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Grant of Joint Property to Children Through Private Deed (Analysis of Decision Number 287 PDT.G/2022/PA/MDO)

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Abstract: This research's title is Grant of Joint Property to Children Through Private Deed (Analysis of Decision Number 287 PDT.G/2022/PA/MDO). The object of this research is Derden Verzet (Third Party Resistance) case Number 287Pdt.G/2022/PA/Mdo at the Manado Religious Court, Indonesia. The objective of this research is to analyze whether joint property that has been donated through a private deed remain joint property or the child's personal property and the strength of the evidence of a private deed in granting joint property to a child at the Manado Religious Court. This study uses a normative juridical legal research type with a statute approach and a case approach. The results of the study show that in the Manado Religious Court Decision Number 287Pdt.G/2022/PA/Mdo, the Judge confirmed that joint assets that have been donated to children through a private agreement are still recognized as valid, thus the joint assets that have been donated are no longer included in joint assets but rather the property of the children as recipients of the grant. The private deed of grant of joint assets from the Defendants to the Opponents has the power of proof because it is recognized as signed by Defendant II as the party who signed it.

Keyword: Grant, Underhand, Joint Property.

INTRODUCTION

A grant is a type of gift made by a person while he is still alive and the implementation of its distribution is usually carried out while the grantor is still alive. There are no specific requirements for the party who will receive the grant so that the grant can be given to anyone, basically all kinds of property that can be used as property rights can be granted like a person's joint property (Ali, 2008).

A gift is an agreement, whereby a donor hands over an item for free, without being able to withdraw it, for the benefit of a person receiving the item. The gift agreement is regulated in Article 1666 to Article 1693 of the Civil Code.

An agreement is an event in which a person promises to another person or in which two or more people promise each other to carry out something. In an agreement there is a written or

oral agreement, in the case of a written agreement there is an agreement written on a paper that is done without being in front of an authorized official (underhand agreement), or in front of an authorized official that is stated in a deed (authentic deed)

The specialty of an authentic deed is that it is a perfect piece of evidence, meaning that if someone submits an authentic deed to a judge as evidence, then the judge must accept and consider what is written in the deed to be an event that has really occurred, and the judge may not order additional evidence. In a private agreement, the agreement is made by or without the intermediary of a public official, but rather is made and signed by the parties who entered into the agreement, if the parties who signed the agreement acknowledge and do not deny their signature, do not deny the contents and what is written in the agreement, then the private deed has the same evidentiary power as an authentic or official deed.

A private gift agreement is a gift that is executed without an authentic deed or is only done privately, in civil law a gift must be made with a notarial deed, as stated in Article 1682 which states "No gift, except those mentioned in Article 1687, may be voided under threat of cancellation, made other than with a notarial deed, the original of which is kept by the notary."

However, not all grants must be made with an authentic deed, there are some grants that do not require an authentic deed such as movable objects, namely gifts in the form of goods such as computers, household furniture and others, in terms of grants that must be made with an authentic deed are grants of immovable objects such as land.

Joint property is a legal consequence after a divorce. The position of joint property after a divorce is regulated according to their respective laws, in accordance with the provisions of Article 37 of the Marriage Law. Islamic law does not recognize joint property because in Islamic law there is no mixing of wealth between husband and wife. In Indonesia, joint property is recognized through customary law which is then applied continuously as a law that cannot be removed because the value of its benefits is greater than its harm. In the provisions of Law No. 1 of 1974 concerning Marriage, Article 35 paragraph (1) states that property generated by a husband and wife who work together can be viewed as joint property between husband and wife. The Civil Code also regulates the formation of joint property, namely Article 119, which states that since the marriage is carried out according to law, joint property occurs entirely between husband and wife unless there are other provisions. So any property obtained since the marriage contract until the marriage ends either due to divorce or death, all property becomes joint property without looking at who the property is from. From here it can be seen that there are differences in the regulation of joint property in Islamic law, the Marriage Law and the Civil Code (Puspytasari, 2020).

Joint property includes: property acquired during the marriage; debts incurred during the marriage except those that are personal property of each husband and wife; property acquired as a gift/grant or inheritance if so determined. A husband and wife who have officially divorced have the same rights to joint property, with an equal division between the two or based on an agreement between the two (Faizal, 2015).

Hartono Seorjopratikno in Fahmi Al Amruzi's book states that the details of joint property in a marriage are as follows (Amruzi, 2013):

1. Since the implementation of the marriage, by law there is a total joint ownership of assets which includes all profits from all objects that already exist and those that do not yet exist.
2. Community property generally includes profits from all movable and immovable property of the husband and wife, both existing and those obtained by them for free.
3. In terms of burden, this togetherness includes all debts incurred by husband and wife, both before and after the marriage takes place.
4. Included in this togetherness are all the fruits and results obtained from the joint property.

According to civil law, the management of joint property is solely in the hands of the husband. However, even though the husband's power is so great, the Civil Code provides several limitations on the objects of joint property. One of the limitations on legal actions taken against objects of joint property is the prohibition on the implementation of gifts on objects of joint property, both for immovable and movable objects. Article 124 Paragraph (3) of the Civil Code emphasizes that it is not permissible to give gifts of immovable goods and all movable goods from the union except to give status to the children (Pulumgan, 2016).

The division of joint assets due to divorce must be divided equally between husband and wife in accordance with the provisions of the marriage law. Half for the husband and half for the wife in accordance with a sense of justice. The joint assets during the marriage may not be eliminated or changed with an agreement between the husband and wife. The value of justice is the dream of a husband and wife that needs to be actualized into the division of joint assets in divorce cases so that justice can be realized for divorced husband and wife. Contained in it Legal Justice, Moral Justice, and Social Justice are used as variable indicators with the consideration that these three indicators can support the realization of the value of justice in the division of joint assets (Limbong, 2023).

The dissolution of a marriage between a husband and wife does not mean the severance of all affairs between the two, but there are legal consequences that need to be considered by both parties who are divorcing. One of the most common disputes that arise due to the dissolution of a marriage is the joint property that must be divided between the husband and wife, as well as the *hadhanah* for children from the marriage who are not yet adults (Rofiq, 1998). Islamic law basically accepts the provisions on joint property in marriage. Likewise in making a gift of joint property to a child. In the Civil Code, gifts are regulated in title X of Book starting from Article 1666 to Article 1693. According to Article 1666 of the Civil Code, a gift is an agreement by which the donor, during his lifetime, free of charge and irrevocably, hands over something for the needs of the recipient of the gift who receives the gift.

Granting joint property to children should be done after a divorce and after the joint property is divided between the husband and wife, where in Article 37 of Law Number 1 of 1974 concerning Marriage if the investment (property) is obtained during a marriage, then it becomes joint property that must be divided between the husband and wife in the event of a divorce. However, in the case of the Manado Religious Court Number 287Pdt.G/2022/PA/Mdo and the Jayapura Religious Court Number 209/Pdt.G/2021/PA.Jpr, the joint property belonging to the husband and wife was granted to the children through a private deed before they divorced. The problem arose when there was a dispute over the division of joint property, the property that had been granted with the private agreement was used as the object of the joint property lawsuit dispute. Thus, the author is interested in conducting a study entitled "Grant of Joint Property to Children Through a Private Deed (Study of Decision Number 287 Pdt.G/2022/PA/Mdo).

Based on the background and identification of problems outlined above, several problems are formulated as follows:

- 1) Does joint property that has been donated through a private deed remain joint property or the child's personal property?
- 2) How strong is the evidence of a private deed in granting joint property to a child at the Manado Religious Court?

METHOD

The type of research used in this study is normative legal research. (Wardiono, 2019) Normative legal research is a type of research that is commonly conducted in legal science development activities which are also commonly called legal dogmatics (*rechtsdogmatiek*). The approaches used in this study are the statute approach and the case approach. (Susanto & Nuna, 2023) The statute approach is carried out by examining all laws and regulations related to the

legal issue being handled. The case approach is carried out by examining cases related to the issue at hand that have become court decisions that have permanent force. The main study in the case approach is the ratio decidendi or reasoning, namely the court's considerations in arriving at a decision (Pulumgan, 2016).

In the study entitled Joint Property Grants to Children Through Private Deeds (Study of Decision Number 287 Pdt.G/2022/PA/Mdo), the author refers to the Civil Code and the Manado Religious Court Decision Number 287 Pdt.G/2022/PA/Mdo.

RESULTS AND DISCUSSION

Legal Position of Joint Property That Has Been Gifted to Children Through a Private Agreement

In the case of Manado Religious Court Number 287Pdt.G/2022/PA/Mdo, Children who received a grant are questioning a joint property dispute between their divorced parents, where the children as the Opponents in the case are the Rights Holders of land ownership with Certificate of Ownership Number 64, Measurement Letter Number 455 of 1981 in the name of Yuliani Elygia Kenny, Herlina Umar and Hardianti Umar located in Kauditan I Village, Kauditan District, North Minahasa Regency, North Sulawesi Province, above which there are buildings in the form of 3 2-storey shophouses and 5-room boarding houses (Manado Religious Court Clerk's Office, 2022).

The joint property dispute between the two divorced parents was then decided by the Jayapura District Court through the Jayapura Religious Court Number 209/Pdt.G/2021/PA.Jpr (Jayapura Religious Court, 2021). In the case, the Panel of Judges granted the Counterclaim, which in one of the dictums of its decision stated that the building in the form of 3 units of 2-story shophouses and 5-room boarding houses standing on land with Certificate of Ownership Number 64, Measurement Letter Number 455 of 1981 in the name of Yuliani Elygia Kenny, Herlina Umar and Hardianti Umar is joint property belonging to the Claimant and the Defendant.

The Opponents strongly objected because Opponent I argued that the disputed object was in the name of Martinus Buntuang as if the disputed object was still owned by Martinus Buntuang, but in fact the disputed object had experienced 2 transfers of rights, namely the First Transfer by Inheritance to the respective heirs named: 1) Yulius Theodorus Buntuang, 2) Maria Buntuang, 3) Florentinus Felix Buntuang, 4) Joseph Daud Buntuang, 5) Siti Fatimah Buntuang, 6) Elia Buntuang, 7) Adolfina Mawuntu, and 8) Jonathan Buntuang, then the second transfer by gift from the heirs was granted to the Opponents, namely Yuliani Elygia Kenny, Herlina Umar and Hardianti Umar based on Deed of Grant Number 21/2017 made before the Land Deed Making Officer (PPAT) Meiske Mandagi, SH, MH, M.Kn. on February 28, 2017, which until now the disputed object is still controlled by the Opponents and the ownership rights have not been transferred to another party.

In its legal considerations, the panel of judges stated that evidence P13 and the statement of the 5th witness Pelawan proved that 3 units of shophouses, each measuring 4.5 x 21 m, located in front of the Manado-Bitung toll road, had been given to Yuliani Elygia Keny, Herlina Umar and Hardianti Umar respectively.

Exhibit P 13 is a Statement of Agreement on the Division of Rights by both parents, namely Defendant I and Defendant II, which was made through a private agreement. Exhibit P.13 is a joint agreement on the division of the Ruko building to 3 children, namely Pelawan I, II and Pelawan III from Hi. Umar Mansyur and Hj. Siti Fatima Buntuang, which was made on July 9, 2018, witnessed by the oldest brother of Siti Fatima Buntuang named Yulius Tidorus, this evidence shows that the disputed object has clearly been given by Defendant I and Defendant II to their children, namely Pelawan I, II and III.

Thus, in its verdict, the panel of judges stated that the object of the dispute was land with certificate of ownership number 64, measurement letter number 455 of 1981, on which

there were buildings in the form of 3 (three) units of 2 (two) storey shophouses, 5-room boarding houses with boundaries: to the north it borders the Manado-Bitung highway, to the east it borders the village road, to the south it borders the land owned by the Dumais Sigar family and to the west it borders the land owned by the Aronggear Pilohima family, which belongs to Pelawan.

The decision of the panel of judges confirms that joint assets that have been donated to children through a secret agreement are still recognized as valid, thus the joint assets that have been donated are no longer included in joint assets but rather are the property of the children as recipients of the gift.

Strength of Proof of Private Deeds in Granting Joint Property to Children

A private deed is basically a deed made by the parties for a certain interest or purpose without involving an authorized official. So in a private deed, the deed is simply made by the parties themselves and then signed by the parties, for example a receipt, a debt agreement, etc., the absence of an authorized official is the main difference between a private deed and an authentic deed (Palit, 2015).

A private deed has formal evidentiary power, namely an evidentiary power based on the truth or falsity of the statement signed in the deed, that the signatory of the deed explains what is stated in the deed. For example, between A and B who make a sale and purchase, admit that the signature stated in the deed is true, so the acknowledgement is regarding the statement of the occurrence of the event itself, not regarding the contents of the statement. or in this case concerning the statement "is it true that there is a statement from the parties who signed it" (Palit, 2015).

The formal evidentiary power of a private deed lies in the external evidentiary power of the private deed, namely if the signature on the deed is acknowledged, it means that the statement stated above the signature is also acknowledged, then here it is certain for everyone that the statement stated above the signature is the statement of the signatory. So a private deed has formal evidentiary power (Palit, 2015).

That in this case Manado Religious Court Number 287Pdt.G/2022/PA/Mdo, there is evidence of a letter that is classified as a private deed, namely made unilaterally by the parents without going through a Notary. The evidence is Exhibit P 13. Exhibit P 13 is a Statement of Agreement on the Distribution of Rights by both parents, namely Defendant I and Defendant II, which was made through a private agreement. Exhibit P.13 is a joint agreement on the division of the Ruko building to 3 children, namely Pelawan I, II and Pelawan III from Hi. Umar Mansyur and Hj. Siti Fatima Buntuang which was made on July 9, 2018, witnessed by the eldest brother of Siti Fatima Buntuang named Yulius Tidorus, this evidence shows that the disputed object has clearly been given by Defendant I and Defendant II to their children, namely Pelawan I, II and III.

Evidence P13 is also supported by the statement of the 5th witness Pelawan on behalf of Yulius Teodorus Buntuang. This witness's statement explains that the witness knew that the grant was a gift of all the property belonging to the parents (Martinus Buntuang) to the witness including 7 siblings and 1 son-in-law and one of them who received a share was Terlawan II and the witness knew that all the land had certificates, then Terlawan II donated it to his three children, regarding the shophouse, he did not know when it was built, what the witness knew was that there were three shophouse plots, each of which had been divided to the three children of Terlawan II, and the witness as the eldest child in the Buntuang family also signed the rights division agreement in 2018 by Terlawan I and Terlawan II. Thus, it is proven that 3 shophouse units, each measuring 4.5 x 21 m, located in front of the Manado-Bitung Toll Road, have been given to children named Yuliani Elygia Keny, Herlina Umar and Hardianti Umar by mutual agreement with their parents on July 9, 2018.

Based on the evidence, Defendant II essentially supports the arguments of the resistance of the Opponents, therefore the panel of judges did not consider it further, because wherever Defendant I's objection goes, it is very contrary to what has been proven by the Opponents, that the object of the dispute as per certificate number 64 with measurement letter 455 is clearly owned by the Opponents by way of acquisition through inheritance and then grant as has been confirmed at the Land Office that the owner of the disputed object is the Opponents, likewise the shophouse building on the land is the joint property of Defendant I and Defendant II, which has been mutually agreed to be given to Opponents I, II and Pelawan III as evidence P.13.

Based on these considerations, it is proven that the object of the Land dispute with certificate of ownership Number 64, measurement letter number 455 of 1981 above which there are buildings in the form of 3 (three) units of 2 (two) storey shophouses and 5-room boarding houses with boundaries: north bordering the Manado-Bitung highway, East bordering the Village road, south bordering land owned by the Dumais Sigar family and West bordering land owned by the Aronggear Pilohim family to belong to Pelawan, therefore Pelawan's objection must be granted.

So that in the verdict of the Manado Religious Court Number 287 Pdt.G/2022/PA/Mdo, the panel of judges stated that the object of the dispute was land with a certificate of ownership Number 64, measurement letter number 455 of 1981 on which there were buildings in the form of 3 (three) units of 2 (two) storey shophouses, 5-room boarding houses with boundaries: north bordering the Manado-Bitung highway, East bordering the Village road, south bordering land owned by the Dumais Sigar family and West bordering land owned by the Aronggear Pilohimauntuk family belonging to Pelawan.

Private deeds only have formal evidentiary power, namely if the signature on the deed is acknowledged (in this case it is already proof of acknowledgement) which means that the statement contained in the deed is acknowledged and justified. Private deeds are regulated in Article 1874 - 1984 of the Civil Code. In this case, the deed that the hand of the grant of joint property has evidentiary power because its signature is acknowledged by the party who signed it.

CONCLUSION

In the Manado Religious Court Decision Number 287 Pdt.G/2022/PA/Mdo, the Panel of Judges emphasized that joint assets that have been donated to children through an underhand agreement are still recognized as valid, thus the joint assets that have been donated are no longer included in joint assets but rather the assets of the children as recipients of the grant.

So in its verdict, the panel of judges stated that the object of the dispute was land with a certificate of ownership number 64, measurement letter number 455 of 1981, on which there were buildings in the form of 3 (three) units of 2 (two) storey shophouses, 5-room boarding houses with boundaries: north bordering the Manado-Bitung highway, east bordering the village road, south bordering land owned by the Dumais Sigar family and west bordering land owned by the Aronggear Pilohima family, which belonged to Pelawan, namely the children of the Defendants (divorced husband and wife).

A private deed only has formal evidentiary force, namely if the signature on the deed is acknowledged (in this case it is already proof of acknowledgement) which means that the statement contained in the deed is acknowledged and justified. This private deed is regulated in Article 1874 - 1984 of the Civil Code. In the Manado Religious Court case Number 287 Pdt.G / 2022 / PA / Mdo, the deed that the handover of joint property from the Defendants to the Opponent has evidentiary force because its signature is acknowledged by the party who signed it, namely Defendant II.

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