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## Legal Consequences of a Deed of Gift Made by Spouses (Case Study of Deed of Gift No. 937 Dated December 27, 2016)

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**Abstract:** The land is the settlement place for most of the community, besides being a source of livelihood for those who earn a living through farming and plantations. Ultimately, the land also serves as the final resting place for someone who has passed away. The population of Indonesia continues to grow, but the land area remains unchanged. The available land area eventually becomes disproportionate to the increasing population. How people meet their needs for land includes buying and selling, exchanging, gifting, or through bequests. This journal will discuss the legal consequences of a grant deed made by a married couple still in the bond of marriage from the perspective of the law. The law has regulated the procedures on how grants are to be made and the legal subjects allowed to execute the grants.

**Keyword:** Legal Consequences, Grant Deed, Husband and Wife, Land Deed Official (PPAT).

### INTRODUCTION

As a gift from Almighty God, land is a blessing that cannot be neglected because it holds significant importance for human life. Land, as a trust from Allah SWT, requires special attention because, besides being a source of livelihood, it is a source of human life.

This is in line with the provisions in the Quran that humans are created from the earth. In the Dictum of the Head of the National Land Agency Regulation Number 4 of 1991 concerning Land Consolidation, it is stated that land, as the wealth of the Indonesian nation, must be utilized for the greatest possible prosperity of the people.

To achieve this utilization, land consolidation needs to be carried out to increase the efficiency and productivity of land use and harmonize individual interests with the social function of land within the framework of development implementation. The transfer of land rights can be through sale and purchase, exchange, gift or inheritance. In article 26 paragraph (1) of Law No. 05 of 1960 it is stipulated that: "Sales and purchases, exchanges, gifts, gifts by will, and other acts intended to transfer property rights and their supervision are regulated by Government Regulations."

The importance of land for humans as individuals and for the state as the highest social organization is constitutionally regulated in Article 33, paragraph (3) of the 1945 Constitution, which states: "The earth, water, and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people." As a continuation of Article 33, paragraph (3) of the 1945 Constitution relating to the earth or land, Law Number 5 of 1960

concerning Basic Agrarian Principles was issued, more commonly known as UUPA. In the context of national development, the role of land becomes increasingly important due to the continuous growth of the population, all of whom require land for housing.

As development activities increase, so does the demand for land, which increases the need for support in the form of legal certainty in land affairs. With the rising demand for land among the population, the transfer of land rights will also increase. Land rights can be transferred through buying, selling, exchanging, gifting, or inheritance. Article 26, paragraph (1) of Law No. 05 of 1960 stipulates that: "Buying and selling, exchanging, gifting, bequeathing, and other acts intended to transfer ownership rights and their supervision are regulated by Government Regulations."

One of the shared transfers in society is gifting. The implementation of gifting, also known as "giving without expecting anything in return," is one of the forms of mutual assistance encouraged by religion to strengthen social relations among people in society. Provisions regarding gifting are regulated in Civil Law, Islamic Law, and Customary Law.

However, there are still deviations in the implementation of gifting in society. Often, the procedures in gifting agreements are conducted with a grain of salt without considering the consequences, turning what was initially intended to strengthen social relations into societal problems. The community's lack of knowledge and awareness about gifting is a fundamental factor that leads to errors in the gifting process. A gifting process must follow procedural rules and comply with Indonesia's prevailing laws and regulations.

One of the provisions in donation that must be observed is that both parties, whether the recipients or donors, must be legally competent and adhere to other provisions stipulated by the law. According to Article 1330 of the Civil Code, it states: "Those who are not capable of making agreements are: 1. Minors 2. Those placed under guardianship 3. Women, in matters specified by law, and generally anyone to whom the law prohibits making certain agreements."

This also applies to the deed of gift number 937 dated December 27, 2016 which is the subject of discussion in the preparation of the journal, because the parties involved in the gift are a married couple who are still married, the author is interested in research to find out the legal consequences of the gift agreement made by a married couple who are still married.

## **METHOD**

The research method used is normative juridical research. Normative legal research means the issues are analyzed based on existing legal regulations and relevant literature on the researched problem. This type of research involves primary, secondary, and tertiary legal materials. The research method employs a legislative approach and a comparative approach.

## **RESULTS AND DISCUSSION**

### **The legal consequences of a deed of gift made by spouses within the bonds of marriage**

Gifting between spouses is a social, legal act involving the gratuitous transfer to the recipient without receiving any consideration in return. The legal act of gifting between spouses has become commonplace and widely practiced in society, as exemplified by Deed of Gift No. 937, dated December 27, 2016.

According to this deed, the wife acts as the donor and the husband as the recipient. The object transferred is a piece of ancestral land still uncertified under Customary Ownership, with status letter c no 6687, plot no 76, Block D II, covering an area of 1570 square meters.

Article 1676 of the Civil Code states: "Everyone is permitted to give and receive something as a gift, except those declared incapable of doing so by law." Those exempted are called incompetent (lacking authority) to perform a legal act. As a legal act, gifting is governed by the Civil Code, so to receive a gift, certain conditions must be met, Conditions for the donor, The Civil Code provides the following conditions for the donor:

1. The donor must be an adult, meaning they have reached the age of 21 or have been married (Article 330 of the Civil Code).
2. The gift is given while the donor is still alive.
3. There should not be a marital relationship between the donor and the recipient, meaning gifts between spouses during marriage are prohibited. According to Article 1678 paragraph (1) of the Civil Code, however, gifting between spouses is still permitted for items of modest value based on their economic circumstances and social status within the community.

Conditions for Acceptance of the Gift , Similar to the conditions for giving a gift, anyone can accept something given to them, including young children, who must be represented. However, according to the provisions on gifts in the Civil Code, the conditions for the recipient of a gift are as follows:

1. The recipient of the gift must exist at the time of the gifting, or if it turns out that the interests of an unborn child desire it, the law may consider the child in the womb as already born (Article 2 of the Civil Code).
2. Public institutions or religious institutions can also accept gifts, provided that the president or the appointed authority, such as the Minister of Justice, grants the power to the administrators of these institutions to accept the gift (Article 1680 of the Civil Code).
3. The recipient of the gift should not be a former guardian of the donor. However, if the guardian has settled accounts for their guardianship, the former guardian can accept the gift (Article 904 of the Civil Code).
4. The gift recipient cannot be a notary who, through their mediation, makes a public deed of a will by the donor, nor can it be a witness who finalizes the making of that deed (Article 907 of the Civil Code).

A gift must be made through a Notarial deed, the original of which is kept by the Notary (Article 1682 of the Civil Code). However, before the issuance of Government Regulation No. 24 of 1997 concerning Land Registration, for those subject to the Civil Code, a deed of gift had to be made in written form by a Notary, as mentioned above.

However, after Government Regulation No. 24 of 1997 issuance, a Land Deed Officer (PPAT) must make every gift of land and buildings through a deed.

Regarding the form, content, and manner of making deeds by PPAT (including deeds of gift), these are regulated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 8 of 2012 concerning Amendments to the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration.

Based on the above provisions in meeting the requirements to obtain a gift, the gifting performed by Mrs. IS as the recipient of the gift and Mr. ED as the recipient of the gift, made in front of the Temporary PPAT Sub-district Chief, does not meet the requirements and provisions found in the Civil Code.

Here are the elements that do not meet the requirements of gifting in Deed of Gift No. 937 dated December 27, 2016, The parties giving the Gift, Mrs. IS, and the recipient of the gift, Mr. ES, are spouses still in a marital bond, which is not allowed by law to perform the legal act of gifting. According to Article 1678 paragraph (1) of the Civil Code, it is prohibited to gift between spouses during marriage, which states: "Gifting between spouses during marriage is prohibited.

" And The object of the gift in this gifting is a piece of ancestral land that is still uncertified under Customary Ownership, with the status letter c no 6687, plot no 76, Block D II, covering an area of 1570 square meters, which includes immovable property that holds high economic value in society. According to Article 1678, paragraph (2) of the Civil Code states: "However, this provision does not apply to gifts or donations of movable items, which are not too valuable considering the donor's ability."

In this article, the object of the gift is a piece of land with high economic value. Thus, the law does not allow it to be the object of gifting between spouses. Therefore, legally, if the elements for obtaining the gift as mentioned above are not fulfilled and one or both parties in the agreement turn out to be incompetent, then the juridical consequences are as follows:

1. If the agreement is made by a minor (not yet an adult), it will be void upon the minor's request solely due to their minority. See Article 1446, paragraph (1) of the Civil Code, in conjunction with Article 1331, paragraph (1) of the Civil Code.
2. If someone under guardianship agrees, the agreement will be void upon the request of the person under guardianship solely due to their status.
3. If a married woman agrees, the agreement will be void if made beyond her authority.
4. Regarding agreements made by persons prohibited by law from performing certain acts, they can demand the cancellation of the agreement unless otherwise specified by law.
5. Agreements made by incompetent persons that are subsequently declared void require the parties to restore the agreement to the state it was in before the agreement was made as if the agreement had never been made, as stipulated by law.

From the above explanation, the analysis of data based on Deed of Gift No. 937, dated December 27, 2016, does not meet the requirements for gifting as regulated by law, thus legally resulting in the nullity of that deed.

## CONCLUSION

The conclusion drawn by the researcher in compiling this journal is as follows Gifting is a legal act regulated by Islamic Law, Customary Law, and Civil Law, with a specific emphasis here on the regulations governing gifting under the Civil Code. Both parties, whether giving or receiving, are outlined in the Civil Code. Based on the Deed of Gift No. 937 analysis dated December 27, 2016, the parties involved are a married couple engaged in the legal act of gifting. According to Article 1678 paragraph (1) of the Civil Code, this is prohibited, stating:

"Gifting between husband and wife is prohibited." Because the law explicitly prohibits such gifting, the author concludes that the legal consequence of this deed is null and void, as the deed does not fulfill the subjective elements under the legislation.

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