and excessive, while the word *petitum* has the meaning of request, demand, or lawsuit (letter of claim), which begins with the use of arguments and ends with a demand (*petitum*). *Ultra petitum* can be defined as the action of a judge who imposes a verdict that not only covers what is requested in the petition but also exceeds that limit.[57] This is regulated in article 178 paragraphs (2) and (3) of the Het Herzeine Indonesisch Reglement (HIR) and article 189 paragraphs (2) and (3) of the Rechtsreglement Voor Buitenegewesten (RBG) which reads "it is not permitted to give a verdict on a case that is not sued or give more than is sued". According to Yahya Harahap, judges who grant demands that exceed the posita and *petitum* of the lawsuit are considered to have exceeded their authority or ultra vires, namely acting beyond their authority.[58] If the verdict contains *ultra petitum* partium, then the verdict must be declared defective even though it was made by the judge in good faith or in accordance with the public interest.

The principle of ultra petita is closely related to the principle that the judge may not give a decision beyond the request of the plaintiff, in accordance with the principle of ne eat iudex ultra petita partium (no judge may decide more

[57] Muh Zulfikar Rais Barliansyah, *"Interpretasi Majelis Hakim Pengadilan Agama Klaten Atas Asas Ultra petitum Partium,"* Jurnal Impresi Indonesia 2, no. 3 (March 23, 2023): 253,
[58] Asri Sarif, *"Akibat Hukum Penyimpangan Asas Ultra petitum Partium Dalam Putusan Akta Perdamaian,"* Lakidende Law Review 1, no. 3 (December 18, 2022)

than requested by the party).[59] The factors that cause ultra petita are as follows: The principle of ex Aequo et bono Judges can impose ultra petita decisions in civil cases based on the principle of ultra, namely deciding based on justice and compliance. Judges can consider matters beyond what the plaintiff requests to achieve substantive justice.

The obscure lawsuit (*obscuur libel*) If the judge considers the plaintiff's lawsuit to be vague or unclear, he or she can interpret what the plaintiff demands. This can potentially lead to an ultra petita decision The judge's desire to achieve substantial justice sometimes encourages the judge to decide more than what the plaintiff has requested. The judge assumes that an ultra petita decision is necessary to resolve the dispute fairly. However, the prohibition of ultra petita decisions is still regulated in civil procedural law (Article 178 paragraphs (2) and (3) HIR / Article 189 paragraphs (2) and (3) RBg). So that ultra petita decisions can still be canceled by higher courts if they are deemed to violate these provisions.[60] As for the lawsuit on the subject matter (NO. 2629/PDT.G.2021.Pa Kab Malang), the judge considered that the plaintiff's demands related to the cancellation of the grant exceeded the basis of the subject matter, including *ultra petitum* and obscure lawsuit (*obscuur libel*). The *ultra petitum* referred to in the plaintiff's claim states that the plaintiffs and co-defendant IV are heirs of the late Yusuf who are still alive and entitled and have not received a share of the inheritance of the disputed land. Furthermore, the

[59] Kertha Wicaksan,*"Asas-Asas Hukum Dalam Sistem Hukum* | accessed September 23, 2024, https://www.ejournal.warmadewa.ac.id/index.php/kertawicaksana/article/view/721.
[60] Anita Afriana et al., *"Batasan Asas Hakim Pasif Dan Aktif Pada Peradilan Perdata,"* Jurnal Bina Mulia Hukum 7, no. 1 (September 30, 2022):147 .

plaintiffs stated that the grant exceeding ⅓ of P. Pyah's property or even the entire grant from P. Pyah to Siti bin Bisri violated the legitieme portie of the heirs, therefore the grant was legally defective, null, and void, and had no binding legal force.

As a result, the grant was defective, null, and void, and had no binding legal force on the grant from P. Pyah to the defendant in 1980 of the disputed land. Then in his claim, the plaintiff stated that the sale and purchase of the disputed land by co-defendant I to co-defendant II was null and void and legally binding and that the sale and purchase did not take place in good faith. Furthermore, the judge also considered the existence of an obscure lawsuit (*obscuur libel*) in the lawsuit (NO. 2629/PDT.G.2021.Pa Kab Malang) filed by the plaintiff. That between the statements of claim number 14 and number 22 is considered conflicting or not mutually supportive because on the one hand, it is argued that the grant of the disputed object was made by H. Bisri through the heir, namely P.Pyah, but on the other hand it is also argued that the disputed object was made by (H. Bisri to his daughter Siti b. H. Bisri) through the heir, namely P.Pyah In a case like this, the Panel of Judges of the Malang Regency Religious Court decided not to accept the plaintiffs' lawsuit, because if the Panel made an ultra petita decision. The judge adheres to the procedural law in article 178 paragraph 3 HIR and 189 paragraph 3 RBG which states that "the judge

may not grant what is not demanded and grant more than is demanded by the plaintiff or applicant" .[61] If a judge does this in a trial, it is an ultra vires power.

Judging from the lawsuit in (NO. 2629/PDT.G/2021.Pa Kab Malang) the judge considered that the subject matter of the lawsuit was an inheritance case, so the basis for the argument of the lawsuit was inheritance. The scope includes the heir, the heirs, and the existence of inheritance property. This is considered by the judge to have fulfilled the lawsuit, but it is also argued in the basis of the lawsuit about the existence of a grant event against the inherited property which is the object of dispute along with canceling the 1980 grant against the disputed object land, and canceling the sale and purchase made by defendant I to co-defendant II against the disputed object land. So that if this is related to the subject matter of the case, the Panel of Judges considers that it is inconsistent (not mutually supportive) and fulfills the principle of *ultra petitum* (demands that exceed what is the basis of the subject matter). Based on the above assessments, the panel of judges decided that the plaintiffs' lawsuit must be declared formally defective and must also be declared unacceptable (*niet ontvankelijk verklaard*). The impact of the judge's decision was that the plaintiff's claim was not accepted and had to pay court costs of Rp. 1,635,000 (one million six hundred thirty-five thousand rupiah).

In the context of Indonesian civil law, the annulment of grants by heirs often faces obstacles in the form of formal defects or ultra petita claims. For

[61] Rian Saputra, Pergeseran Prinsip, and Hakim Fasif, *" Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif"* Wacana Hukum: Jurnal Fakultas Hukum Universitas Slamet Riyadi 25 (May 19, 2019): 17.

example, in decision number 1175/Pdt.G/2024/PA.Lmj.[62] The lawsuit for the annulment of a grant cannot be accepted because the lawsuit contains a formal defect, namely in the lawsuit there is a lack of clarity in the subject matter of the lawsuit, which when the judge gives time to justify the lawsuit to the plaintiff, in the lawsuit the plaintiff adds objects that were not previously in the lawsuit, thus changing the material content of the lawsuit. The judge considers that the improvement of the lawsuit is allowed as long as it does not replace or add objects that were not previously in the lawsuit and if the judge grants the plaintiff's claim, it can lead to an *Ultra petitum* decision. In addition, in decision number Pdt.G/2229/2023/Pa. North Jakarta. The grant lawsuit that cannot be accepted, namely, the lawsuit is formally defective due to *obscuur libel* (obscurity of the lawsuit) seen from the plaintiff not describing clearly and in detail related to the address of the object of dispute and the plaintiff does not have a clear legal basis in filing a lawsuit where in the posit, the plaintiff combines the inheritance lawsuit and the cancellation of the grant, finally causing the lawsuit to be unacceptable (*Niet ontvankelijk verklaard*).[63]

In the next decision, number 1203/Pdt.G/2023/PA. Sel is a lawsuit related to the cancellation of a grant that is not accepted by the judge (*niet ontvankelijk verklaared)* because the lawsuit has a formal defect because the lawsuit filed by the plaintiff is vague or unclear (*obscuur libel)*. Based on the judge's

[62] "Direktori Putusan," accessed September 30, 2024, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef6e952efc1160c095313732303438.html.
[63] "Direktori Putusan," accessed October 1, 2024, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeeb6b4fce6d9469bda313732343534.html.

consideration, defendant 7 was not known at the address that had been appointed/mentioned by the Plaintiffs/their Attorneys in the amended lawsuit dated October 31, 2023, and the Plaintiffs' Attorneys stated that the address of Defendant 7 remained as the amended lawsuit. Then the judge also considered, that in order to compile a proper lawsuit, especially regarding the identity of the parties, it must be stated precisely and clearly both about names and addresses, so that it becomes clear the legal subjects designated by the Plaintiffs. If the identity of the parties is mentioned as written by the Plaintiffs in the *amended* lawsuit, then the Plaintiffs are deemed to have been careless in preparing their lawsuit, and the Plaintiffs' lawsuit is deemed not to meet the formal requirements of the lawsuit because the parties in the lawsuit a *quo* are not known at the address mentioned by the Plaintiffs in this case Defendant 7 and can be qualified as an *obscure lawsuit (Obscuur Libell)*. From the judge's consideration above, the judge considered that the plaintiff's power of attorney was formally defective/invalid and the plaintiff's claim was unclear or vague so that the plaintiff's lawsuit must be declared unacceptable (*niet ontvankelijk verklaard*).[64]

Furthermore, in decision number 1316/Pdt.G /2023 PA. Jepr is a lawsuit for grant annulment that cannot be accepted by the judge because there is a cumulation lawsuit and the contents of the lawsuit are also unclear. This is based on the judge's consideration after observing that the plaintiff's lawsuit is

[64] "Direktori Putusan," accessed October 3, 2024, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee8e9c485036fcba0c313634373137.html.

considered a cumulation lawsuit because it is unclear regarding a grant lawsuit, a sharia economic lawsuit, or a pawn. If the judge accepts the lawsuit then there is an *ultra petitum* decision, because it exceeds what is required. And the judge considered that there was a lack of clarity in the lawsuit filed by the plaintiff in the form of not explaining the legal basis, not explaining the disputed object and the contradiction between the statement and the *petitum*.[65]

F. Practice of Case Settlement

Based on the decision (NO. 2629/PDT. G/2021. The plaintiffs' lawsuit did not meet the formal and material defects. Before filing a lawsuit for cancellation of the grant, it is very important to pay attention to several crucial legal aspects to avoid formal and ultra petita defects. First, ensure that all administrative requirements and the substance of the lawsuit have been fulfilled in accordance with the provisions of the applicable laws and regulations. Second, pay attention to the limits and scope of the judge's authority, so that the demands do not exceed what is submitted or do not exceed the scope of the dispute in question. In a lawsuit, it must be clear the content of the main postulate of the lawsuit (foundationamentum petendi) as in the postulates of the lawsuit about inheritance, then the scope of the lawsuit contains heirs, heirs, and property to be inherited. There must not be two or more propositions of the subject matter of the lawsuit that cause the lawsuit to accumulate in one lawsuit.

[65] "Direktori Putusan," accessed October 3, 2024, https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee6e3ec4e21cb8a3ad313231373136.html.

A cumulative lawsuit is a combination of several lawsuits in a lawsuit filed in court.[66] The accumulation of lawsuits is allowed as long as the following conditions are met:

1. There is a close relationship between the combined claims both from the legal side and the legal consequences there must be an inner connection (*innerlijke samenhang)* between the merged claims. This means that the claims must be interrelated and cannot be separated from one another.
2. The object of the lawsuit must be the same and addressed to one defendant, the description of the posita (basis of the lawsuit) must be stated separately and clearly between one claim and the other.[67]
3. There must be a legal relationship between the parties (plaintiff and defendant). If there is no clear legal relationship, then the lawsuit must be filed separately.
4. Congruence between Posita and *Petitum* In a lawsuit, there is a congruence between posita (statement of facts) and *petitum* (request). This is important to ensure that all claims in the lawsuit are mutually supportive and relevant.

The process of combining multiple claims in one lawsuit, which can take two main forms: subjective cumulation and objective cumulation :

---

[66] Isman Isman, *"Kumulasi Gugatan Antara Perbuatan Melawan Hukum Dan Wanprestasi,"* Jurnal Yudisial 14, no. 1 (April 30, 2021): 62, https://doi.org/10.29123/jy.v14i1.370.
[67] Fahim, *"Titik Singgung Penggabungan Gugatan Dengan Gugatan Kelompok,"* Accessed September 23, 2024, Https://Review-Unes.Com/Index.Php/Law/Issue/View/23.

1. Subjective Cumulation is a combination of lawsuits in which there are several plaintiffs or several defendants. The law does not prohibit the plaintiff from filing a lawsuit against several defendants, against this subjective cumulation the defendant can file an objection, namely not wanting the subjective cumulation.[68] In article 127 HIR and article 151 R.Bg, as well as several articles in Rv. and BW there are rules that allow subjective cumulation, where the plaintiff can file a lawsuit against several defendants. For this subjective cumulation lawsuit, the defendant can file an objection so that it is filed individually, or on the contrary, the defendant wants other parties to be included in the lawsuit concerned because of the existence of connexity.
2. Objective cumulation is if the plaintiff files several lawsuits against one defendant, but in order for the merger to be valid and eligible, there must be a close relationship, there is another understanding Objective cumulation is the merger of two lawsuits in one civil lawsuit. Examples of cases that require connexity include a divorce case with a claim for maintenance, a claim for annulment of an agreement with a claim for compensation, a tort claim with compensation, and others. In the religious court environment, it is known that there is a cumulation of lawsuits between divorce and

[68] Rai Mantili and Sutanto Sutanto, *"Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata Di Indonesia," Dialogia Iuridica* 10, no. 2 (April 30, 2019): 9, https://doi.org/10.28932/di.v10i2.1210.

child control, child maintenance, wife's maintenance, and joint property.

The legal basis for the permissibility of cumulated claims in Indonesia lies in the absence of an explicit prohibition in the procedural law, support from Supreme Court jurisprudence, the principle of connectivity between claims, and the principle of efficient adjudication. This creates space for plaintiffs to file multiple interrelated claims in one judicial process in order to achieve better justice. As long as the requirements of the cumulation lawsuit are met, namely close relationship, similarity of legal objects, and suitability between posita and *petitum*.

Reflecting on the decision of the case (NO. 2629/PDT. G.2021.Pa Kab Malang) in the basis of its lawsuit (foundationamentum petendi) is an inheritance issue, but on the other hand, it is also postulated the basis of its lawsuit regarding the cancellation of grants and the cancellation of the sale and purchase of land in dispute. Based on the terms of the accumulator lawsuit above the decision (NO. 2629/PDT. G.2021.Pa Kab Malang) did not meet these requirements, so the judge considered that the lawsuit was formally flawed (not in line with or not mutually supportive) and if the judge granted the demand, it would cause an *ultra petitum* decision.

The judge adheres to the procedural law article 178 paragraph 3 of the HIR and 189 paragraph 3 of the RBG stating that "the judge shall not grant what is not demanded and grant more than what is demanded by the plaintiff or

applicant".[69] Therefore, the focus of the case in a lawsuit is very important if in one lawsuit more than one scope of the main arguments of the lawsuit must be related to each other both in terms of law, the object of the lawsuit, and are aimed at the same defendant. If these conditions are not met, the lawsuit filed must be separate or separate. Based on an interview with the Judge of the Blitar City Religious Court, Mr. Drs. Edy Marsis, he said that if in a lawsuit or one lawsuit there is more than one subject matter (the main argument of the lawsuit) then the lawsuit must be resolved individually, but if the scope of the problem is still relevant, then the lawsuit is cumulative. Apart from the formal and material requirements in the lawsuit, evidence in the trial is very important to support the lawsuit that will be filed in the trial.

Proof is a process carried out to prove the facts that are the basis of the claim or demand submitted by one of the parties in the case.[70] This process is very important because it aims to strengthen or weaken the postulates put forward by each party. Judging from the decision of the case (NO. 2629/PDT. G.2021.Pa Kab Malang), the defendant did not attach evidence during the trial. The evidence that can be attached by the defendant is in the form of an authentic deed in accordance with Article 1682 which reads an important document that has legal force over the giving of goods or land to another person.[71] If the donated land is in the form of certified land, then the grant is made in front of the Land

[69] Sarif, *"Akibat Hukum Penyimpangan Asas Ultra petitum Partium Dalam Putusan Akta Perdamaian"*. Lakidende Law Review, (Desember 18 2022)
[70] Soeikromo Deasy, *"Proses Pembuktian Dan Penggunaan Alat-Alat Bukti Pada Perkara Perdata Di Pengadilan,"* Jurnal Hukum Unsrat II, no. 1 (January 2014): 126.
[71] Subekti and Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (PT Pradnya, 2011) 119.

Deed Making Officer (PPAT) in the area where the land is. However, in the decision, no evidence of the land grant was attached, only the information in the letter c book read that the grant was given to Siti Maimunah Binti H.Bisri, the address of Putat Lor Village, Gondanggi District, Malang Regency covering an area of 31820 M2.

Before filing a lawsuit in court, it would be good to know the order of events in court. Apart from legal advisors who must understand procedural law in court, the plaintiff and defendant must also understand so that the lawsuit process runs smoothly when in court. Law No. 7 of 1989 concerning Religious Courts which has been amended by Law No. 3 of 2006 and Law No. 50 of 2009, as well as the Civil Procedure Law that applies in general, the order of procedural legal proceedings in religious courts:

1. The filing of a lawsuit by the plaintiff or his attorney in writing to the authorized religious court. In legal proceedings, the filing of a lawsuit aims to have the court decide on the rights and obligations between the disputing parties. A lawsuit usually involves legal claims for tort, default, property disputes, or other cases where one party is deemed to have violated the rights of the plaintiff.[72]
2. Once a lawsuit is accepted, the plaintiff is required to pay court costs and then the lawsuit can be registered. These court costs cover various administrative expenses necessary to carry out the judicial

[72] *"Alur Proses Persidangan,"* PA Unaaha, accessed September 23, 2024, https://www.pa-unaaha.go.id/layanan/alur-proses-persidangan/111.

process, such as registration of the lawsuit, summoning the parties involved, and court operations. Court costs are mandatory for the plaintiff or applicant to pay before the case can be heard by the court. After paying the court fee, the plaintiff will receive a case registration number, which indicates that the case has been officially registered and is ready for further proceedings.

3. The summoning of parties is an official procedure in the judicial process where the bailiff, an officer of the court, is responsible for delivering a summons or official notice to the parties involved in a case (whether plaintiffs, defendants, or third parties).[73] These summonses are made so that the parties are aware of the court schedule and can attend to undergo legal proceedings in court. The summons process is very important because it informs the parties legally and formally about the date, time and place of the hearing. A valid and timely summons is a mandatory requirement in the judicial process. If one of the parties does not receive the summons properly, the hearing may be deemed legally flawed, and the verdict may be challenged.
4. Mediation is where the parties to a dispute are asked to resolve their issues with the help of a mediator, before proceeding to trial. The main purpose of mediation is to provide an opportunity for the parties

[73] Erik Rahman, Hasbuddin Khalid, and Anggreany Arief, *"Pelaksanaan Tugas Jurusita Pada Perkara Perdata,"* Qawanin Jurnal Ilmu Hukum 3, no. 1 (September 10, 2022), https://doi.org/10.56087/qawaninjih.v3i1.391:3.

involved to reach an agreement without having to go through a time-consuming and costly trial process.[74] The mediation process is regulated in Supreme Court Regulation (Perma) No. 1/2016 on Mediation Procedures in Courts, which requires mediation to be conducted in every civil dispute before a court hearing takes place. If the mediation is successful, then no further hearing is required, but if it is unsuccessful, then the case proceeds to trial.

5. At the first hearing the judge checks the identity of the parties and the completeness of documents in a case is very important to ensure that the judicial process runs legally and according to legal procedures. This examination is carried out at the beginning of the trial or before entering the stage of examining the subject matter of the case and has several main objectives, namely: ensuring the validity of the litigants, preventing claims by authorized parties, ensuring the competence of the court, ensuring the completeness of documents (lawsuit letter, supporting documents in the form of written evidence or other documents, power of attorney).[75]
6. The defendant's answer may be in the form of a confession, rebuttal, or rebuttal to the plaintiff's lawsuit

[74] Apriliani Kusnadi and Devi Siti Hamzah Marpaung, *"Efektifitas Penyelesaian Sengketa Konsumen Melalui Proses di Luar Pengadilan (Melalui Jalur Mediasi),*" Wajah Hukum 6, no. 1 (May 1, 2022): 83, https://doi.org/10.33087/wjh.v6i1.710.

[75] "Pengadilan Agama Kelas 1A Purwodadi - *Kemandirian Dan Keyakinan Hakim Pada Proses Peradilan Sebagai Upaya Menjadi Hakim Ideal Dan Profesional,"* accessed October 3, 2024, https://pa-purwodadi.go.id/index.php/26-halaman-depan/artikel/359-kemandirian-dan-keyakinan-%20hakim-pada-proses-peradilan-sebagai-upaya-menjadi-hakim-ideal-dan.

7. Replic and duplica of the plaintiff can provide replicas (responses to the defendant's answers), and the defendant can provide duplicates (responses to the defendant's replicas)
8. Evidence in the court process is a critical stage where the parties, both plaintiffs and defendants, must present evidence to support or refute the arguments submitted. This evidentiary stage is important because it will be the basis for the judge in deciding the case based on the facts revealed at trial. The evidence submitted must be relevant and in accordance with the subject matter, and meet the formal and material requirements. Types of evidence can be in the form of (written evidence, witnesses, testimony, confessions, oaths, and expert testimony).[76]
9. Written or oral conclusions regarding the outcome of the trial
10. The judgment may be in the form of accepting the lawsuit or rejecting the lawsuit, in part or in whole. The verdict was read by the judge in an open hearing.

Thus, a good understanding of the court process is essential to ensure that the lawsuit does not suffer from obscuur libel (unclear lawsuit) or formal defects (non-compliance with the formal requirements set out in the law). A clearly drafted, complete, and legally compliant lawsuit ensures that the trial

[76] Juliati Br Ginting, *"Proses Pembuktian Perkara Perdata," The Juris* 4, no. 1 (June 30, 2020): 15, https://doi.org/10.56301/juris.v4i1.88.

process runs smoothly and the substance of the case can be effectively examined by the judge. Some important aspects to understand are:

1. Clarity and accuracy of posita (arguments) and *petitum* (demands) in the lawsuit to avoid obscuur libel.
2. Compliance with formal requirements, including court competence, completeness of parties, and supporting documents, to avoid formal defects.
3. The ability to formulate appropriate legal arguments and attach relevant evidence to substantiate claims or rebuttals.

By understanding these matters, parties can carry out legal proceedings legally, effectively, and efficiently, and avoid the risk of having a lawsuit rejected for formal or technical reasons.

G. Grant in the Perspective of Islamic Law and the Civil Law Decision No. 2629/PDT. G.2021.Pa Kab Malang

Grant cancellation in the perspective of the Compilation of Islamic Law (KHI) and the Civil Law (KUHPerdata) have different characteristics, although both regulate the termination or cancellation of grants. The following is a summary of the cancellation of grants according to the KHI and the Criminal Code based on decision no. 2629/PDT. G.2021.Pa Kab Malang is reviewed from the aspect of grant rules, conditions for the cancellation of grants, and legal consequences of grant cancellation.

Table 2.
Grant in the prespective of the Compilation Islamic Law and the Civil Law

Aspects	KHI	KUHPer
Grant rules	It is regulated in the second book of the KHI on inheritance, precisely in chapter VI regarding grants, from articles 210 to 214.	It is regulated in the Criminal Code in the third book on the engagement of chapter X concerning grants, in articles 1666 to 1693.
Conditions for cancellation of grants	In decision no. 2629/PDT. G.2021.Pa Kab Malang, several factors make grants can be canceled. This can be seen in the KHI rule that grants can be canceled if the conditions when the grant are not met, this is regulated in article 210 which reads that the person who gives and receives is at least 21 years old, has good sense, without coercion, and the property is donated up to 1/3 of the total property, in front of 2 witnesses. Furthermore, the grant can be withdrawn if the parent's grant to the child is by Article 212 of the KHI.	In decision no. 2629/PDT. G.2021.Pa Kab Malang, several factors make grants can be canceled. This can be seen in the rules of the Criminal Code, grants can be canceled if: 1. if the conditions of the grant are not fulfilled by the grantee, one of which is in article 914 which discusses the *legitimie portie* 2. if the person who is given the grant by committing or participating in an attempt to murder or another crime against the grantor, 3. if the grantor falls into poverty, Meanwhile, the grantee refuses to provide support to the grantor. Furthermore, grants can be canceled if they are not fulfilled in the following articles: 1. article 1682 explains that grants for immovable goods such as land and buildings must have an authentic deed 2. article 1677 (paragraph 2) that grants can only

		be made for goods that exist when the grant occurs.
Legal consequences	Judging from several articles of KHI rules in decision no. 2629/PDT. G.2021.Pa Kab Malang, the grant can be canceled due to the non-fulfillment of the conditions, one of which is the object of the grant property carried out in the decision in its entirety, thus violating the conditions of the grant, which is exceeding the portion set at 1/3	Meanwhile, in the Criminal Code in decision no. 2629/PDT. G.2021.Pa Kab Malang, grants can be canceled due to the non-fulfillment of the conditions of the grant in article 1688 (paragraph 1), including when the grant process occurs legitimie portie and the absence of authentic deed evidence when the grant occurs.

Meanwhile, based on the viewpoint of the KHI and the Criminal Code, the cancellation of legal grants in (Decision No. 2629/PDT. G/2021/PA. Malang Regency) can be accepted because there are many rules and conditions when grants cannot be met. Meanwhile, based on the KHI and KUHPer point of view, the cancellation of legal grants in (Decision No. 2629/PDT.G/2021/PA. Kab Malang) can be accepted because there are many rules and conditions when the grant cannot be fulfilled, it can be seen in article 210 paragraph (1) of the Compilation of Islamic Law (KHI), Furthermore, for KUHPer in decision no. 2629/PDT.G.2021.Pa Kab Malang, there are several factors that make the grant cancelable. This can be seen in the rules of KUHPer 1688, grants can be canceled if the grant conditions are not met by the grantee, namely in article 914 which discusses the legitimie portie section, then in article 1682 explains that grants of immovable property such as land and buildings must have an authentic deed.

CHAPTER IV

CLOSING

A. Conclusion

The legal consequences of the cancellation of the grant decided by the judge on (Decision No. 2629/PDT. G/2021/PA. Malang Regency) is unacceptable (*Niet Ontvankelijke Verklaard*) and results in losses suffered by the plaintiff, where the decision that has been submitted by the judge is legally valid based on Article 178 Paragraph (3) of the *Het Herzien Indonesich Reglement* (HIR) which reads "the judge is prohibited from making a decision on a case that is not prosecuted, or giving more than what is demanded". Meanwhile, based on the viewpoint of the KHI and the Criminal Code, the cancellation of legal grants in (Decision No. 2629/PDT. G/2021/PA. Malang Regency) can be accepted because there are many rules and conditions when grants cannot be met. Meanwhile, based on the KHI and KUHPer point of view, the cancellation of legal grants in (Decision No. 2629/PDT.G/2021/PA. Kab Malang) can be accepted because there are many rules and conditions when the grant cannot be fulfilled, it can be seen in article 210 paragraph (1) of the Compilation of Islamic Law (KHI) which explains that the person who grants must be at least 21 years old, of sound mind, without coercion, and the property granted is at most ⅓ of the total property to another person or institution in the presence of two witnesses and the property granted is the right of the grantee. Furthermore, for KUHPer in decision no. 2629/PDT.G.2021.Pa Kab Malang, there are several factors that make the grant cancelable. This can be seen in the rules of KUHPer 1688, grants

can be canceled if the grant conditions are not met by the grantee, namely in article 914 which discusses the legitimie portie section, then in article 1682 explains that grants of immovable property such as land and buildings must have an authentic deed.

However, in fact, in the decision, the judge did not accept the lawsuit filed by the plaintiff due to several factors, including if the judge grants the plaintiffs' lawsuit, it will cause an *ultra petitum* decision, where in one case there is more than one subject matter of the lawsuit and there are also claims submitted by the plaintiffs that are not in accordance or in line that make the lawsuit fuzzy (*obscuur libel*).

This is the importance of understanding the court process and the process of making a lawsuit is very important to avoid a lawsuit that is formally defective and ultra petitum. A formal defect occurs when the lawsuit filed does not meet the formal requirements set by law, such as vagueness in compiling the arguments of the lawsuit (obscuur libel). Through a good understanding of the legal process and the making of a lawsuit by resolving each lawsuit separately or individually, for the case of determining inheritance rights first, then continued with the annulment of grants in the religious court, then the annulment of sale and purchase in the district court. Thus, an in-depth understanding of the litigation process and claim-making procedures is crucial in maintaining the validity of the claim and ensuring that the case can be substantively examined by the court.

B. Suggestion

1. Future researchers are advised to conduct research with an empirical approach in order to obtain information related to the topic of grant cancellation regarding the level of understanding of the Indonesian people about the settlement of grant cancellation practices in religious courts.

2. To readers or someone who has a similar problem, namely about grant cancellation cases, it is advisable to better understand the administrative requirements and the substance of the lawsuit in order to avoid an *ultra petitum* lawsuit or a lawsuit that is formally defective.

3. Provide an understanding to the reader, when the process of making a lawsuit there must be one main argument of the lawsuit, no more, so that there is no cumulation lawsuit. Even if there is more than one argument of the lawsuit must be resolved separately, but if it is still related between the main arguments of the lawsuit, it can be filed together.

BIBLIOGRAPHY

Abdul Baqi, Muhammad Fuad. *Al-Lu'lu' Wal Marjan*. 2. Dar Al-Fikri, n.d.

Abdurrahman, Zulkarnain. *"Penarikan Kembali Hibah Orang Tua Terhadap Anak Dalam Pandangan Para Ulama." Jurnal Pemberdayaan Masyarakat* 6, no. 1 (May 27, 2018): 11. https://doi.org/10.37064/jpm.v6i1.4991.

Afriana, Anita, Ema Rahmawati, Rai Mantili, and sherly Ayuna Putri. *"Batasan Asas Hakim Pasif Dan Aktif Pada Peradilan Perdata." Jurnal Bina Mulia Hukum* 7, no. 1 (September 30, 2022): 142–54. https://doi.org/10.23920/jbmh.v7i1.1078.

Agung, Mahkamah. *Kompilasi Hukum Ekonomi Syariah*. Mahkamah Agung RI, 2011.

Ajib, Muhammad. *Fiqih Hibah Dan Waris*. Pertama. Jakarta: Rumah Fiqih Publishing, 2019.

Al-Faifi, Syaikh Sulaiman Ahmad Yahya. *Ringkasan Fikih Sunnah Sayyid Sabiq*. 1st ed. Jakarta: Pustaka Al-Kautsar, 2013.

Al-Hafidz, Ahsin W. *Kamus Ilmu Al-Quran*. Jakarta: Amzah, 2006.

Amiruddin, Muhammad, Nasrullah Sapa, and Abdul Syatar. *"Uncovering Wasathiyah Values On Sharia Banking." Al-Mashrafiyah: Jurnal Ekonomi, Keuangan, Dan Perbankan Syariah* 4 (October 16, 2020): 15. https://doi.org/10.24252/al-mashrafiyah.v4i2.14676.

"*Asas-Asas Hukum Dalam Sistem Hukum* | Kertha Wicaksana." Accessed September 23, 2024. https://www.ejournal.warmadewa.ac.id/index.php/kertawicaksana/article/view/721.

Barliansyah, Muh Zulfikar Rais. *"Interpretasi Majelis Hakim Pengadilan Agama Klaten Atas Asas Ultra Petitum Partium." Jurnal Impresi Indonesia* 2, no. 3 (March 23, 2023): 251–65. https://doi.org/10.58344/jii.v2i3.2202.

Basri, Saifullah. *"Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam."* Jurnal Kepastian Hukum dan Keadilan 1, no. 2 (July 12, 2020): 37. https://doi.org/10.32502/khdk.v1i2.2591.

Database Peraturan | JDIH BPK. "UU No. 3 Tahun 2006." Accessed February 22, 2024. http://peraturan.bpk.go.id/Details/40154/uu-no-3-tahun-2006.

Deasy, Soeikromo. *"Proses Pembuktian Dan Penggunaan Alat-Alat Bukti Pada Perkara Perdata Di Pengadilan."* Jurnal Hukum Unsrat II, no. 1 (January 2014): 124–36.

"Direktori Putusan." Accessed February 2, 2024. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeec0cdaa64dc04afb4313334363435.html.

"Direktori Putusan." Accessed September 30, 2024. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaef6e952efc1160c095313732303438.html.

"Direktori Putusan." Accessed October 1, 2024. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeeb6b4fce6d9469bda313732343534.html.

"Direktori Putusan." Accessed October 3, 2024. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee8e9c485036fcba0c313634373137.html.

"Direktori Putusan." Accessed October 3, 2024. https://putusan3.mahkamahagung.go.id/direktori/putusan/zaee6e3ec4e21cb8a3ad313231373136.html.

Fahim. *"Titik Singgung Penggabungan Gugatan Dengan Gugatan Kelompok."* Accessed September 23, 2024. https://review-unes.com/index.php/law/issue/view/23.

Ginting, Juliati Br. *"Proses Pembuktian Perkara Perdata." The Juris* 4, no. 1 (June 30, 2020): 12–21. https://doi.org/10.56301/juris.v4i1.88.

"KBBI VI Daring." Accessed February 29, 2024. https://kbbi.kemdikbud.go.id/entri/sengketa.

"KBBI VI Daring." Accessed February 24, 2024. https://kbbi.kemdikbud.go.id/entri/hibah.

"KBBI VI Daring." Accessed February 24, 2024. https://kbbi.kemdikbud.go.id/entri/ahli%20waris.

Isman, Isman. *"Kumulasi Gugatan Antara Perbuatan Melawan Hukum Dan Wanprestasi."* Jurnal Yudisial 14, no. 1 (April 30, 2021): 57–78. https://doi.org/10.29123/jy.v14i1.370.

"JDIH Mahkamah Agung RI." Accessed September 22, 2024. https://jdih.mahkamahagung.go.id/legal-product/herzien-inlandsch-reglement-hir/detail.

"Jenis-Jenis Sengketa Pertanahan - Pengacara Kasus Sengketa Tanah." Accessed October 3, 2024. https://kantorpengacara-ram.com/jenis-jenis-sengketa-pertanahan/.

Kamaruddin. *"Hukum Hibah Dan Permasalahannya." Al-'Adl* 1, no. 1 (2008). http://dx.doi.org/10.31332/aladl.v1i1.746.

Kusnadi, Apriliani, and Devi Siti Hamzah Marpaung. *"Efektifitas Penyelesaian Sengketa Konsumen Melalui Proses Di Luar Pengadilan (Melalui Jalur Mediasi)." Wajah Hukum* 6, no. 1 (May 1, 2022): 80–85. https://doi.org/10.33087/wjh.v6i1.710.

Mantili, Rai, and Sutanto Sutanto. *"Kumulasi Gugatan Perbuatan Melawan Hukum Dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata Di Indonesia."* Dialogia Iuridica 10, no. 2 (April 30, 2019): 1–18. https://doi.org/10.28932/di.v10i2.1210.

Marzuki, Peter Mahmud. *Penelitian hukum*. [Jakarta]: Kencana, 2005.

Mushaf Al-Maqbul Al-Qur'an Dan Terjemahannya. 1st ed. Bandung: Cahaya Kreativa Utama, 2018.

Muzayyin, Ahmad, Mawardi Mawardi, and Syarifuddin Syarifuddin. *"Pembatalan Hibah Perspektif Hukum Islam Dan Kuhper Di Desa Kedungdowo* Kecamatan Arjasa Situbondo." *Al-Hukmi : Jurnal Hukum Ekonomi Syariah Dan Keluarga Islam* 3, no. 2 (November 10, 2022): 229–42. https://doi.org/10.35316/alhukmi.v3i2.2323.

Notaria, Israviza. *"Akibat Hukum Pembatalan Akta Hibah Yang Objeknya Harta Warisan Yang Belum Dibagi Kepada Ahli Waris Dan Melebihi Legitieme Portie Berdasarkan Putusan Mahkamah Agung Nomor 2954 K/PDT/2017."*

Indonesian Notary 2, no. 3 (September 30, 2020). https://scholarhub.ui.ac.id/notary/vol2/iss3/17.

PA Unaaha. "Alur Proses Persidangan." Accessed September 23, 2024. https://www.pa-unaaha.go.id/layanan/alur-proses-persidangan/111.

Putri, Rizqi Saniyyah, and Ahmad Sholikhin Ruslie. *"Penarikan Kembali Harta Hibah Sebagai Harta Waris Menurut Khi Dan Kuhperdata."* Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance 3, no. 2 (January 20, 2023): 1393–1406. https://doi.org/10.53363/bureau.v3i2.254.

Rahman, Erik, Hasbuddin Khalid, and Anggreany Arief. *"Pelaksanaan Tugas Jurusita Pada Perkara Perdata."* Qawanin Jurnal Ilmu Hukum 3, no. 1 (September 10, 2022). https://doi.org/10.56087/qawaninjih.v3i1.391.

Rahman Ghazaly, Abdul, Ghufron Ihsan, and Sapiudin Shidiq. *Fiqih Muamalat*. 1st ed. Jakarta: Kencana Prenada Media Group, 2010.

RI, Mahkamah Agung. *Himpunan Peraturan Peundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*. Jakarta: Mahkamah Agung RI, 2011.

Saputra, Rian, Pergeseran Prinsip, and Hakim Fasif. Wacana Hukum: Jurnal Fakultas Hukum Universitas Slamet Riyadi, "*Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif"* 25 (May 19, 2019): 1–9.

Sarif, Asri. "Akibat Hukum *Penyimpangan Asas Ultra Petitum Partium Dalam Putusan Akta Perdamaian.*" Lakidende Law Review 1, no. 3 (December 18, 2022): 325–32. https://doi.org/10.47353/delarev.v1i3.38.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. 3rd ed. Jakarta: Universitas Indonesia Press, 1986.

———. *Pengantar Penelitian Hukum*. Cet. ke-3. Universitas Indonesia, 2014.

Subekti, R. *Aneka Perjanjian*. 6th ed. Bandung: Penerbit Alumni, 1984.

Subekti, R, and R Tjitrosudibio. *Kitab Undang-Undang Hukum Perdata*. PT Pradnya Paramita, 2014.

Suparman, Maman. *Hukum Waris Perdata*. 1st ed. Jakarta: Sinar Grafika, 2015.

Syafe'i, Rachmat. *Fiqih Muamalah*. 6th ed. Bandung: CV Pustaka Setia, 2001.

Syarief, Elza. *Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan*. Jakarta: Kepustakaan Populer Gramedia, 2012.

"Website Resmi Pengadilan Agama Kelas 1A Purwodadi - K Accessed October 3, 2024. https://pa-purwodadi.go.id/index.php/26-halaman-depan/artikel/359-kemandirian-dan-keyakinan-%20hakim-pada-proses-peradilan-sebagai-upaya-menjadi-hakim-ideal-dan.

Zuhroh, Diana. "Konsep Ahli Waris Dan Ahli Waris Pengganti: Studi Putusan Hakim Pengadilan Agama." *Al-Ahkam* 27, no. 1 (June 9, 2017): 43. https://doi.org/10.21580/ahkam.2017.27.1.1051.

KEMENTERIAN AGAMA
UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH
Terakreditasi "A" SK BAN-PT Depdiknas Nomor : 157/BAN-PT/Ak-XVI/S/VII/2013 (Al Ahwal Al Syakhshiyyah)
Terakreditasi "B" SK BAN-PT Nomor : 021/BAN-PT/Ak-XIV/S1/VIII/2011 (Hukum Bisnis Syariah)
Jl. Gajayana 50 Malang 65144 Telepon (0341) 559399, Faksimile (0341) 559399
Website: http://syariah.uin-malang.ac.id/

CONSULTATION PROOF

Name : Mochamad Riskana Barkah

Student Number/Department : 200201110034/ Islamic Family Law

Supervisor : 1. Abdul Haris, M.HI.

2. Sohibul Hairi, M.pd

Thesis Title : The Judge's Rejection of The Heirs' Lawsuit Regarding The cancellation of Grants from The perspective of KHI and KUHPer

No	Day / Date	Consultation	Signature	
1.	Wednesday, 16 January 2024	Consultation of Proposal		
2.	Monday, 21 February 2024	Fixing point of view for The Thesis		
3.	Thursday, 27 February 2023	Footnote improvement, correction of al quran verse writing		
4.	Thursday, 1 March 2024	Improvement of proposal substance		
5.	Monday, 5 March 2024	Word and language corrections in the proposal Indonesian language		
6.	Friday, 7 March 2024	Word and language corrections in the proposal English language		
7.	Monday, 19 August 2024	Outline consultation and revision of proposal result		
8.	Monday, 24 September	Consultation Chapter II, III, IV		
9.	Thursday, 3 October 2024	Fixing Thesis and Translation Consultation to English		
10.	Friday, 4 October 2024	Thesis ACC		

Malang, 4 Oktober 2024
Acknowledged,
Head of Islamic Family Law Department

Erik Sabti Rahmawati, MA, M.Ag
NIP 197511082009012003

ATTACHMENTS

PUTUSAN

Nomor 2629/Pdt.G/2021/PA.Kab.Mlg

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

Pengadilan Agama Kabupaten Malang yang memeriksa dan mengadili perkara Gugatan Waris pada tingkat pertama telah menjatuhkan putusan sebagai berikut, antara pihak-pihak :

1. **Huda Fathur Rahman bin Yusuf,** Umur 44 Tahun, Agama Islam, Pekerjaan Peneliti, Pendidikan terakhir SLTA. Tempat kediaman. Jln. Murcoyo 1, RT.013, RW. 004, Desa Gondanglegi Wetan, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Penggugat I** ;
2. **Sitin Khoirilla binti Yusuf.** Umur 45 Tahun, Agama Islam, Pekerjaan mengurus rumahtangga. Pendidikan terakhir Diploma VI. Tempat kediaman. Jln. Gentengan, RT.005, RW. 009, Desa Gedong Wetan. Kecamatan Turen. Kabupaten Malang. Selanjutnya disebut **Penggugat II**;
3. **Anisa Kurnia Yusuf binti Yusuf,** Umur 41 Tahun, Agama Islam, Pekerjaan Karyawan Swasta. Pendidikan terakhir SLTAP Tempat kediaman. Jln. Mundu . RT.001, RW. 001, Desa Putat Lor. Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Penggugat III** ;
4. **Nurul Mauludiah binti Yusuf,** Umur 38 Tahun, Agama Islam, Pekerjaan Karyawan Swasta, Pendidikan terakhir SLTP. Tempat kediaman. Jln. Mundu, RT.001, RW. 001, Desa Putat Lor, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Penggugat IV** ;

Dalam hal ini diwakili oleh Kuasa Hukum yang bernama, Wisman Purnama Rasa. S.H., dan Partners..,Advokat, beralamat di Jalan Bantaran Indah No. 19. Rt.003. Rw.013. Desa/Kelurahan. Tulusrejo. Kecamatan Lowok Waru. Kota Malang. ,berdasarkan surat kuasa khusus tanggal 2i April 2021 yang didaftarkan di Pengadilan Agama Kabupaten Malang dengan Nomor 1525/Kuasa/4/2021/PA.Kab.Mlg. selanjutnya disebut sebagai **para Penggugat;**

melawan

1. **Siti Binti H. Bisri alias Siti Maimunah Binti H. Bisri** Umur ..... Tahun, Agama Islam, Pekerjaan Ibu Rumahtangga, Tempat kediaman. Jln. Raya Putat Lor, Nomor 36. RT.01, RW. 01, Desa Putat Lor, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Tergugat;**
2. **Nurul Filda Fatmawati.** Umur ..... Tahun, Agama Islam, Pekerjaan Ibu Rumahtangga, Tempat kediaman. Jln. Raya Putat Lor, Nomor 36. RT.02. RW. 01, Desa Putat Lor, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Turut Tergugat I;**
3. **Zainudin Fanani.** Umur ..... Tahun, Agama Islam, Pekerjaan Swasta, Tempat kediaman. Jln. Dahlia. RT.05. RW. 01, Desa Putat Lor, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Turut Tergugat II;**
4. **Kantor Desa Putat Lor.** Alamat. Jln. Raya Ketawang. Nomor 222. Dusun Baron. Putat Lor. Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Turut Tergugat III;**
5. **Siti Maimunah binti Yusuf.** Umur ..... Tahun, Agama Islam, Pekerjaan Karyawan Swasta. Pendidikan SLTP. Tempat kediaman. Jln. Meelati. RT.02. RW. 01, Desa Putat Lor, Kecamatan Gondanglegi. Kabupaten Malang,. Selanjutnya disebut **Turut Tergugat IV;**

Pengadilan Agama tersebut;

Telah membaca dan mempelajari berkas perkara yang bersangkutan;

DUDUK PERKARA

Menimbang, bahwa Para Penggugat dengan surat gugatannya tanggal 19 April 2021, yang terdaftar pada tanggal 21 April 2021 di Kepaniteraan Pengadilan Agama Kabupaten Malang Nomor 2629/Pdt.G/2021/PA.Kab.Mlg mengemukakan hal-hal sebagai berikut :

1. Bahwa dahulu di Dusun Baran, RT.01, RW.01, Desa Putat Lor, Kecamatan Gondanglegi, Kabupaten Malang, pernah hidup sepasang suami istri yang bernama P. Pyah alias Basuni dengan Siti Maimunah;
2. Bahwa Siti Maimunah sebelum menikah dengan P. Pyah alias Basuni adalah seorang janda beranak satu yang bernama Siti Rohmah, bahwa Siti Rohmah menikah dengan orang yang bernama Sawawi. Selama

perkawinannya tersebut dikaruniai anak bernama 1. H. Bisri alias Tuki, dan 2. Fatimah;

3. Bahwa didalam perkawinannya antara P. Pyah Alias Basuni dengan Siti Maimunah hanya dikaruniai 1 (satu) orang anak satu-satunya yang bernama Yusuf;

4. Bahwa P. Pyah alias Basuni meninggal dunia pada Tgl. 04-05-2005, sedangkan Siti Maimunah meninggal dunia pada Tgl. 28 Agustus 1970;

5. Bahwa setelah dewasa Yusuf menikah dengan orang yang bernama Mutmainah alias Siti Lestari dan dikaruniai anak 5 (lima) orang yakni Para Penggugat dan Turut Tergugat IV;

6. Bahwa Yusuf tinggal dan berdomisili dirumah yang sekarang ditempati oleh Penggugat IV hingga meninggalnya beliau pada hari Senin Tgl. 24-12-2018. sedangkan isterinya Mutmainah alias Siti Lestari telah meninggal terlebih dahulu pada Hari Senin tanggal 25-08-2014 ;

7. Bahwa semasa hidupnya P. Pyah alias Basuni, mempunyai sebidang tanah sawah dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2, dengan batas-batas :

Sebelah Utara : Tanah milik H. Saroni
Sebelah Barat : Tanah milik H. Sodik / HJ. Marsini
Sebelah Selatan : Tanah H. Rus dan Jalan Umum
Sebelah Timur : Tanah milik H. Matasik

Dan kini mohon disebut dengan tanah sengketa;

8. Bahwa sejak semula atau tahun 1960 tanah sengketa milik P. Pyah alias Basuni disuruh garap oleh beliau (P.Pyah alias Basuni) kepada H. Bisri alias Tuki agar dapat dirawat dan diambil hasilnya, akan tetapi tidak untuk dimiliki;

9. Bahwa P. Pyah alias Basuni meninggal dunia pada Tgl. 04-05-2005, ketika itu Abah Yusuf mulai menanyakan tentang tanah sengketa, namun pada waktu itu H. Bisri alias Tuki, masih belum mau menyerahkan kepada Abah Yusuf dengan alasan masih membutuhkannya untuk kehidupan sehari-hari, maka Abah Yusuf tidak menanyakan lagi;

10. Bahwa pada sekitar tahun 2017 ketika Abah Yusuf ayah dari para Penggugat merasa sakit-sakitan dan membutuhkan biaya pengobatan yang tidak sedikit, maka Abah Yusuf berniat mengambil kembali tanah miliknya yang digarap oleh H. Bisri alias Tuki selama ini, namun ditolak dengan tegas oleh H. Bisri Alias Tuki, dan Abah Yusuf pun meminta kembali walaupun Abah Yusuf sudah mengingatkan bahwa tanah sengketa sudah sangat lama digarap dan dinikmati hasilnya dan kini diminta kembali oleh Abah Yusuf untuk biaya berobat, namun ditolak pula oleh H. Bisri alias Tuki;

11. Bahwa Abah Yusuf dengan tangan hampa pulang kerumah Penggugat IV dalam keadaan sakit-sakitan, dan pada pertengahan tahun 2017, yakni pada Tg. 13-6-2017 Abah Yusuf pun mencari informasi dan mengecek keadaan tanah sengketa di Kantor Desa Putat Lor, dan oleh Kantor Desa diberikan Kutipan dari Buku Huruf C Desa;

12. Bahwa Abah Yusuf menjadi terkejut bukan kepalang ketika melihat di Kutipan Dari Buku Huruf C Desa Putat Lor. bahwa tanah sawah tersebut telah berganti kepemilikannya dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2,. Dengan Keterangan : Hibah ke Siti b. H. Bisri, Alamat Desa Putat Lor, Kecamatan Gondanglegi, Kab. Malang, seluas ± 3180 M2. Pada tahun 1980. Dan menurut keterangan Kantor Desa yang dimaksud Siti b. Bisri diatas adalah Siti Maimunah binti H. Bisri;

13. Bahwa melihat hal ini membuat Abah Yusuf marah-marah/tidak rela melihat keadaan tersebut karena sebagai anak satu-satunya dari P. Pyah / Basuni sama sekali tidak diberi tahu baik oleh Abahnya P. Pyah / Basuni maupun dari orang lain / Perangkat Desa Putat Lor semua dilakukan secara diam-diam tidak mengorangkan Abah Yusuf;

14. Bahwa semenjak terjadinya perselisihan tersebut H. Bisri Alias Tuki menderita sakit-sakitan pula yang sering keluar masuk rumah sakit, karena melakukan penghibahan hibah yang menyalahi aturan hukum melalui kakek tirinya P. Pyah/Basuni kepada anaknya yang bernama Siti b. H. Bisri pada tahun 1980;

15. Bahwa pada hari Senin Tanggal 24-12-2018 Abah Yusuf meninggal dunia, bahwa sebelum meninggalnya Abah Yusuf pada saat

seluruh anak-anaknya berkumpul Beliau mengatakan dan menceritakan kronologis asal mula kepemilikan tanah sengketa tersebut, dan beliau memberi pesan / amanah yang harus dilaksanakan oleh Ahli-warisnya yakni para Penggugat dan Turut Tergugat IV, bahwa beliau tidak rela dan tidak ridho / tidak mau apabila tanah sengketa hanya dimiliki oleh Tergugat dengan cara hibah yang tanpa sepengetahuan dan tanpa ijin dari Abah Yusuf. karena Abah Yusuf adalah anak satu-satunya / ahli waris yang sah dari Alm. P. Pyah alias Basuni yang menikah dengan Almh. Siti Maimunah tersebut;

16. Bahwa Abah Yusuf berpesan / memberi amanah kepada anak-anaknya yakni Para Penggugat dan Turut Tergugat IVuntukmengajukan gugatan ini ke Pengadilan Agama Kabupaten Malang, maka guna memenuhi Amanah tersebut Para Penggugat selaku anak-anaknya (Ahli waris) dengan ini mengajukan gugatan waris ke Pengadilan Agama Kabupaten Malang;

17. Bahwa kemudiannya Turut Tergugat IV yang juga merupakan Ahli Waris abah Yusuf tidak besedia ikut Para Penggugat untuk menggugat Tergugat dikarenakan kedekatan bathin antara Turut Tergugat IV dan Tergugat, akan tetapi tidak mempengaruhi Gugatan dan dimohon patuh pada putusan yang berlaku;

18. Bahwa ternyata sebelum perkara ini diajukan ke Pengadilan Agama Kabupaten Malang dibulan Mei 2019, H. Bisri aias Tuki telah meninggal dunia maka tidak jadi digugat dalam perkara ini;

19. Bahwa dalam Hukum Kewarisan Islam, pemberian hibah untuk orang lain juga dibatasi maksimum hanya 1/3 harta, jadi jika memang hibah melanggar hak anak, maka anak dapat menggugat pemberian hibah, Namun jika anak tidak mempermasalahkan, maka hibah tetap bisa dilaksanakan. Untuk mencegah terjadinya tuntutan dikemudian hari dalam praktik selalu disyaratkan adalah Surat Persetujuan dari anak-anak kandung Pemberi Hibah. Dengan demikian, pemberian hibah harus memperhatikan persetujuan dari para ahli waris dan jangan melanggar hak mutlak mereka . Hak mutlak adalah bagian warisan yang telah di tetapkan

oleh Undang-Undang untuk masing-masing ahli waris (vide Pasal 913 BW). Jadi tentang persetujuan Anak terhadap Hibah tersebut harus di ketahui dan di setujui si anak karena mereka memiliki hak mutlak (*legitieme portie*) dan hak ini di lindungi Undang – Undang;

20. Bahwa untuk muslim tunduk pada pasal 209 Kompilasi Hukum Islam, Penegasan SKB MA dan Menteri Agama No. 07/KMA/1985 dan Qs Al-Ahzab (33) : 4-5, bahwa pemberian hibah harus taat pada ketentuan batas maksimum sebesar 1/3 dari seluruh harta pemberi hibah;

21. Bahwa kenyataannya pemberian hibah antara P. Pyah/ Basuni kepada Siti b.H. Bisri dilakukan dengan diam-diam / tersembunyi agar tidak diketahui oleh Abah Yusuf semasa hidupnya terhadap harta P.Pyah / Basuni dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2,. Dengan Keterngan : Hibah ke SITI b. H. Bisri, Alamat Desa Putat Lor, Kecamatan Gondanglegi, Kab. Malang, seluas ± 3180 M2. Pada tahun 1980. Maka pemberian hibah tersebut melebihi 1/3 harta peninggalan pewaris atau bahkan telah dihibahkan untuk seluruhnya, (dalam sistem kewarisan Islam) atau telah secara nyata melanggar *Legitieme portie* dari ahli waris (dalam sistem kewarisan perdata barat), bahwa hak mutlak para Ahli waris dari Pewaris yang telah meninggal dunia seharusnya menurut hukum adalah 2/3 bagian dari harta si Pewaris. Bahwa sedangkan 1/3 bagian menjadi hak dari Pewaris untuk memberikan atau menghibahkan kepada siapapun juga;

22. Bahwa melihat penghibahan yang dilakukan oleh P. Pyah/ Basuni kepada Siti b. H. Bisri, sebagaimana pada butir 12 posita gugatan tersebut diatas, maka penghibahan tersebut jelas-jelas telah menyalahi aturan hukum yang berlaku yakni penghibahan tidak boleh dilakukan melebihi dari 1/3 bagian, bahkan terbukti telah dilakukan penghibahan secara keseluruhan, maka menyalahi hukum dan mengalami cacat hukum batal demi hukum dan harus dibatalkan;

23. Bahwa menurut hukum hak mutlak para Ahli waris dari Pewaris yang telah meninggal dunia seharusnya menurut hukum adalah 2/3 bagian

dari harta si Pewaris. Bahwa sedangkan 1/3 bagian menjadi hak dari Pewaris untuk memberikan atau menghibahkan kepada siapapun juga;

24. Bahwa pemberian hibah atau '*penghibahan*' dari P. Pyah Alias Basuni kepada Tergugat pada tahun 1980, terhadapharta P.Pyah kepada Siti bin Bisri telah nyata melanggar pasal 209 Kompilasi Hukum Islam, Penegasan SKB MA dan Menteri Agama No. 07/KMA/1985 dan Qs Al-Ahzab (33) : 4-5, bahwa pemberian hibah harus taat pada ketentuan batas maksimum sebesar 1/3 dari seluruh harta pemberi hibah. Maka pemberian hibah tersebut mengalami cacat hukum, batal demi hukum dan tidak mempunyai kekuatan hukum mengikat;

25. Bahwa kini Para Penggugat menjadi lebih terkejut lagi ketika mengetahui bahwa tanah sawah sengketa tersebut telah dihibahkan kepada anaknya (Turut Tergugat I) dan telah dijual kepada pihak lain (Turut Tergugat II) , tanpa melibatkan, tanpa ijin dan tanpa sepengetahuan Para Penggugat dan dengan demikian membuktikan bahwa penghibahan dan jual beli tanah sengketa tersebut dilakukan dengan itikad tidak baik dan maksud yang merugikan hak-hak para Penggugat;

26. Bahwa menurut keterangan kantor Desa Putat Lor Tanah Sengketa tersebut telah Terjual dengan cara oleh Tergugat terlebih dahulu di hibahkan kepada anaknya yang bernama Nur Filda Rahmawati (Turut Tergugat I) pada tahun 2015 dan pada tahun 2019 Tanah Sengketa tersebut dijual oleh Nur Filda Rahmawati (Turut Tergugat I) kepada Ust. Zainudin Fanani, yang menjadi Turut Tergugat II dalam Gugatan ini;

27. Bahwa penghibahan Tanah Sengketa dari Tergugat kepada anaknya Turut Tergugat I terhadap tanah sengketa tersebut secara hukum mengalami cacat hukum , batal demi hukum dan harus dibatalkan., hal tersebut dikarenakan kenyataannya pemberian hibah dari P. Pyah/ Basuni kepada Siti b.H. Bisri (Tergugat)sendiri mengalami cacat hukum kenapa bisa dihibahkan lagi kepada anaknya Turut Tergugat I jelas ada akal-akalan dibalik penghibahan Tanah sengketa yang dilakukan Tergugat kepada Turut Tergugat I yang tanpa ijin dan tanpa diketahui oleh Para Penggugat adalah

bukan tanggung jawab dari Para Penggugat namun menjadi tanggung-jawab dari Tergugat sendiri;

28. Bahwa dengan demikian perbuatan jual beli terhadap tanah sengketa tersebut secara hukum juga mengalami cacat hukum , batal demi hukum dan harus dinyatakan dibatalkan demi hukum serta tidak mempunyai kekuatan hukum serta tidak mempunyai kekuatan mengikat terhadap semua pihak, bahwa jual beli Tanah sengketa yang dilakukan Turut Tergugat I dengan Turut Tergugat II dinyatakan Jual beli tanpa itikad baik serta tanpa ijin dan tanpa diketahui oleh Para Penggugat adalah bukan tanggung jawab dari Para Penggugat bahwa namun menjadi tanggung-jawab dari Tergugat sendiri;

29. Bahwa agar gugatan ini tidak sia-sia (*illusoir*) maka Para Penggugat mohon agar tanah sengketa dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2, dengan batas-batas : - Sebelah Utara : Tanah milik H. Saroji, Sebelah Barat : Tanah milik HJ. Marsini, Sebelah Selatan bahwa Matasik. Untuk diletakkan sitaan jaminan (CB) atas tanah sengketa;

30. Bahwa adalah wajar apabilaTergugat dihukum untuk membayar biaya perkara yang timbul;

31. Bahwa berhubung mendesak perkara ini , disertai dengan bukti-bukti yang kuat maka mohon agar perkara ini diputus dengan serta – merta (*uit voerbaar bij voorraad*);

Berdasarkan hal-hal diuraikan diatas, besar harapan kami agar Pengadilan Agama Kabupaten Malang berkenan memanggil dan memberikan putusan sebagai berikut :

1. Menerima dan mengabulkan gugatan Para Penggugat untuk seluruhnya.
2. Menyatakan Para Penggugat dan Turut Tergugat IV adalah Ahli Waris dari Alm. Yusuf yang masih hidup dan berhak serta belum mendapat bagian harta waris atas tanah sengketa.
3. Menyatakan tanah sengketa sebagaimana tercantum dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2, dengan batas-batas : - Sebelah Utara : Tanah milik H. Saroni, Sebelah Barat : Tanah milik H.

Sidik/Hj. Marsini;

- Sebelah Selatan : Tanah milik H. Rus dan Jalan Umum;
- Sebelah Timur : H. Matasik;

Adalah harta waris peninggalan P.Pyah/ Basuni. Yang belum dibagi waris kepada Ahli-Warisnya yakni Yusuf yang kini digantikan kedudukannya (*plaats vervullings*) Para Penggugat dan Turut Tergugat IV selaku Ahli Waris dari Alm. Yusuf;

4. Menyatakan pemberian hibah yang melebihi 1/3 harta milik P. Pyah atau bahkan telah dihibahkan untuk seluruhnya, dari P.Pyah kepada Siti bin Bisri telah melanggar *Legitieme portie* dari Ahli Waris (dalam sistem kewarisan perdata barat), Maka pemberian hibah tersebut mengalami cacat hukum, batal demi hukum, serta tidak mempunyai kekuatan hukum mengikat;
5. Menyatakan cacat hukum, batal demi hukum dan tidak mempunyai kekuatan hukum mengikat '*penghibahan*' dari P. Pyah alias Basuni kepada Tergugat pada tahun 1980 terhadap tanah sengketa, karena penghibahan dibuat tanpa sepengetahuan Ahli Waris satu-satunya dari P.Pyah yakni Alm Yusuf maupun anak-anaknya yang kini sebagai Para Penggugat dan Tergugat IV;
6. Menyatakan batal demi hukum dan tidak mempunyai kekuatan hukum mengikat penghibahan dari Tergugat kepada Turut Tergugat I terhadap tanah sengketa yang dilakukakan Tergugat karena penghibahan dari Tergugat kepada Turut Tergugat I tersebut dilakukan terhadap Obyek Sengketa yang Cacat Hukum;
7. Menyatakan batal demi hukum dan tidak mempunyai kekuatan hukum mengikat Jual beli terhadap tanah sengketa yang dilakukan Turut Tergugat I kepada Turut Tergugat II dan dinyatakan perbuatan jual beli tidak mempunyai i'tikad baik;
8. Memerintahkan kepada Turut Tergugat I, Turut Tergugat II, Turut Tergugat III dan Turut Tergugat IV tunduk dan patuh melaksanakan Putusan Hakim yang mempunyai kekuatan Hukum tetap;
9. Menyatakan sah dan berharga sita jaminan yang diletakkan oleh Pengadilan Agama Kabupaten Malang terhadap tanah sengketa atas nama

P.Pyah dibuku Letter C Desa No. 660 Persil No. 30 , Kelas SII, Luas 3180 M2, dengan batas-batas:

- Sebelah Utara : Tanah milik H. Saroni, Sebelah Barat : Tanah milik H. Sidik/Hj. Marsini;
- Sebelah Selatan : Tanah milik H. Rus dan Jalan Umum;
- Sebelah Timur : H. Matasik;

10. Menghukum Tergugat dan atau siapa saja yang mendapat hak dari padanya untuk menyerahkan tanah sengketa dalam keadaan kosong kepada Para Penggugat, bilamana perlu dengan bantuan Aparat Negara (Kepolisian Negara Republik Indonesia);

11. Menghukum Tergugat,untuk membayar seluruh biaya perkara yang timbul;

12. Menyatakan perkara ini dapat dilaksanakan dengan serta merta (*uit voerbaar bij voorraad*), walaupun ada upaya hukum banding, kasasi maupun verzet;

13. Atau, apabila Pengadilan Agama berpendapat lain, mohon Pengadilan menjatuhkan putusan yang adil dan benar menurut hukum (*ex aequo et bono*)

Bahwa Para Penggugat, Tergugat, Turut Tergugat I dan Turut Tergugat III. hadir di persidangan;

Bahwa Majelis telah memberikan nasehat kepada Para Pihak untuk menyelesaikan perselisihan mereka atas obyek sengketa tersebut secara kekeluargaan, namun tidak berhasil;

Bahwa para Penggugat, Tergugat dan Turut Tergugat I. telah mengikuti proses meniasi oleh Mediator Pengadilan yang bernama Ahmad Izzuddin, M.HI pada tanggal 11 Mei 2021, namun tidak berhasil, sebagaimana laporan Mediator Tanggal 18 Mei 2021;

Bahwa selanjutnya dibacakan Gugatan Para Penggugat yang isinya tetap dipertahankan Para Penggugat;

Bahwa, Majelis telah mempelajari secara seksama Gugatan Waris Para Penggugat tersebut. Maka Majelis Hakim menganggap perlu untuk memberi

pertimbangan- pertimbangan yang akan dituangkan dalam pertimbangan hukum dan amar putusan dalam perkara ini;

Bahwa untuk mempersingkat uraian putusan ini, segala yang tercatat dalam berita acara sidang merupakan bagian yang tidak terpisahkan dari putusan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan Gugatan Para Penggugat adalah sebagaimana telah diuraikan di atas;

Menimbang, bahwa Para Penggugat, Tergugat, Turut Tergugat I dan Turut Tergugat III. hadir di persidangan;

Menimbang, bahwa Majelis telah memberi nasehat kepada Para Pihak untuk mengelesaikan perselisihan mereka atas obyek sengketa tersebut secara kekeluargaan, namun tidak berhasil;

Menimbang, bahwa Para Penggugat, Tergugat dan Turut Tergugat I. telah menempuh mediasi oleh Mediator Pengadilan yang bernama Ahmad Izzuddin, M.HI pada tanggal 11 Mei 2021, namun tidak berhasil;

Menimbang, bahwa setelah Majelis mempelajari Gugatan Para Penggugat., Maka Majelis perlu memberikan pertimbangan- pertimbangan sebagai berikut:

Menimbang, bahwa menurut pendapat M. Yahya harahap dalam Hukum Acara Perdata. Tentang: Gugatan, Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan. (hal. 51-67). Yang Diambil alih menjadi pendapat Majelis. Yang menjelaskan bahwa hal-hal yang penting yang harus dirumuskan dalam gugatan, sehingga gugatan dapat terhindar dari cacat formil, adalah sebagai berikut:

a. Syarat Formil. Gugatan didaftarkan di Pengadilan Agama sesuai dengan kewenangan relatif, diberi tanggal, ditandatangani oleh Penggugat atau Kuasanya, serta adanya identitas Para Pihak;

b. Syarat Materil: Adanya dalil-dalil yang menjadi dasar gugatan (*fundamentum petendi*). Dan tuntutan Gugatan (*petitum*). Yang nantinya diputuskan oleh hakim berdasarkan dalil pokok gugatan (*fundamentum*

petendi);

Menimbang, bahwa setelah dicermati Gugatan Para Penggugat, dapat difahami bahwa yang menjadi Pokok Gugatan dalam perkara a qou. Adalah Gugatan Waris. Maka yang menjadi dasar dalil gugatan (*fundamentum petendi*). Ruang lingkupnya harus mencakup adanya: Pewaris, adanya ahli waris dan adanya harta warisan, yang akan dibagi kepada Ahli Waris. Sebagaimana diatur dalam Pasal 49 Ayat (3) Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama. Dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009. Yang kemudian dituangkan dalam tuntutan Gugatan (*petitum*). Hal ini dinilai telah terpenuhi karena pada *fundamentum petendi Gugatan*. telah diuraikan tentang adanya Peristiwa Waris. Namun didalilkan pula dalam dasar dalil gugatan (*fundamentum petendi*) tentang adanya peristiwa hibah terhadap harta warisan yang menjadi obyek sengketa, sehingga hal ini apabila dikaitkan dengan pokok perkara dalah perkara a quo dipandang antara keduanya tidak sejalan (tidak saling mendukung).

Menimbang, bahwa pada tuntutan Gugatan (*petitum*). Para Penggugat juga mohon agar Pengadilan membatalkan pelaksanaan hibah atas obyek sengketa yang telah dilakukan pada Tahun 1980. tuntutan tersebut apabila dikaitkan dengan Pokok Perkara, maka Majelis menilai bahwa hal itu dipandang dapat memenuhi asas ultra petitum partium. Yaitu tuntutan melebihi apa yang menjadi dasar dalam Pokok Perkara;

Menimbang, bahwa disamping itu, antara Posita Gugatan angka 14. Dan angka 22 dinilai saling bertentangan. Karena disatu sisi didalilkan bahwa hibah atas obyek sengketa dilakukan oleh H. Bisri Alias Tuki melalui Pewaris yaitu P.Pyah alias Basuni. Namun disisi yang lain didalilkan pula bahwa hibah atas obyek sengketa dilakukan oleh Pewaris. Yaitu H. Bisri Alias Tuki;

Menimbang bahwa posita ngka 3 dikaitkan dengan petitum gugatan dipandang tidak saling mendukung karena Yusuf yang didalilkan sebagai anak tunggal tidak diminta untuk ditetapkan sebagai ahli waris dari pewaris dalam perkara a quo;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut .Majelis berpendapat bahwa Gugatan Para Penggugat harus

dinyatakan cacat formil dan harus pula dinyatakan tidak dapat diterima (*niet ontvankelijk verklaard*);

Menimbang, bahwa tentang biaya perkara Majelis berpendapat bahwa berdasarkan ketentuan pasal 181 ayat (1) HIR, maka biaya yang timbul akibat perkara ini dibebankan kepada Para Penggugat;

Mengingat segala peraturan perundang-undangan yang berlaku yang berkaitan dengan Gugatanini.

M E N G A D I L I

1. Menyatakan Gugatan Para Penggugat tidak dapat diterima (*niet ontvankelijk verklaard*);
2. Menghukum kepada Para Penggugat untuk membayar biaya perkara ini sejumlah Rp1.635.000,00 (satu juta enam ratus tiga puluh lima ribu rupiah);

Demikian penetapan ini dijatuhkan pada hari Selasa tanggal 15 Juni 2021 Masehi bertepatan dengan tanggal 4 Zulkaidah 1442 Hijriyah, oleh kami Drs. SANTOSO, M.H., sebagai Ketua Majelis, Drs. H. MUH. KASYIM, M.H., dan Drs. ABD. RAZAK PAYAPO, masing-masing sebagai Hakim Anggota, Putusan tersebut diucapkan pada hari itu juga dalam sidang terbuka untuk umum oleh Ketua Majelis tersebut dengan didampingi Hakim-Hakim Anggota dengan dibantu oleh WIDODO SUPARJIYANTO, S.H.I., M.H., sebagai Panitera Pengganti, dan dihadiri oleh Penggugat diluar hadirnya Tergugat;

Hakim Anggota I,	Ketua Majelis,
Drs. H. MUH. KASYIM, M.H.	**Drs. SANTOSO, M.H.**
Hakim Anggota II,	

Drs. ABD. RAZAK PAYAPO

Panitera Pengganti,

WIDODO SUPARJIYANTO, S.H.I., M.H.

Rincian Biaya Perkara :

1. Biaya Pendaftaran	:	Rp.	30.000,-
2. Biaya Proses	:	Rp.	75.000,-
3. PNBP Kuasa	:	Rp.	10.000,-
4. Biaya Panggilan	:	Rp.	1.440.000,-
5. PNBP Panggilan	:	Rp.	60.000,-
6. Biaya Redaksi	:	Rp.	10.000,-
7. Biaya Meterai	:	Rp.	10.000,-
Jumlah	:	**Rp.**	**1.635.000,-**

(satu juta enam ratus tiga puluh lima ribu rupiah)

CURRICULUM VITAE

Name	: Mochamad Riskana Barkah
SIN	: 200201110034
Place, Date of Birth	: Malang, 06 September 2002
Addres	: Jl. Mertojoyo Q 4 Malang
No. HP	: 082132186447
Email	: bryantfury4@gmail.com

FORMAL EDUCATION

2007 – 2008	: KBTK As-salam Tlogomas
2008 – 2014	: MIN 1 Kota Malang
2014 – 2017	: SMPN 8 Malang
2017 – 2020	: Man 1 Kota Malang
2020 – 2024	: Universitas Islam Negeri Maulana Malik Ibrahim Malang

RIWAYAT ORGANISASI

1. 2018 – 2019 : Head of Man 1 Malang City Cooperative
2. 2017 – 2018 : Head of Volleyball Exclusivity Man 1 Malang City
3. 2021 – 2022 : Member of UKM Unior Coaching Division
4. 2022 – 2023 : Chairperson of the Unior Anniversary 2022 Organizing Committee
5. 2022 – 2024 : Daily Management of UKM Unior Equipment Division