



## Juridical Analysis of Judges' Decisions in Settling Grant Disputes from a Maslahah Perspective

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Received : Juni 2024 Accepted: Agustus 2024 Published: Desember 2024

**Abstract:** Grants are *tabarru'* actions but often cause envy among the parties concerned or indirectly concerned. With several facts and cases regarding the withdrawal of grant assets for various reasons. As the case of grant disputes in the Kudus Religious Court with case number 314/Pdt.G/2020/PA.Kds. Jo. Number 372/Pdt.G/2020/PTA.Smg. Jo. 658 K/Ag/2021. The purpose of this article is to know and analyse the judge's decision in resolving grant disputes from a *maslahah* perspective, seen from the type of research using library research or literature study, the primary data source is the decision of the Kudus Religious Court with case number 314/Pdt.G/2020/PA.Kds. Jo. Number 372/Pdt.G/2020/PTA.Smg. Jo. 658 K/Ag/2021, while secondary legal sources are *maslahah* perspectives both from book sources, journal articles and so on, then data analysis using qualitative analysis techniques. The results of the study explain that the decisions of the courts of first instance and appeal are cancelled because this case is a case that should be the authority of the religious courts. As the decision of the panel of judges of the Kudus Religious Court Number 314/Pdt.G/2020/Pa.Kds, and the Semarang Religious High Court in its decision Number 372/Pdt.G/2020/PTA.Smg did not apply justice and expediency and even legal certainty. Article 49 of the Religious Courts Law is the basis for legal certainty in this case so that the party who filed the lawsuit did not get justice that the object of the case was the only property that had been owned and also in the two decisions did not achieve happiness for many parties, this is in line with the Supreme Court's decision Number 658 K/Ag/2021. Therefore, the decision of the Indonesian Supreme Court in examining and deciding the case is in accordance with the applicable legal theory and in accordance with the principle of *kemashlahatan* or *maslahah* theory in Islamic law.

**Keywords:** *Grant; Maslahah; Tabarru' Act*

**Abstrak:** Hibah merupakan perbuatan *tabarru'* namun seringkali menimbulkan sisi iri di kalangan pihak-pihak yang bersangkutan maupun yang tidak bersangkutan secara tidak langsung. Dengan beberapa fakta dan kasus mengenai penarikan kembali harta hibah dengan berbagai alasan yang melatarbelakangi. Sebagaimana kasus sengketa hibah di Pengadilan Agama Kudus dengan perkara nomor 314/Pdt.G/2020/PA.Kds. Jo. Nomor 372/Pdt.G/2020/PTA.Smg. Jo. 658 K/Ag/2021. Tujuan dalam artikel ini adalah mengetahui dan menganalisis putusan hakim dalam penyelesaian sengketa hibah perspektif *maslahah*, dilihat dari jenis penelitiannya menggunakan jenis penelitian *library research* atau studi literatur, sumber data primer berupa putusan Pengadilan Agama Kudus dengan perkara nomor 314/Pdt.G/2020/PA.Kds. Jo. Nomor 372/Pdt.G/2020/PTA.Smg. Jo. 658 K/Ag/2021, sedangkan sumber hukum sekundernya perspektif *maslahah* baik dari sumber buku, artikel jurnal dan lain sebagainya, kemudian analisis data menggunakan teknik analisis kualitatif. Hasil penelitian menjelaskan bahwa putusan pengadilan tingkat

pertama dan tingkat banding dibatalkan karena perkara ini merupakan perkara yang seharusnya menjadi wewenang peradilan agama. Sebagaimana putusan majelis hakim Pengadilan Agama Kudus Nomor 314/Pdt.G/2020/Pa.Kds, dan Pengadilan Tinggi Agama Semarang dalam putusannya Nomor 372/Pdt.G/2020/PTA.Smg tidak menerapkan keadilan dan kemanfaatan bahkan kepastian hukum. Pasal 49 Undang-undang peradilan agama merupakan dasar yang menjadi kepastian hukum dalam perkara ini sehingga pihak yang mengajukan gugatan tidak mendapatkan keadilan bahwa obyek perkara merupakan harta satu-satunya yang telah dimiliki dan juga dalam dua putusan tersebut tidak mencapai kebahagiaan bagi banyak pihak, hal ini sejalan dengan putusan Mahkamah Agung Nomor 658 K/Ag/2021. Oleh karena itu putusan MA RI dalam memeriksa dan memutus perkara tersebut telah sesuai dengan teori hukum yang berlaku dan sesuai dengan prinsip kemashlahatan atau teori masalah dalam hukum Islam.

**Kata Kunci: Hibah; Masalah; Perbuatan Tabarru'**

#### ▪ Introduction

Grant disputes are one type of dispute that often arises in society, especially in family relationships or between individuals involved in the voluntary giving of assets without expecting anything in return.<sup>1</sup> Etymologically, the grant is a gift, while according to etymology, the grant is a contract that makes the control of an object without a substitute while still alive or given voluntarily. This differs from a loan that offers property to others to be utilized but does not give the right to be owned..<sup>2</sup>

Grants in Indonesian law are regulated by more than one law. Grants are also regulated by Islamic law, civil law based

on the Civil Code (KUHPerduta) and customary law.<sup>3</sup> Basically, the regulation of grant issues according to the three legal systems has elements of similarity, although in some cases each other also contains differences. Grants regulated in the Compilation of Islamic Law are contained in Book II of the Law of Inheritance, namely in Chapter VI Article 210 through Article 214.<sup>4</sup> The definition of a grant is found in Article 171 point g, stating that a grant is a voluntary and unrewarded gift of an object from one person to another person who is still alive to be owned.<sup>5</sup> Hibah as befits an agreement in general cannot be withdrawn unilaterally without the consent

<sup>1</sup> Abdul Shomad, *Hukum Islam: Penormaan Prinsip Syari'ah Dalam Hukum Indonesia*. (Jakarta: Kencana, 2010), 358

<sup>2</sup> Yoyok Prasetyo, *Ekonomi Syariah* (Bandung: CV. Aria Mandiri Group, 2018).

<sup>3</sup> Muhammad Amin, "Studi Komparasi Kekuatan Hukum Hibah Terhadap Anak Angkat Dalam Kehidupan Sosial-Masyarakat Ditinjau Dari Hukum Perdata Dan Kompilasi Hukum Islam," *Jurnal JINNSA (Jurnal Interdisipliner Sosiologi Agama)* 1, no. 2 (2021), <https://ejournal.iain-manado.ac.id/index.php/jinnsa/article/view/132>.

<sup>4</sup> Vinna Lusiana, "Hukum Kewarisan Di Indonesia," *Jurnal Alwatziqboebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora* 8, no. 2 (2022),

<https://journal.iainsambas.ac.id/index.php/ALWATZIKHOEBILLAH/article/view/2022>.

<sup>5</sup> Utami, Nur Indah, Ferryani Krisnawati, and Suryati Suryati. "Kedudukan Akta Hibah Bagi Anak Angkat Dari Pemberian Harta Orang Tua Angkat (Studi Putusan Nomor: 1637/Pdt. G/2019/Pa. Jp)," *Wijayakusuma Law Review* 5, no. 1 (2023),

[https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Kedudukan+Akta+Hibah+Bagi+Anak+Angkat+Dari+Pemberian+Harta+Orang+Tua+Angkat+%28Studi+Putusan+Nomor%3A+1637%2FPdt.+G%2F2019%2FPa.+Jp%29&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Kedudukan+Akta+Hibah+Bagi+Anak+Angkat+Dari+Pemberian+Harta+Orang+Tua+Angkat+%28Studi+Putusan+Nomor%3A+1637%2FPdt.+G%2F2019%2FPa.+Jp%29&btnG=). Lihat juga Tim Penyusun Kementerian Agama RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Mahkamah Agung RI, 2018).

of the opposing party.<sup>6</sup> However, Indonesian regulations such as the Compilation of Islamic Law provide the possibility for grantors to withdraw what has been given to others, in accordance with Article 212 which states that grants cannot be withdrawn except for grants from parents to their children.<sup>7</sup> Grants from parents to children can be withdrawn so that parents who give something to their children must pay attention to justice between their children. Basically, grants cannot be withdrawn, but there is a possibility that grants can be withdrawn with the consent of the grantee or with a court decision.<sup>8</sup>

Therefore, in the settlement of grant disputes, the role of the judge is very important because the decision taken by the judge will determine whether the grant is valid or void, and how it affects the parties involved, because the juridical process in analyzing the judge's decision is very crucial. This includes aspects of justice, legal certainty, and protection of the rights of the parties involved, especially in considering the best interests of all parties concerned.<sup>9</sup>

For example, a case of grant withdrawal occurred in the Kudus Religious Court between the Plaintiff as a parent and the Defendant as one of the Plaintiff's children. However, the withdrawal of the grant made by the plaintiff was rejected by the judges of the Kudus Religious Court Number 314/Pdt.G/2020/Pa.Kds on the grounds that the case submitted was not a grant case but a contract agreement which is the authority of the District Court. (Holy Religious Court Number 314/Pdt.G/2020/Pa.Kds),<sup>10</sup> With the rejection of the Holy Religious Court, the Plaintiff filed an appeal. The Plaintiff's appeal was also dismissed by the Semarang High Court of Religious Affairs Number 372/Pdt.G/2020/Pta.Smg upholding the reasoning of the decision of the Kudus Religious Court. (Semarang High Court of Religious Affairs Number 372/Pdt.G/2020/Pta.Smg).<sup>11</sup> At the cassation level, the panel of judges of the Supreme Court in Decision Number 658 K/Ag/2021 decided that the case

<sup>6</sup> Endang Tri Wahyuni, "Pelaksanaan Pembatalan Hibah Tanah Oleh Pemberi Hibah (Studi Kasus Putusan Pengadilan Negeri No.95/Pdt.G/2004/PN.Smg)," *Penelitian Program Pasca Sarjana Universitas Diponegoro, Semarang*, 2009, <http://eprints.undip.ac.id/17400/>.

<sup>7</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 2013).

<sup>8</sup> Rita Arini Apriani, *Analisis Yuridis Terhadap Penolakan Permohonan Pembatalan Akta Hibah (Studi Kasus Putusan Pengadilan Agama Jakarta Pusat No. 436/Pdt.G/1999/PA.JP Dan Putusan Pengadilan Negeri Jakarta Pusat No. 50/Pdt.G/2008/PN.Jkt.Pst)* (Depok: Universitas Indonesia, 2011).

<sup>9</sup> Selamat Lumban Gaol, "Penyelesaian Sengketa Pemakaian Nama Badan Hukum Perkumpulan Yang Terdapat Persamaan Pada

Pokoknya Antara Satu Perkumpulan Dengan Perkumpulan Lainnya," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020), [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Penyelesaian+Sengketa+Pemakaian+Nama+Badan+Hukum+Perkumpulan+Yang+Terdapat+Persamaan+Pada+Pokoknya+Antara+Satu+Perkumpulan+Dengan+Perkumpulan+Lainnya&btnG=#d=gs\\_cit&t=1736124448843&u=%2Fscholar%3Fq%3Dinfo%3AFQbXvJCvpQ0J%3AScholar.google.com%2F%26output%3Dcite%26scirp%3D0%26hl%3Den](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Penyelesaian+Sengketa+Pemakaian+Nama+Badan+Hukum+Perkumpulan+Yang+Terdapat+Persamaan+Pada+Pokoknya+Antara+Satu+Perkumpulan+Dengan+Perkumpulan+Lainnya&btnG=#d=gs_cit&t=1736124448843&u=%2Fscholar%3Fq%3Dinfo%3AFQbXvJCvpQ0J%3AScholar.google.com%2F%26output%3Dcite%26scirp%3D0%26hl%3Den).

<sup>10</sup> Salinan Putusan Hakim Nomor 314/Pdt.G/2020/Pa.Kds" (n.d.).

<sup>11</sup> "Salinan Putusan Hakim Pengadilan Tinggi Agama Nomor 372/Pdt.G/2020/Pta.Smg," n.d.

was a grant and not a contract agreement. (Decision Number 658 K/Ag/2021).<sup>12</sup>

The decision is in line with the concept of *maslahah* in Islamic law, which is the goal of achieving good and preventing harm in social life, the judge's decision in the grant dispute must reflect the principle of balance between individual interests and community interests. For example, if a grant causes losses to certain parties, both materially and non-materially, the judge's decision must be able to provide a fair solution and consider the *maslahat* (good) for all parties involved, and not only prioritize the interests of one party<sup>13</sup>

Based on this phenomenon, therefore, it is necessary to conduct a juridical analysis of the judge's decision in the grant dispute to see how far the decision has reflected the principle of *maslahah*, as well as providing justice and legal certainty to the parties involved.

The approach that the author uses in this research is the Normative Juridical approach, although in certain parts other methods are still used. Normative is approaching the problem under study

based on Islamic law which gives a style or nature to Islamic teachings. Normative juridical research, namely research that is focused on examining the application of rules or norms in positive law.<sup>14</sup> While normative juridical According to Soekanto, the normative juridical approach is legal research conducted by examining library materials or secondary data as basic material to be researched by conducting a search for regulations and literature related to the problem under study<sup>15</sup> This research is descriptive qualitative. According to Creswell, it provides an overview of the qualitative approach that creates or inductively develops social constructivism theory.<sup>16</sup> Furthermore, Bogdan and Taylor qualitative research is research that produces descriptive data in the form of written or spoken words from people or observed behavior<sup>17</sup> When connected with this research, researchers try to describe conditions, growing opinions, ongoing processes, ongoing consequences or developing trends. A writing that focuses on library research or literature study, primary data sourced from the decision of the Kudus Religious Court

<sup>12</sup> "Salinan Putusan Hakim Mahkamah Agung Nomor 658 K/Ag/2021," n.d.

<sup>13</sup> Mustamam Mustamam, "Analisis Yuridis Tentang Pencabutan Hibah Orang Tua Kepada Anak kandungnya Dalam Perspektif Perspektif Kompilasi Hukum Islam (Studi Putusan Nomor 1934/Pdt. G/2013/PA. Mdn)," *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 20, no. 1 (2020), [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Analisis+Yuridis+Tentang+Pencabutan+Hibah+Orang+Tua+Kepada+Anak+kandungnya+Dalam+Perspektif+Perspektif+Kompilasi+Hukum+Islam+%28Studi+Putusan+Nomor+1934%2FPdt.+G%2F2013%2FPA.+Mdn%29&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Analisis+Yuridis+Tentang+Pencabutan+Hibah+Orang+Tua+Kepada+Anak+kandungnya+Dalam+Perspektif+Perspektif+Kompilasi+Hukum+Islam+%28Studi+Putusan+Nomor+1934%2FPdt.+G%2F2013%2FPA.+Mdn%29&btnG=).

<sup>14</sup> Zumiyati Sanu Ibrahim, "Implikasi Pembatalan Hibah (Suatu Tinjauan Hukum Islam)," *Jurnal Al Himayah* 5, no. 2 (2021), <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/2577/1686>.

<sup>15</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 2021).

<sup>16</sup> John W. and J. David Creswell Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (London: SAGE Publications, 2014), [https://spada.uns.ac.id/pluginfile.php/510378/mod\\_resource/content/1/creswell.pdf](https://spada.uns.ac.id/pluginfile.php/510378/mod_resource/content/1/creswell.pdf).

<sup>17</sup> Moleong Lexy J, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2017).

with case number 314/Pdt.G/2020/PA.Kds. Jo. Nomor 372/Pdt.G/2020/PTA.Smg. Jo. 658 K/Ag/2021, while the secondary legal sources are *maslahah mursalah* perspectives both from book sources, journal articles and so on, then analyzing the data using qualitative analysis techniques.<sup>18</sup>

## ▪ Discussion

### 1. Grants in Islam

Although grants have a noble taqarrub and social dimension, on the other hand, sometimes grants can also cause envy and hatred, and some even cause divisions among those who receive grants, especially in grants to families or children. A father's grant to children in the family is not a few that cause envy, even family divisions. This means that grants that originally had noble goals as taqarrub and social care can turn into disasters and catastrophes in the family.<sup>19</sup>

In the Qur'an, the use of the word grant is used in the context of giving God's grace to His messengers, the prayers offered by His servants, especially the Prophets, and explaining the nature of God who is the most bountiful, but it can only be used as a general instruction and suggestion for someone to give some of their wealth to others.

In terminology, a pillar is defined as something that forms (comes into existence) something else from its existence, considering that it comes into existence with its own pillar (element), not because it is established. Otherwise, the subject (actor) would be an element of the work, and the

body would be an element of the nature, and the signified (*al-maṣūf*) would be an element of the nature (the signified). In the Encyclopedia of Islamic Law, a pillar is an element that is an integral part of an action or institution that determines whether or not the action is valid and whether or not something exists. As for what is meant by a condition is everything that depends on the existence of the law with the existence of something, and the absence of something results in the absence of the law, but with the existence of something it does not necessarily also have a law. The scholars agree that grants have pillars and conditions that must be met, so that the grant is considered valid and the law applies. According to Ibn Rushd, the pillars of grants are three: (1) the person who grants (*al-wābib*), (2) the person who receives the grant (*al-maḥbūb lab*), (3) the property or goods granted.

### 2. Cancellation of Grant

In the Compilation of Sharia Economic Law in Article 715, namely If a husband or wife, while still in the bonds of marriage, give grants to each other, they are not entitled to withdraw their respective grants after the transfer of property.<sup>20</sup> From this explanation, it can be understood that the grant between husband and wife is irrevocable, meaning that the grant between husband and wife is valid, returning to the initial rule that every muamalah and transaction is basically permissible, except

<sup>18</sup> Sugiyono, *Metode Penelitian Kuantitatif kualitatif dan R&D*, (Bandung: Alfabeta, 2008), hlm.402. Lihat juga M. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1983), hlm.51

<sup>19</sup> Satria Effendi, *Problematika Hukum Keluarga Islam Kontemporer: Analisis Yurisprudensi Dengan Pendekatan Usbuliyab*. (Jakarta: Kencana, 2004).

<sup>20</sup> M. Fauzan, *Kompilasi Hukum Ekonomi Syariah*, (Jakarta: Kencana, 2019), hal. 218-219.

those that are expressly prohibited such as causing harm, deception, gambling and usury.

### 3. Judge's Decision in Settlement of Grant Dispute

There are three decisions in terms of Judges' Consideration in canceling husband and wife grants, namely the Kudus Religious Court Number 314/Pdt.G/2020/Pa.Kds, the Religious High Court decision Number 372/Pdt.G/2020/Pta.Smg and the Supreme Court decision Number 658 K/Ag/2021.

#### a. Considerations in the Decision of the Judge of the Kudus Religious Court Number 314/Pdt.G/2020/Pa.Kds

The Plaintiff is the legal wife of Defendant I who was married on January 17, 1993 registered at the KUA of Jati District, Kudus Regency, the marriage of the Plaintiff and Defendant I ended in divorce based on the Decision of the Kudus Religious Court Number: 0012/Pdt.G/2014/PA.Kds The Plaintiff and Defendant I were not married because the Defendant had an affair with another woman from Besito Kudus, and no children were born during the marriage, nor was there any joint property acquired during the marriage, after the Plaintiff married the Defendant, The Plaintiff received part of the inheritance from the Plaintiff's parents in the form of a piece of yard land C. No. 2490, pasal 59a, D.II covering an area of approximately 215 M2 (two hundred fifteen square meters); then a piece of land inherited from the Plaintiff's parents C. No. 2490, persil 59a, D.II The area of approximately 215 m2 (two hundred fifteen square

meters) was registered with the Kudus District Land Office and on 29 March 1994 Defendant III (Head of the Land Office of Kudus District) issued Certificate of Title No: 1482 Pakis Japanese Village, Measurement Letter No. 4238/93, covering an area of approximately 215 m2 (two hundred fifteen square meters) in the name of the right holder Siti Khasanah bt Samsi (Plaintiff) and based on a Grant Deed dated 20-2-2003 No: 4238/93: 4238/93, covering an area of approximately 215 m2 (two hundred and fifteen square meters) in the name of the right holder Siti Khasanah bt Samsi (Plaintiff) and based on the Deed of Grant dated 20-2-2003 No. 28/2003 the name of the right holder SH: 28/2003 in the name of the right holder (Judge's Decision Number 314/Pdt.G/2020/Pa.Kds)

In its exception, the Defendant rejected the Plaintiff's claim and stated that the Religious Court did not have absolute authority because it contained principles of civil law so that the competent authority was the Kudus District Court. These principles include:

- 1). The principle of consensualism (Article 1320 of the Civil Code), which is a binding statement between the makers of the agreement.
- 2). The Principle of Freedom of Contract (Article 1338 paragraph (1) of the Civil Code), namely agreements made legally shall apply as laws for those who make them.
- 3). Pancta Sunt Servanda Principle (Article 1338 paragraph (1) and (2) of the Civil Code), namely the judge must respect the contents

of the agreement.

- 4). The Principle of Good Faith (Article 1338 paragraph (3) of the Civil Code), which is the basis for making agreements is an honest attitude.

The Defendant stated that the Plaintiff's claim was vague because it mixed two cases in one lawsuit, namely the annulment of the grant and the mixing of inheritance assets. In the main case, the Defendant rejected all of the arguments in the Plaintiff's lawsuit, except those that were expressly recognized. That the object of the grant dispute that had been signed by the Plaintiff to the Defendant was the Plaintiff's own initiative. That the Defendant did not commit any unlawful act and in fact none of the Defendant's actions were detrimental to the Plaintiff

In the reconvention. The Plaintiff did not explain in detail how the grant deed came into existence, which in fact had been legally recognized. With this dispute the Defendant became the subject of discussion among the extended family and even his good name was bad in the workplace so that the Defendant felt disadvantaged and requested material and moral compensation. The Judge's consideration stated that the parties were Muslims, in accordance with Article 49 of the Religious Courts Law that the Religious Courts are authorized to examine, decide and resolve cases between people of the Muslim religion, one of which is in the field of grants. Supreme Court Jurisprudence No. 207 K/Sip/1955 that the District Court and High Court

are not authorized to examine grant cases. Therefore, the Religious Court/Shar'iyah Court is authorized to examine the case *a quo*. Considering that the parties have been bound in an agreement, they must obey and obey, as stated by Allah QS Al-Isra' : 34 and QS Al Maidah: 1.

The judge's decision, in the exception, granted the Defendant's exception stating that the Kudus Religious Court was not authorized to hear the case *a quo*. In the main case, stated that it did not accept the Plaintiff's claim. In counterclaim, stated that it did not accept the Defendant's counterclaim. sentenced the Plaintiff to pay court costs. Grant is an institution recognized by Islamic law for institutions that become a means of ownership. A grant is also a unilateral legal act, in which one party gives or promises to give an object to another party and does not get an exchange or replacement or reward.<sup>21</sup>

According to Article 1666 of the Civil Code, a grant is formulated as follows: "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 surrender." Grants can only be in the form of objects that already exist. If the grant includes objects that will only exist in the future, then just regarding that, the grant is void (Article 1667 of the Civil Code).

The majority of scholars are of the opinion that it is *forbidden to* revoke a grant, even if it occurs between brothers

<sup>21</sup> Mardani, *Hukum Kewarisan Islam Indonesia* (Jakarta: Rajawali Pers, 2015).

or husband and wife, unless the grant is a grant from parents to their children. Whereas in KHI (Compilation of Islamic Law) Article 212 it is explained that grants cannot be withdrawn, except for grants from parents to their children.<sup>22</sup>

The above article clearly explains that grants cannot be or can be withdrawn except for the grants of parents to their children, indicating the prohibition of withdrawing grants or *sadaqah* that have been given to others, the permissibility of withdrawing grants only applies to parents to their children, the intention is that parents in giving grants to their children pay attention to the values of justice. Supreme Court Decision No. 225 K/Sip/1960 dated August 23, 1960, states that grants do not require the consent of the heirs. This makes it clear that all heirs must respect the last will of the grantor (*wahib*), because the principle contained in the right of ownership is the freedom of the owner of the property to do anything with his property

Because the grant is in the form of an agreement, it cannot be revoked,

especially unilaterally by the grantor (*wahib*). Unlike a will, a grant occurs when the grantor (*wahib*) is still alive, and there is an immediate transfer of property rights (*levering*). Whereas a will occurs after the grantor (*washi*) dies.<sup>23</sup>

Article 210 of the Compilation of Islamic Law has provided a limit on the number of grants allowed is a maximum of 1/3 of the entire property of the grantor (*wahib*) to others, including to adopted children. This is in line with the Prophetic Hadith narrated by Bukhari and Muslim which says that it is permissible to make a will with one-third, while one-third is a lot.<sup>24</sup>

Religious Courts in Indonesia are one of the judicial environments that have their own specifications and uniqueness because they are subject to two different legal systems. Ideologically, the Religious Courts are subject to Islamic law while when viewed from the status of its formation established by the state, the Religious Courts are state courts and based on the constitution are subject to state law. The struggle between the two legal systems gave

<sup>22</sup> Zumiyati Sanu Ibrahim, "Implikasi Pembatalan Hibah (Suatu Tinjauan Hukum Islam)."

<sup>23</sup> Nor Mohammad Abdoeh, "Hibah Semua Harta Kepada Anak Angkat (Telaah Komparasi Antara Kuh Perdata Dan Khi)," *Abkam: Jurnal Hukum Islam* 8, no. 1 (2020), [D0nHVqFGIbOQGPMGrzTv6G-dmltJfBmre7RTOtVBUhAZKntIpnubW9C8dAR8KaxzJGjtG95MPSU1EHKjBKapZRZk1XRWErcfkI3tg7Q9x6wVVaDX1oj9tjH8wNlxHQBIXwk7YAwfDY-h-tD53Rx-1Lv1IFQ5agXJ2lgrXxFwblNbNouBH9e1nnPxtDGB8dvA1S4-ferr39NA681VzrSz4Q\\_\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA.](https://d1wqtxts1xzle7.cloudfront.net/104827773/1434-libre.pdf?1691420530=&response-content-disposition=inline%3B+filename%3DHibah_Semua_Harta_Kepada_Anak_Angkat_Tel.pdf&Expires=1736135671&Signature=JZQlg4682UcEAaASISOljy2VsRbDB6B-TTn4N6iVFA35DZWMWpf32hCnijD8XATzaRWDreC6YtUPghRSSPL0qlpstFpXfZ0YE54KPiDCrRBufn1BKH61PHyv4Jv1z6-</a></p>
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<sup>24</sup> Ibnu Rusydi, "Hibah Dan Hubungannya Dengan Kewarisan Menurut Kompilasi Hukum Islam Dan Hukum Perdata," *Jurnal Ilmiah Galuh Justisi* 4, no. 2 (2017), <https://jurnal.unigal.ac.id/galuhjustisi/article/view/324>.



birth to a state court in the field of Islamic sharia.<sup>25</sup>

Religious Courts function and play a role in upholding justice, truth and legal certainty. In accordance with the absolute authority in article 49 (1) of Law number 7 of 1989 "Religious Courts are tasked and authorized to examine, decide and resolve cases between Muslims in the field: (Law Number 7 of 1989, end)

- 1). Marriage
- 2). Inheritance, wills and grants made under Islamic law.
- 3). Waqf and Shadaqoh."

Then it underwent changes with the issuance of Law No. 3 of 2006 and amended certain articles that have been adjusted to the development of existing legislation and practical needs in the field. Thus, the status and position of the Religious Courts have become stronger and no longer intersect with the General Courts. (Law No. 3 of 2006)

A grant within the meaning of Law Number 3 of 2006 is a voluntary and unrewarded gift of an object from a person or legal entity to another person or legal entity to be owned (*vide*, Explanation of Law Number 3 of 2006 number 37 Article 49 letter d).<sup>26</sup> In the first decision, namely about the cancellation of the deed of grant, which

is one of the authorities of the Religious Court as the first level of justice whose duty and authority is to examine, decide and resolve cases between people of the Muslim religion. In this case, the Holy Religious Court Decision states that this case is a contractual agreement so that the Holy Religious Court is not authorized to resolve this issue.

In the first decision, the plaintiff rejected the claim of the plaintiff, because this case was included in the field of grants, and no party was defeated or won and was in the common interest of both parties, then the plaintiff appealed for further proceedings in order to find common ground in justice that was mutually agreed upon.

#### **b. Judges' Considerations in the Decision of the Religious High Court Number 372/Pdt.G/2020/Pta.Smg**

The Plaintiff and the Appellant are the Defendants. About the law that a grant is a legal act of a person who transfers his property to another person that the Plaintiff is the grantor and the Defendant is the grantee. That agreements made legally apply to those who make them in accordance with Article 1338 of the Civil Code, that all agreements made legally apply as laws to those who make them.<sup>27</sup> So

<sup>25</sup> Shobirin Shobirin, "Kompetensi Peradilan Agama Dalam Interpretasi Hukum Keluarga Islam Di Indonesia," *ZISWAF: Jurnal Zakat Dan Wakaf* 2, no. 1 (2015), [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Kompetensi+Peradilan+Agama+Dalam+Interpretasi+Hukum+Keluarga+Islam+Di+Indonesia&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Kompetensi+Peradilan+Agama+Dalam+Interpretasi+Hukum+Keluarga+Islam+Di+Indonesia&btnG=).

<sup>26</sup> Selamat Lumban Gaol, "Penyelesaian Sengketa Pemakaian Nama Badan Hukum

Perkumpulan Yang Terdapat Persamaan Pada Pokoknya Antara Satu Perkumpulan Dengan Perkumpulan Lainnya."

<sup>27</sup> Niru Anita Sinaga, "Implementasi Hak Dan Kewajiban Para Pihak Dalam Hukum Perjanjian," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 1 (2020), [https://journal.universitassuryadarma.ac.id/ind\\_ex.php/jihd/article/view/400](https://journal.universitassuryadarma.ac.id/ind_ex.php/jihd/article/view/400).

that the decision of the judge of the Semarang High Court of Religion, strengthening the decision of the Kudus Religious Court and punishing the loser to pay court costs.

From the description above, the author will analyze the cancellation of grant deeds according to Indonesian regulations and legal theories related to this issue, namely the cancellation of grant deeds.

**c. Consideration of Judges in Supreme Court Decision Number 658 K/Ag/2021**

The Cassation Petitioners are the Plaintiffs/Appellants. The Respondents in Cassation are the Defendants/Appellants. Grounds of the Cassation Petitioner:

1). *Judex Factie* has wrongly and erroneously applied the law

The Holy Religious Court and the Semarang Religious High Court stated that "the Religious Court does not have the authority to decide the *case quo*" in fact that the Religious Court and the Religious High Court in this case violated the Religious Courts Law that the Religious Courts are courts for people who are Muslims in the field of one of them grants because the litigants are Muslims and file a lawsuit about grants.

That the decision *a quo* violates KHI Article 210 paragraph 1 (grants as much as 1/3 part) and Article 212 (Grants cannot be withdrawn, except for grants from parents to their children), the fact that the object of the grant is the only property owned by the Plaintiff, it turns out that it has been granted more than

1/3 of the property owned by the Plaintiff and the grant should be able to be withdrawn by the Plaintiff. The grant object in *the case* violates the *principle of Lex Specialist Derogat Lex Generalis*, that the grant case has been regulated in the Religious Courts Law specifically, but instead applies the rules of the Civil Code which are general in nature

2). The *Judex Factie* did not carefully interpret the elements of Article 1338 and Article 1320 of the Civil Code.

Article 1320 and Article 1338 of the Civil Code are interrelated and cannot be separated from one another. The principle of freedom of contract and the principle of *pacta sunt servada* are legally flawed because they are contrary to the law in this case the fact that the grant exceeds 1/3 of the property which is the only property of the Plaintiff. The principle of good faith was violated by the Defendant, due to an "abuse of circumstances" where the plaintiff was the legal owner of the certificate and the only property left by his parents.

3). The *Judex Factie* was too summier and less careful in applying the words of Allah QS Al Isra: 34 and Al Maidah: 1.

That it is true that the two letters are Fiman Allah which must be implemented, but is it appropriate if applied in the case *a quo*? That in fact the content of the engagement in question (Deed of Grant) is contrary to the Law which specifically has clearly

regulated the legal relationship of grants between people who are Muslims, namely Law No. 50 of 2009 Jo Law No. 3 of 2006 Jo Law No. 7 of 1989 concerning Religious Courts and the Compilation of Islamic Law, Consideration of the judge. That the decision of the *judex factie* of the Semarang Religious High Court must be canceled by considering the following; considering that in accordance with Article 210 KHI, the Plaintiff gave a grant to Defendant I in excess of 1/3 of his wealth, so that the extent of the object of dispute granted is contrary to the law, then the grant deed is declared legally defective and has no legal force. Considering that Article 212 KHI states "Grants cannot be withdrawn except for grants from parents to their children", then the grant deed declared legally defective and canceled is a claim that has a legal basis. Considering that the object of dispute is in the hands of the Defendants, so that it is possible for the Defendants to transfer the object of dispute to other parties, the application for bail (*conservatoir beslag*) should be granted. Considering that the Plaintiff, the petitem of the lawsuit regarding forced money (*dwangsom*) must be rejected.

Considering that in the counterclaim of the Defendants demanding compensation for defamation of the Defendants, this is not the absolute authority (*Absolute Competentie*) of the Religious Court, therefore the counterclaim of the Defendants is

declared unacceptable. Therefore, the decision of the Supreme Court judge granted the cassation petition of the Cassation Petitioner by canceling the decision of the Semarang High Court of Religion which upheld the decision of the Kudus Religious Court.

The decision of the Supreme Court panel of judges in deciding this grant case is that it grants the cassation petition filed by the Cassation Petitioner by canceling the decision of the Semarang Religious High Court which upheld the decision of the Kudus Religious Court.

Judge's consideration. That the decision of the *judex factie* of the Semarang Religious High Court must be canceled by considering the following; that in accordance with Article 210 KHI, the Plaintiff gave a grant to Defendant I in excess of 1/3 of his wealth, so that the extent of the object of dispute that was granted was contrary to the law, so the grant deed in this case was declared legally defective and had no legal force. Considering that Article 212 KHI states "Grants cannot be withdrawn except for grants from parents to their children", then the grant deed declared legally defective and canceled is a claim that has a legal basis. And it is the only property left by the parents, so there is no joint property in the land.

The Supreme Court judges in their decision rejecting the decision of the Kudus Religious Court and rejecting the decision of the Semarang Religious

High Court carried the theory of positivism, the theory of justice and the theory of expediency. Because in the theory of positivism which aims for legal certainty, namely legal certainty in achieving existing written norms by canceling the deed of grant. Grants made by parents to their children can be taken back in accordance with Compilation Article 212 and hadiths which state that grants cannot be withdrawn except for grants from parents to their children. The cancellation of the grant in the Supreme Court decision was also carried out because the object of the grant dispute in this case had exceeded the maximum grant limit, namely 1/3 of the property owned by the parents, so it was appropriate that this grant deed be canceled. The Compilation of Articles 210 paragraph (1) states that a person can grant as much as 1/3 of their property. This is also in accordance with the hadith which states that grants from parents to their children must be balanced. And that is the only property left by the parents, so there is no joint property in the land. Which is a husband and wife, where the husband seduces the wife to enter into the SHM given by the parents, so that the husband does not marry or cheat again, but the reality is the opposite of what the plaintiff expected. The husband had an affair and the SHM was jointly owned.

The theory of justice that can be taken from the Supreme Court's decision is

that the annulment of the grant deed proves the intended justice, namely justice so that other children get the same thing, namely property from their parents.

The theory of justice can lead to expediency, which is a theory that tries to increase happiness and minimize unhappiness, or a society that tries to give as much happiness as possible to the people so that the feeling of unhappiness is felt by the community in general. It can be interpreted that judges as rulers should provide happiness for many people.<sup>28</sup>

According to the author, the Supreme Court's decision in this case prioritizes these three theories which are very different from the decisions of the panel of judges at the first instance and appellate level which only prioritize general norms rather than specific norms because the first instance court only looks at general principles in civil law, namely:

- 1). *The principle of consensualism* (Article 1320 of the Civil Code), which is a binding statement between the makers of the agreement.
- 2). The Principle of Freedom of Contract (Article 1338 paragraph (1) of the Civil Code), namely agreements made legally apply as laws for those who make them.
- 3). The principle of *Pacta Sunt Servanda* (Article 1338 paragraph (1) and (2) of the Civil Code), namely the judge must respect the contents of the

<sup>28</sup> Muhammad Helmi, "Muhammad Helmi. Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam," *Jurnal Mazahib* 14, no. 2

(2015), <https://core.ac.uk/download/pdf/212100977.pdf>.

agreement.

- 4). The Principle of Good Faith (Article 1338 paragraph (3) of the Civil Code), namely the basis for making an agreement is an honest attitude.

Meanwhile, grants are the authority of the Religious Courts in accordance with Article 49 of the Religious Courts Law which has been specifically regulated. The Supreme Court in this case has made the right decision which in the theory of Positivism proves that the applicable norm, namely Article 212 of the Compilation, has been applied. Article 212 of the Compilation that grants cannot be withdrawn except for grants from parents to their children. The application of the article in this case prioritizes justice so that other children get the same thing from their parents.<sup>29</sup>

After the enactment of Law No. 3 of 2006, which came into force on the date of promulgation on March 30, 2006, the cases that can be received, examined, decided and resolved by the Religious Courts are cases in the fields of marriage, inheritance, wills, grants, zakat, infaq, shadaqah and Islamic economics. In the Elucidation of Law No. 3/2006, it is explained that a grant is a gift of an object voluntarily and without reward from a person or legal entity to another person or legal entity to be owned (*vide*, Elucidation of Law No. 3/2006 number 37 Article 49 letter d)

Therefore, the Religious Court examines the case of grant cancellation,

to be precise, Judge Decision Number 314/Pdt.G/2020/Pa.Kds *jo* Decision number 372/Pdt.G/2020/Pta.Smg *jo* Decision Number 658 K/Ag/2021 regarding grant cancellation. The author can describe that the panel of judges in deciding the refusal to cancel the grant by using the basis of considerations in article 212 of the Compilation of Islamic Law and by referring to the provisions of article 712 of the Compilation of Sharia Economic Law, which stipulates that the grantee cannot withdraw the grant property after the handover is carried out, although there is an exception for parents' grants to their children, but the article implies that the grant can also be withdrawn on condition that the recipient agrees to it, this applies to grants in general but does not apply to grants from parents to their children

The Panel of Judges is of the opinion that when there was a conflict between the Plaintiff and the Defendant and the Plaintiff intended to withdraw the certificate that had been handed over and was currently in the possession of the Defendant, but the Defendant did not agree and was reluctant to return the certificate and firmly rejected the Plaintiff's intention to cancel the grant, so there was insufficient reason for the Plaintiff to withdraw and cancel the grant to the Defendant.

In addition, although the physical control of the grant is still in the hands of the Plaintiff, the certificate has been

<sup>29</sup> Mustamam, "Analisis Yuridis Tentang Pencabutan Hibah Orang Tua Kepada Anak Kandungnya Dalam Perspektif Perspektif Kompilasi

Hukum Islam (Studi Putusan Nomor 1934/Pdt. G/2013/PA. Mdn)."

controlled by the Defendant and has been transferred to the names of both husband and wife, the transfer of rights through a grant has been proven by the issuance of a certificate of ownership, thus it must be stated that the Plaintiff has indeed granted the Defendant property in the form of kintal land and a permanent house building on it, as in the previous consideration, and this is in accordance with the provisions of the Regulation of the Supreme Court of the Republic of Indonesia Number 02 of 2008 (Compilation of Sharia Economic Law) Revised Edition 2010 Article 686 paragraph (3) that *ijab* in grants can be expressed in words, writings or gestures that contain the meaning of free transfer of ownership of property, and with the completion of the process of transferring rights (certificate), the grant contract has occurred, and based on Article 686 paragraph (2) in conjunction with Article 698, the grantor, in this case the Plaintiff, should proactively hand over the grant goods to the grantee.

The Panel of Judges was of the opinion that in the case of a grant between the Plaintiff and the Defendant the legal transfer had taken place, although physically the kintal land and permanent house building were still controlled by the grantor in this case the Plaintiff. Regarding the clause argued by the Plaintiff regarding the conditional grant, the Panel of Judges could not accept it, because the condition was not stated in the Grant Deed, there was no evidence of an agreement outlined in an agreement

made for that purpose by both parties.

From a series of processes carried out by the panel of judges of the Religious Court, according to the researchers, the stipulation issued has several weaknesses in analyzing the facts. As a result of the weaknesses mentioned above, the determination of the panel of judges of the Religious Court is not systematic, incomplete and less convincing.

Based on the description above, it can be seen that in deciding the grant cancellation dispute, the panel of judges at any level pays attention to the rights of the parties to the disputed grant object. As a legal consideration, the panel of judges must use the law of property division according to custom, according to Islam and according to civil law so that it can decide as fairly as possible.

Dispute resolution through the judiciary is basically not only to seek a peaceful and fair settlement in accordance with public legal awareness, but also to seek justice according to legislation, jurisprudence and the feelings of judges. This is because in deciding a case that is presented to the panel of judges as material for consideration is legislation and also jurisprudence on similar decisions in the past. In addition, in deciding a case a judge is given the right to state his own decision. So that in deciding a case it can be seen how deeply a judge understands the case he decides.

In the researcher's analysis of the withdrawal of the grant deed by the Supreme Court is very appropriate by canceling the previous decision because

according to the author in the first level decision and the appeal level the panel of judges did not apply the Religious Courts Law Article 49 that religious courts have the authority to decide and resolve cases between Muslims, one of which is in the field of grants, and did not apply Article 212 KHI which states that grants cannot be revoked except for grants from parents to their children.

The Supreme Court in addition to applying legal certainty in Article 49 of the Religious Courts Law and Article 212 KHI, also applies justice and expediency for the children of the Plaintiff who do not get a share of the grant because in KHI the maximum limit for making a grant is 1/3 of the grantor's property while the grant property in this case is all of the grantor's property. Therefore, the annulment of the grant deed by the Supreme Court is in accordance with existing regulations in Indonesia. So that in this case, the original land belonged to the parents and gave it to the daughter then in the marriage the certificate was jointly named in the names of the wife and husband, then the maximum limit of 1/3 for the grantee the rest returned to the grantor, so that there was a final decision that was not divided equally because of the cancellation of the grant in the matter so as to provide justice for both of them.

#### 4. Analysis of Decision Number 314/Pdt.G/2020/PA.Kds. Jo. 372/Pdt.G/2020/PTA. Smg. Jo. 658 K/Ag/2021. *Maslahah* Perspective

There are two kinds of contracts: valid and invalid contracts<sup>314/Pdt.G/2020/PA.Kds. Jo. 372/Pdt.G/2020/PTA. Smg. Jo. 658 K/Ag/2021</sup> The basis of the registered case is a lawsuit for grant annulment, so what needs to be explored more deeply on the dispute is whether the grant that occurred between the parties in case number 314/Pdt.G/2020/PA.Kds. Jo. 372/Pdt.G/2020/PTA. Smg. Jo. 658 K/Ag/2021 is in accordance with the value of a valid contract or even there are contract criteria that are ignored so that the contract becomes *ghairu shahih*.

Of the three decisions, only the cassation level examines, explores the facts and explores the value of the grant dispute contract between the Plaintiff and the Defendant.

In the cassation level decision number 658 K/Ag/2021, it was assessed that the grant contract that had been carried out by the recipient and grantor contained an element of *tagrir* (trickery) because the Defendant was proven to have broken the promise not to remarry if his name was listed in the 1482 Certificate of Ownership, so that the contract was invalid and had to be canceled, then the Grant Deed on the disputed object did not have legal force.

Based on the research case above, it is necessary to explore the value of the contract first, whether it is in accordance with the pillars and conditions of the contract that have been set standards or whether there are things that have not been fulfilled, because *Akad* has a very strategic position and role in various *muamalah* issues.

In fact, the contract can be one of the determinants of whether a transaction is valid or not. The contract that has taken

place has a very broad effect (legal effect). With the validity of a contract, ownership can be transferred from one person's ownership to another party. With a contract, it can also change the authority, responsibility and function of something.

In the case of this research, the Cassation Level Decision number 658 K/Ag/2021, using Article 21 of the Compilation of Sharia Economic Law which states that the contract is carried out based on 11 principles:

- a. Voluntary (each contract is made based on the will of the parties and not because of compulsion);
- b. Keeping promises (every contract must be carried out by the parties);
- c. Prudence (every contract is made with careful consideration);
- d. Unchanging (each contract has a clear purpose and avoids speculation);
- e. Mutual benefit (each contract is carried out to fulfill the interests of the parties so as to avoid manipulation);
- f. Equality (the parties to the contract have an equal position, have equal rights and obligations);
- g. Transparency (the contract is carried out with open accountability of the parties);
- h. Ability (the contract is made according to the ability of the parties);
- i. Ease (the contract makes it easy for each party to perform);
- j. Good faith (the contract is carried out in order to uphold the benefit);
- k. A lawful cause (the contract is not against the law). Agreements that are not executed in good faith are often referred to as breach of promise..

Based on the 11 principles mentioned above, the Cassation Level Decision states that the status of the contract between the Plaintiff and the Defendant is classified as an invalid contract because the pillars and conditions of the contract between the Plaintiff and the Defendant have not been fulfilled, but there are elements of the agreement that were violated by the Defendant, making the Defendant not in good faith to carry out the agreement, because an agreement is binding on the Plaintiff and the Defendant as long as the agreement between the two is not canceled by agreement as well..

In the judge's decision must have legal norms, one of which is that the decision must rest on the basic principles of Islamic sharia, namely *maqāsid al-syari'ah*, which is then developed in general and specific terms, which has the aim of realizing *maqāsid al-syari'ah*, which has an end to the spirit of justice, namely benefit, so that the final result of the judge is able to make a new applied law that is able to provide legal protection and a sense of justice in every case he resolves. The judge in deciding the case of canceling the wife's grant to the husband must certainly pay attention to the element of benefit to the litigants, because it is related to the relationship between the two who were once husband and wife and also the maintenance of property as the purpose of shari'ah (*maqāsid al-syari'ah*) in order to maintain 5 (five) basic elements of human life. When the cancellation of the grant will be forced it will harm the rights of one of the owners, and vice versa if the grant is not canceled it will damage the rights of the owner of the property. So based on this, the panel



of judges tried to minimize the harm, which means that if the judge does not cancel the withdrawal of the grant, it will reduce the level of harm to the property in relation to the legal ownership of the property, because if the property has been mixed with the grantee's property, canceling the grant will cause greater harm.

Therefore, judges in resolving grant annulments must pay attention and ensure that every aspect does not harm one of the five basic needs of every human being who wants legal justice so that no party is neglected. Although sometimes they have to depart from the existing written law, if this is the way the needs can be met which is the right of the community or the parties themselves, then fulfilling it becomes a benefit for the application of the applicable law in the sharia economic law system..

It can be summarized that *Maslahah mursalah* is a Maslahah that is in accordance with the objectives, principles and postulates of legal provisions that serve to eliminate narrowness in the nature of *darūriyah* and *ḥājiyah* as well as *tahsinīyah*, must be acceptable to reason and occur in a manner that is harmonious and rational and acceptable to society. 314/Pdt.G/2020/PA.Kds. Jo. 372/Pdt.G/2020/PTA. Smg. Jo. 658 K/Ag/202. Sociologically and juridically, legal considerations can be said to be rational because the Panel of Judges in legal considerations are very careful and uphold a sense of justice and legal certainty. The purpose of the provision is actually so that one party does not harm the rights of the other party. If one of the parties performs a legal action over the inherited property with coercion and threats, then all losses due to the legal action performed

must be borne by the party performing the legal action, so as not to harm the rights of the other party.

*Maslahah* can relieve distress, so that if it is not used humans will feel distressed. Therefore, the Panel of Judges should also consider the rights of the Defendant (husband) in the renovated object which the Defendant had a part in as a solution covered by the benefit for the Defendant to be compensated for his work and services as a husband in developing the renovation of the grant object to provide legal protection and justice.

#### • Conclusion

The decision of the Holy Religious Court decided on the case of Cancellation of Grant Number 314/Pdt.G/2020/PA.Kds. is canceled which is 2/3 (two thirds) part and 1/3 (one third) of the other part is valid. The decision of the Semarang Religious High Court took the provisions of article 715 of the Compilation of Sharia Economic Law that husband and wife who are still in a marriage give grants to each other, are not entitled to withdraw their grants after the handover and grant as in the case of the grant dispute a quo, so that the Appeal level Panel of Judges rejected the cancellation of the grant of the Plaintiff and the Defendant but determined that the object of the grant dispute was determined to be joint property. The cassation level judges considered that the grant contract contained elements of *tagrir* (trickery) because the cassation level judges considered that the Defendant was proven to have broken the promise so that the cassation level decided that the grant contract was defective in will,

therefore the contract was invalid and had to be canceled and in this case the contract had been carried out in bad faith by the Defendant with the element of *tagrîr* based on threats.

As for the *Maslahah* analysis, the panel of judges tried to prioritize the benefit in accordance with the concept of *Maslahah* proposed by Al-Gazâlî, both at the *darûniyât* level, *ḥājīyāh* and *tahsiniyyāh*, but the judges did not directly quote the *ushul* rules and rather prioritized rules with different orientations but with the aim of fulfilling the benefits for the litigants, both at the level of maintaining property (*Hifẓ al-māl*) in accordance with the objectives of *syarak* (*maqāṣid al-syarī'ah*).

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