

LEGAL POWER OF WILLS AND GRANTS BASED ON CIVIL CODE AND ISLAMIC LAW

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This study aims to determine the legal relationship between the Civil Code and Islamic Law and to determine the impact of differences in legal approaches between the Civil Code and Islamic Law in resolving Wills Grant disputes. The research method used in this research uses normative research methods by reviewing various literature, regulations, journals, articles and other areas of literature. The legal material analysis method used is the collection of legal material carried out through the literature which includes a research library of documents related to the problem to be studied. The research results show that a testamentary gift is a testamentary determination with a name that bequeaths to one or more people certain items from their inherited assets or provided items of a certain type. A will can be revoked or canceled so that it is no longer binding. It can be said that the testamentary gift can be withdrawn. In the matter of withdrawing a will grant in civil law and Islamic law, it is due to a judge's decision which has legal force as explained in article 197 of the Compilation of Islamic Law paragraphs 1, 2 and 3. The provisions of a will grant in Islamic law are that a person may hand over his property to other people, the delivery must not exceed a predetermined level. Research Recommendations: One way of granting a will according to Islamic law requires witnesses who can be trusted and can confirm the last words, signs and writings. And the suggestion is for legislators that if they want to form a new law regarding wills, they should communicate with experts who understand Islamic law better in order to create positive law that suits the needs of Indonesian society.

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INTRODUCTION

Civil Code as rule written that has been codified in Indonesia contains rule about inheritance in Book II is about Material and there are also some regulated in Book III , namely about Contract . Civil Code explain that inheritance is only in progress Because death . [1]Grant as function social that can given to Who just without look at race , religion and class , then grant can made into as solution For solve problem law inheritance mature This . Treasure legacy , must be shared to the right people accept it,in in jurisprudence there is discussion about knowledge Mawaris . [2] According to the fuqaha, knowledge rose is knowledge For know the right person accept heirloom , a person who does not can accept inheritance , the amount received by each inheritance and ways its division . Position knowledge This viewed half sharia science , because other fields of related sharia science with condition man before died , then knowledge This linked with condition they after died . [3] System distribution treasure legacy use system Islamic heritage , sometimes expert inheritance No can enjoy part treasure legacy , so that need improved its effectiveness and optimization implementation system Islamic inheritance so that property legacy That circulating in the environment more kinship wide . For complete and fill gaps events that occur in law heir , then Allah has to order man For do will and bequest . Position will and bequest as effort For create justice and benefit . [4] Will applicable after the person makes a will That died , and according to

Islamic law implementation will come first from implementation inheritance with notice its limitations . Provisions on testamentary limits That based on hadith history of Nasai and Ahmad: [5] "The Messenger of Allah visited him I when in condition sick , while ask : " what you has testament ?", I answered : " Yes ", he ask again : " How much ?", I answer : " all" my treasure may Allah bless you ", then He ask again : " then what was left behind For your child ?", I answer : " they are rich people." Then he said : " Bequeath a tenth of it ." Sentence That repeated and I also said over and over (" all "), so He said : " Bequeath to one third , because one third That Already Enough Lots orbig ". When you want give will so don't excessive and not may exceed one third treasure relics . There are similar hadith with the hadith above , namely hadith the history of Bukhari and Muslim from Saad bin Abi Waqqas which tells that : "The Messenger of Allah SAW visited I am in the year of the farewell pilgrimage , because I suffer Sick hard , then I said : "I have suffer Sick hard and me have property and not someone inherited it except a child women . Are I may give alms two thirds and my son Enough a third ?". The Prophet answered : " Don't ", then I ask : " How if half ?", the Prophet answered : " Don't ." Then He said : " Bequeath to one third only , one third That Enough many . Indeed You leave expert inheritance in that rich state more Good than leave they in the poor conditions that become burden of others". Principle in make will is No may harm expert heir , then shared wealth No may more from one third . So that expert inheritance can enjoy more treasure legacy . testament more good and safe If written , if Already There is intention , then write it down will the in deed authentic.Thing the done For be on guard and be careful with will false .

Grant no can withdrawn back , except grant from parents to his son . The case of cancellation grant is common cases happen because of party recipient grant No fulfil condition in operate grants that have been given . According to law , grants that have been given No can withdrawn back , will but there is a number of exception so that grant can withdrawn back . Regarding grants in Indonesia are regulated in a number of provisions , namely in Compilation of Islamic Law (KHI), Customary Law and Civil Code (KUHPperdata). From the provisions said , grant is a solution in distribution inheritance to his family . [2]

In the Civil Code restrictions about grant will referring to on property which will shared on expert inheritance Because there is right absolute (Legitime Portie) which has determined by law . By law If grant will violate legitimacy portie will become null and void, but there is the rule made by the Supreme Court that If There is violation against Legitime Portie, expert inheritance the feel No disadvantaged so its nature become can canceled , Loaded In Article 913 of the Civil Code, what is meant by Legitime Portie is part from treasure legacy heir after die must given to expert heir , expert the intended heir is expert inheritance straight line descent according to law . So the heir No may set something at the moment Still life and also through his will or , give grant to anybody to treasure his legacy that can harm expert inheritance . [6]Islamic law on will based on the provisions and As-Sunnah which are source main in Islamic law . Will is giving somebody to others well in the form of goods , receivables orpubn benefit For owned by the person who is given will after the testator dead . Some experts define will as giving right owned by in a way voluntary work carried out after giver dead . While will become the right to receive after giver will That dead and his debts sorted out as guidance of the Qur'an. A will based on or tied up with or accompanied condition That legitimate if condition That true . Limitation of conditions is conditions that contain benefit for the person who gave it , the person who gave it , or someone else, as long as condition That No forbidden or contradictory with Meaning Sharia . Required by the person receiving it will namely he pukan expert the heir who gave testament ; the person who is given will there at the moment giver will dead , good There is in a way truly or There is in a way estimates ; and recipient will No kill the person who was given will . According to Hanafiyah scholars , a will is give right own something in a way voluntary (tabarru ') implementation suspended after after existence incident death from the giver , good in the form of goods and also benefits . While according to Malikiyah scholars , a will is something obligation that requires to recipient will claim 1/3 of the property legacy the testator .

Ambiguity or difference interpretation about strength law grant will in context Civil Code and Islamic law . This is will consider whether there is conformity or difference between second system

law in determine validity , cancellation and implementation grant testament . Perception public related strength law grant will based on second system law In addition to the aspects juridical , view public to grant will in context law positive and Islamic law can also become factor important that influences implementation law in society . Potential conflict or mismatch between law positive and related Islamic law grant testament . Research This can discuss cases concrete where there is misalignment between decision court based on Civil Code and principles Islamic law related grant testament . Relevance and urgency comparison strength law grant will between Civil Code and Islamic law in context development law civil law in Indonesia. Although Indonesia implements system law based on Civil Code , Islamic law also has significant influence , especially in context law inheritance . [7]The formulation problem from study This that is , is it urgency the comparison contained in Civil Code and Compilation of Islamic Law on strength law grant will and How the impacts caused and the differences between Civil Code and Compilation of Islamic Law related grant will As for the purpose study that is For know and analyze about urgency the comparison contained in Civil Code and Compilation of Islamic Law on strength law grant will.For know and analyze the impacts caused and the differences between Civil Code and Compilation of Islamic Law related grant testament . Uses theoretical study This give contribution knowledge and also knowledge about Legal Power Against Testamentary Grants Based on Civil Code and Compilation of Islamic Law. As for the Usefulness practice namely results study expected can give contribution thoughts and input to individual If happen related matters with Legal Power of Wills and Grants Based on Civil Code and Compilation of Islamic Law

METHOD

Methods used that is Normative Legal Research [8] that is research conducted or intended only on the rules written legislation or material law others of a nature theoretical with method to examine theories , concepts , principles law as well as regulation related legislation with Legal Power of Wills and Grants Based on Civil Code and Islamic Law. Research studies comparison law that is method general from a comparison and research comparison that can be applied in field law . In connection with that , then type material the law used in study This is secondary data . Secondary data the is the data obtained researcher from sources that have been There is . Data collection techniques were carried out with method Study Bibliography . Research bibliography , namely do assessment against secondary data . Selection literature selected such that appearance with consider aspect quality and quality from ability author For That used descriptive analysis namely describe and analyze Legal Power of Wills and Grants Based on Civil Code and Islamic Law. The analysis material law that is Processing material law done with method process and analyze the data that has been collected in a way textual , then constructed in a way qualitative , for furthermore withdrawn a conclusion .

RESULTS

Testamentary grant is determination a special will , by which the person bequeaths to a or more give a number of goods certain from treasure his legacy or give goods from type certain such as : everything moving goods , or give right use results or all over part treasure legacy . [9] Determination will special , contains Meaning that the grantor Already determine type items to be granted to others, whether goods That goods move or goods No move . Article 875 BW reads : "As for what is called letter will or testament is a deed containing statement somebody about what he wants will happen after died and by him can revoked back " Based on Article 875 BW and the opinion Wirjono Prodjodikoro mentioned above can concluded that withdrawal return the treasure that will given to others, as long as grantor Not yet died is may . Dotted reject from Article 875 BW, then grantor as testator deliver part his wealth that has been determined , but withdrawn return That is it 's normal because matter That is right his in a way intact . [10] Withdrawal return grant will can secretly known from behavior action the grantor , while after grant will That loaded . In such conditions can taken conclusion that the grantor wish interesting return What have you pronounced . Donation action For interesting return secretly this No so looks Because there side

the grantor has intend For granting , in the middle on the other hand intend to abort . Subekti say will That testament is a statement from somebody about what he wants after He died . In principle such a statement go out from One parties and each time can withdrawn back by the maker .

DISCUSSION

Legal Power of Testamentary Grants according to Civil Code and Islamic Law

According to Islamic Law, Grants can be under review from the Qur'an in Surah Al Baqarah verse 177 "And give the treasure he loves to his relatives , children orphans , poor people, travelers (in need help) and those who beg and free their servants " , and the hadith of the Prophet that was made reference grant among them : From Ibn Abbas ra he said : The Prophet SAW. said "the one who accepts return the grant (grant) is like dog vomiting Then he Eat return his vomit That ." Muttafaq ' alaih . In the history of Al- Bukhari: " Nothing bad metaphor for us other than the person who asked return the grant , such as dog vomiting Then he Eat return his vomit ". From Ibn Umar and Ibn Abbas ra from the Prophet SAW. he said : "It is not lawful for somebody muslim who gives a giving Then he Asking for the gift back , other than parents in a the gift that he gave give to his son ." Narrated by Ahmad and Al-Arba'ah (four narrators , namely Abu Daud, At- Tirmidhi , An Nasai and Ibn Majah) and hadith the rated shaheeh by AtTirmidhi , ibn Hibban and Al-Hakim. In hadith the contained argument prohibition request return grant . According to The general scholar Al Bukhari determined it as chapter his book with title : " Chapter not halal (haram) for a Muslim request return grants and alms ." Most scholars exclude this father's gift to children and the like . In KHI Article 212 with firm state that grant to child can withdrawn back . KHI allows withdrawal in a way casuistic if the granting that occurred between parents with child . For example , child recipient grant The same very No care about the life of parents who have old and poor. While life child sufficient . Or withdrawal based on on grant conditional . [11] For example in agreement grant There is determined condition that child recipient grant will take care of and bear parents life during alive . It turns out matter That No filled the child . In case This grantor can interesting return the grant .

For can it is said legitimate or No a giving to others, then required existence pillars and conditions grant namely : [12]

Shigat grant , According to Sheikh Muhammad bin Qosim, no. legitimate the law a grant except with existence spoken consent and qabul. Grant That through consent accepted , as form consent qabul shown by giving treasure without reward . According to Imam Malik and Imam As- Shafi'i , that is held is accepted within grant . According to Hanafiyah scholars , that consent That just Already enough , while the Hambali people to argue that grant That legitimate with a gift that shows to him .

Grantor , grantor is a person who gives something or treasure to other party . In case This grantor required terms and conditions :

Own what is granted ,

Not a restricted person his rights Because a reason ,

Adults ,

Not forced because grant That agreement that requires pleasure in its validity .

In Article 210 of the Compilation of Islamic Law it is stated that the person who has aged at least 21 years old , sensible healthy and without existence coercion can to grant as much as 1/3 of the

assets the thing to others or institution in the presence of two witnesses For owned .

Recipient grant , Recipient is the person who receives giving . For considered legitimate as recipient , then recipient grant must fulfil condition that is Correct Correct There is at the time given grant , if No truly There is or estimated existence for example fetus , then No valid .

Donated goods , Donated goods is something donated assets . As for the conditions goods grant that is :

Truly There is ,

Valuable property ,

Can be owned its essence ,

Not related with place owned by grantor ,

Dedicated , namely that which is donated That No For general . However, Imam Malik, Imam As-Shafi'i , Imam Ahmad and Imam Abu Tsur No requires thus , and according to him grant For general that is not divided up That valid . [\[13\]](#)

Difference Legal Approach to Testamentary Grants according to Civil Code and Islamic Law

How to Donate Will

According to Islamic Law, Islamic Law does not determine a method certain For create will final from the the deceased legacy . [\[11\]](#) According to Islamic law how to bequeath treasure must set with firm and clear , when it comes to the will can to talk . However if the testator That mute , then can with signal provided understood It means the . If it is the will can writing , then the writing must be clear and bright as well as contain testamentary intent . [\[14\]](#) JADDIN CSL_CITATION {"citationItems":[{"id":"ITEM-1","itemData":{"ISSN":"2746-5047","abstract":"Hukum waris adat "memiliki penerapan yang berbeda tergantung pada adat, budaya dan sistem kekeluargaan pada masyarakat tersebut. Sistem masyarakat Indonesia ada penarikan garis keturunan. Terdapat tiga macam sistem\nekeluargaan, yaitu: Sistem Patrilineal Sistem ini menarik garis keturunan pada garis ayah (laki-laki). Daerah yang menerapkannya" antara lain masyarakat di Tanah Gayo, Alas, Batak, Ambon, Irian Jaya, dan Bali. Selain sistem waris yang ditarik dari garis keturunan, masyarakat juga dapat mengangkat ahli waris diluar garis keturunan. Ini dapat dilakukan dengan membuat wasiat. Pelaksanaan isi akta hibah wasiat kadang menjadi masalah terutama dibuat pada masyarakat "pribumi yang menerapkan hukum adat. Tujuan penelitian untuk mengetahui proses pembuatan hibah wasiat dan pelaksanaan wasiat berdasarkan KUH Pedata, mengetahui akibat hukum pelaksanaan hibah wasiat yang dibuat dengan akta hibah wasiat oleh golongan pribumi yang sistem pewarisannya menggunakan hukum adat. Tipe penelitian hukum normatif dengan pendekatan perundangan dan konseptual. Hasil penelitian menunjukkan Pelaksanaan wasiat dapat dilaksanakan melalui notaris dengan dibuatnya Surat Keterangan Hak Mewaris oleh notaris setelah adanya pengecekan mengenai ada atau tidaknya wasiat terakhir pada daftar pusat wasiat. Untuk wasiat berupa hak atas tanah, Surat Ketaran Hak Mewaris tersebut didaftarkan pada Kantor Kementerian Agraria dan Tata Ruang / Badan Pertanahan Nasional untuk dilaksanakan perubahan data dalam sertipikat tanah yang dimaksud dalam wasiat. Akta hibah wasiat yang dibuat oleh orang pribumi (masyarakat Bali) yang menerapkan hukum waris adat tidak menjadi batal, karena akta hibah wasiat" merupakan bagian hukum perdata barat dan pembuatannya tunduk pada KUHP perdata atau karena yang membuat wasiat adalah orang yang tunduk terhadap hukum adat." , "author":{"dropping-particle":"","family":"Krisnanda","given":"I Nyoman Oky","non-dropping-particle":"","parse-names":false,"suffix":""}, {"dropping-particle":"","family":"Budiarta","given":"I Nyoman Putu","non-dropping-particle":"","parse-names":false,"suffix":""}, {"dropping-

particle":"","family":"Mahaputra","given":"I.B. Gede Agustya","non-dropping-particle":"","parse-names":false,"suffix":"","}],"container-title":"Jurnal Interpretasi Hukum","id":"ITEM-1","issue":"3","is-sued":{"date-parts":[["2022"]]},"page":"365-371","title":"Pengaturan Tentang Warisan Dengan Akta Hibah Wasiat Berdasarkan Sistem Hukum Waris di Indonesia","type":"article-journal","volume":"3"},"uris":["http://www.mendeley.com/documents/?uuid=defe50fd-5dc2-4b07-8c44-874b8157d92a"]},"mendeley":{"formattedCitation":"[14]","plainTextFormattedCitation":"[14]","previouslyFormattedCitation":"[14]"},"properties":{"noteIndex":0},"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"} For strengthen Meaning Good from the testator then one of them method grant will according to Islamic law is needed existence witnesses who can trusted and able justify existence final words , gestures , and writings . In Surah Al-Maidah verse 106 it is explained "O you who believe , if one of you You face death , in progress he will testamentary , then shall (will) it) was witnessed by two fair persons among you , or two people of different religions you , if You in journey in advance earth Then You overwritten danger death . You hold on second witness That after prayer (for swear) , then they both of them swear in the name of Allah, if you hesitate: "(By Allah) we do not will buy with oath This a little price (for interest someone) , even though he close relatives , and we don't hide testimony of God; actually we if thus of course including those who are sinners ". According to Civil Law , Civil Law know three method make grant will . According to Wiryono Projodikoro , BW knows three type method make grant will namely : [\[14\]](#)

Secret Testament. Secret Testament this is set in Articles 940 and 941, in chapter This determined that died inheritance must write Alone or tell someone else to write about intention Good will final that . That writing must signed by the heir said . The writing closed in cover , sealed and submitted to a notary and witness it four people sakasi . Then the the deceased inheritance make make statement whose contents are that the writing is his will .

Testament no secret . Article 938 of the Civil Code states , " everyone letter will with deed general must made before a notary with attended by two witnesses . According to Wiryono Projodikoro, testament No confidential This since formerly named with testament oral . However another opinion says that No consider method oral as condition absolute .

The testament was written himself . Written testament alone (holographic) arranged in Article 932 of the Civil Code Webbook reads : a will written alone must all in all written and signed by the testator Alone . Such a will by the testator must saved to a notary . Notary the assisted by two witnesses , authorities quick make A deed storage that must be signed together with the bequest and witnesses , which deed must be written , good under letter will , if letter will This with open he conveyed to him , and on paper alone , if letter will That sealed delivered to him : in matter final This in front of notary and witnesses the bequeathed must to put A notes to the cover states that cover That contains letter will which notes should be strengthened with sign his hand . In case This when the bequeathed Because a obstacles that arise after Signature letter will or the cover , no can sign cover or deed storage or both of them then the notary must make a information about one another on the cover or deed storage said ." [\[15\]](#)

When submission of the testament, the testament must be Already written , closed and sealed witnessed by two witnesses in front of Notary Public with objective that That Correct testament . Article 934 BW, states that died inheritance can request return testament . For that , notary must make statement that his testament withdrawn return with letter authentic .

According to Islamic Law

Testament , scholars differ opinion about will , is it That must abandoned or must done . As for the opinion That : First , opinion This look at that will That must for everyone who leaves property , good treasure That Lots or A little . Ibn Hazm narrated that mandatory will That from Umar, Thalhah bin Mutharrif , Zubair and Asy-Sya'bi which is based on the letter Al-Baqarah verse 180 " It is obligatory on you , if one of You the arrival (signs) of death , if He leave lots of wealth , will For

mother-father and close friend his relatives in a way ma'ruf , (this is) obligation upon those who fear Allah .” “Al- Ma'ruf ” is something that is not rejected expert inheritance Because the small amount when compared to with his wealth or Don't until too Lots so that will use up part expert inheritance . [16] According to law civil , in essence law This know two ways withdrawal grant that is withdrawal return in a way firm and withdrawal return secretly a . Withdrawal Secretively Firm Withdrawal return grant will in a way firmly , regulated in Articles 992 and 993 of the Civil Code . Article 992 reads : " With not reduce provision in Article 934, each will Good all in all and also For some , no may revoked return but with a the will which was then or with a notarial deed that must be , by which the person who gave it will state his will will to pull out referee That or For part ” . Based on chapter the withdrawal return grant will carried out by the grantor at the time Still life and grantor make a a special deed whose purpose is For to pull out good intentions that . According to Oemar Salim, withdrawal return grant will in a way firm This according to Article 922 can done : (1) In a grant will new , which was held according to articles of the BW, (2) In a Notary Public special .

CONCLUSION

Based on results study can concluded that the testamentary grant is a determination will with the name that inherits to a or more give goods certain from treasure his legacy or give goods from type certain . Testamentary grant can aborted or canceled so that No tie again . This is can it is said grant will That can withdrawn back . In trouble withdrawal return grant will in law civil and Islamic law due to the judge's decision has strength law as explained in Article 197 of the Compilation of Indonesian Islamic Law, paragraphs 1, 2 and 3. Provisions grant will in Islamic law is somebody may deliver treasure belonging to another person, surrender the No may exceed the level that has been determined namely 1/3 of the assets legacy , for can said legitimate a giving to others so must fulfilled terms and conditions in contract In this case . This set up in articles 913 to 929 BW. The suggestions from study This that is Should in the development of the times for regulation to grant will expected can give convenience every society in settlement case related grant testament . And it should be in the determine provision distribution grant will can realized with see condition related applicable law Good from Civil Code and also compilation law Islam .

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