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ANALYSIS OF A JUDGE'S DECISION ON DEFAULT AGAINST A LAND GRANT AGREEMENT FROM THE PERSPECTIVE OF A GRANT CONTRACT: Study of Judge's Decision Nomor 3/Pdt.G/2023/PN.Jth

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Abstract

This article aims to analyse the judge's reasoning in Decision No. 3/Pdt.G/2023/PN.Jth regarding the default of a conditional land grant agreement between the plaintiff and the defendant. This case focuses on a land grant agreement that was made orally, with the condition that the plaintiff's child be appointed as a community service worker at the Puskeswan. The approach that the author uses is normative juridical research. The results showed that the judge considered the oral agreement invalid because it did not fulfil the applicable legal requirements, including the authority of the defendant in the appointment of community service personnel, as well as a violation of the principle of grants that must be made without compensation. As a result, the plaintiff's claim was rejected because there was no evidence or fulfilment of legal requirements. This research shows the importance of fulfilling legal requirements in conditional grants to prevent default.
Keywords: Default, Land Grant Agreement, and Grant Deed

Abstrak

Artikel ini bertujuan untuk menganalisis pertimbangan hakim dalam Putusan No. 3/Pdt.G/2023/PN.Jth mengenai wanprestasi perjanjian hibah tanah bersyarat antara penggugat dan tergugat. Kasus ini berfokus pada perjanjian hibah tanah yang dibuat secara lisan, dengan syarat anak penggugat diangkat menjadi tenaga kerja bakti di Puskeswan. Pendekatan yang penulis gunakan adalah penelitian yuridis normatif. Hasil penelitian menunjukkan bahwa hakim menilai perjanjian lisan tersebut tidak sah karena tidak memenuhi syarat-syarat hukum yang berlaku, antara lain kewenangan tergugat dalam pengangkatan tenaga pengabdian masyarakat, serta adanya pelanggaran asas hibah yang harus dilakukan tanpa imbalan. Akibatnya, gugatan penggugat ditolak karena tidak ada bukti atau pemenuhan syarat hukum. Penelitian ini menunjukkan pentingnya pemenuhan syarat sah dalam hibah bersyarat untuk mencegah terjadinya wanprestasi.

Kata kunci: Wanprestasi: Wanprestasi, Perjanjian Hibah, dan Akta Hibah

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INTRODUCTION

Hibah is a form of contract that originates from fiqh and has been widely implemented in Indonesian society. Conceptually, hibah is a contract used to release rights to an asset through a gift made voluntarily to a certain party without tendency or without reciprocation from the recipient. In this grant contract, the grantor is willing to release his ownership to other parties as a form of his willingness to share his assets.[1]

In the study of fiqh muamalah, grants are said to be a form of *tabarru'* contract, which is an agreement that has a non-commercial character and is free from expectations of certain rewards. As an element in *māliyyah* law, grants are often used as a form of solidarity and humanity in society in relations to social interaction and social communities. Grants are given with the pure intention of helping to overcome the recipient's economic difficulties, which may take the form of livelihood needs or other needs. In this case, the motive for giving grants is not out of selfishness, but only to help and ease the burden on others.[2]

In the practice of muamalah fiqh, there are prerequisites that must be fulfilled so that the grant is valid in shara'. Each party must have the willingness of the giver (*al-wahib*) and the recipient (*al-mauhub lah*), the object of the grant (*al-hibah*) must be clear and known by both parties, and the grant contract must be clearly stated through ijab and qabul which indicates the agreement and consent of both parties. This process emphasises the importance of transparency and honesty in the implementation of grants, to ensure that the gift is made with sincere intentions and without coercion.[3]

Scholars differ on the concept of the application of this grant contract. The Hanafi and Hanbali schools of thought suggest that the grantor has the right to ask for back the property if it has not been controlled and taken by the grantee. The grant agreement is considered perfect when it has been controlled and taken over by the grantee. If it has been taken over and belongs to the recipient, the grantor does not have the right to take it back unless the grant is from a father to his son. The Maliki school of thought states that the grantor

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[1] Bani Sharif Maula. "*Study of al-Ahwal al-Syakhsiyyah* with *Maqasid al- Shari'ah* Approach," *Al-Manahij: Journal of Islamic Legal Studies,* Vol. 8, No. 2, (2014), pp. 233-246

[2] Julfan Saputra, Sri Sudiarti, and Asmaul Husna. "*The Concept of Al-Ariyah, Al-Qardh and Al- Hib ah.*" *Al-Sharf: Journal of Islamic Economics,* Vol. 2, No.1 (2021), pp. 19-34.

[3] Rachmat Syafe'i, *Fiqh Muamalah*, (Bandung: Pustaka Setia, 2004), p. 244. 244.

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does not have the privilege of asking for back the land that has been granted. The grant is considered a long-term agreement or a fixed contract, so it cannot be cancelled simply based on the return of the granted land. The Shafi'i school of thought is of the opinion that a grant can be completed if there is acknowledgement and consent from the *grantee* or if the *grantee* has given his property. Once the grant is complete, the land cannot be taken back unless the grant is from a father to his son.[4]

In the perspective of shara', hibah as a form of wealth distribution is highly recommended, because it reflects the values of generosity, social solidarity, and justice. Grants have various benefits, both individually and socially. Individually, grants can serve as a means to manage and plan the distribution of wealth more efficiently in accordance with the will of the giver. Grants also have the potential to improve the recipient's economic condition, provide financial support, and strengthen family relationships. Socially, grants act as an instrument to create a balance of wealth distribution in society, reduce social inequality, and strengthen solidarity between citizens.[5]

Article 212 of the Compilation of Islamic Law (KHI) explicitly stipulates that grants cannot be withdrawn except in the case of grants from parents to their children. Withdrawal makes the grant unclear, because it will result in the absence of legal certainty, and is also contrary to property rights. As a valid and legally binding agreement, a grant will be binding and cannot be withdrawn simply based on the wishes of one party without the mutual consent of both parties.[6]

This grant agreement is regulated in various legal provisions in Indonesia, both in the Civil Code and in Islamic law which is recognised as one of the sources of positive law in Indonesia.[7] The grant process usually involves an official document stating the grantor's intention and the grantee's consent, and can include tangible goods such as land, buildings, or intangible goods such as intellectual property rights. In a grant contract, the grantor is not entitled to demand anything in return from the recipient. However, it is

[4] Shaykh Abdurrahaman Al-Juzairi, *Fikih Empat Mazhab*, (East Jakarta: Pustaka Alkautsar, 2015), pp. 466-468.

[5] M. Fuad Nasar, *Capita Selecta Zakat: Essay on Zakat Collective Action against Poverty*, (Yogyakarta: Gre Publishing, 2018), pp. 419.

[6] Jeremy F Tumbol. "Gugurnya Akta Hibah Karena Tidak Sesuai Peruntukkannya According to the Civil Code." *Journal of Lex Crimen,* Vol. 11, No. 6 (2022).

[7] Deni Rusli, and Zakaria Syafeâ. "Cancellation of Grants in Islamic Law and Indonesian Civil Law in the Theory of Engagement." *Indonesian Journal of Humanities and Social Sciences* Vol. 4, No. 2, (2023), pp. 269-288.

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permissible for the grantor to ask the recipient to reimburse the costs incurred during the grant process, provided that it does not take advantage of the transaction. Therefore, it is important for both parties to understand the terms and legal implications of the grant to avoid potential disputes in the future.[8]

Land grant agreement is one of the forms of engagement that is often carried out in society, especially in the context of family relationships or as a form of donation to other parties. Land as an object of grant has a very significant value because land not only has economic value but also historical and emotional value for the owner. Therefore, the land grant process must be carried out carefully and fulfil the applicable legal provisions so as not to cause disputes in the future. One of the issues that often arise in land grant agreements is default, namely the inability or failure of one of the parties to fulfil its obligations as agreed in the agreement.[9]

Default is the failure or inability of one party to fulfil its obligations as stipulated in the agreement. In the context of a conditional grant agreement, the principles of default that can be applied to terminate the agreement include several important aspects. Conditional grants contain conditions that must be fulfilled by the grantee, and if the grantee fails to fulfil these conditions, the grantor is entitled to claim a default.[10]

In some cases, grantors can also claim compensation for losses suffered due to default. Cancellation of a conditional grant agreement must follow the procedures set out in the agreement or applicable law, including giving the grantee a warning or deadline to remedy the default. The grantee is entitled to damages if the default causes loss, which may include the return of the granted land or financial compensation. The restoration of the grantor's rights is done through legal proceedings, if necessary, to ensure that the losses suffered can be minimized or recovered.[11]

Defaults in land grant agreements can occur in various forms, such as grantors who do not hand over the land as promised or grantees who do not

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[8] Abdul Ghofur Anshori, *Legal Philosophy of Grants and Wills in Indonesia*, (Yogyakarta: UGM PRESS, 2018), p. 16. 16.

[9] Deni Rusli, and Zakaria Syafea. "Cancellation of Grant in Islamic Law and Indonesian Civil Law in the Theory of Engagement." *Indonesian Journal of Humanities and Social Sciences,* Vol. 4, No.2 (2023), pp. 269-288.

[10] Faizal Hamdi, "Analysis of Simple Lawsuit Decisions on Default and Claims for Compensation in Murabahah Agreements (Decision of Bantul Religious Court Number: 7/Pdt. Gs/2020/Pa. Btl), *Dissertation*, (Banyumas: UIN Prof. KH Saifuddin Zuhri, 2023).

[11] C. Fahmi, 'Revitalisasi Penerapan Hukum Syariat di Aceh (Kajian terhadap UU No.11 Tahun 2006)' (2016) 8 *Tsaqafah: Jurnal Peradaban Islam* 295–309.

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use the land in accordance with the agreed objectives. This can lead to disputes between the parties involved and often end up in court to get a settlement.[12]

One of the cases that attracted attention in the context of default in a land grant agreement was the case of the construction of the Puskeswan Office in Kuta Cot Glie District, Aceh Besar Regency. The incident was contained in the verdict of case Number 3 /Pdt.G/2023/PN.Jth at the Jantho District Court. The lawsuit in Case No. 3/Pdt.G/2023/PN.Jth started when plaintiff I, who is the father of plaintiff II, claimed to own a piece of land measuring 9,845 m² that is currently used as the Kuta Cot Glie Subdistrict Puskeswan Office, and the land was purchased from Bakri Ibrahim. In 2015, the Aceh Besar District Government planned to build a Puskeswan Office on this land after the initial construction site was protested by local village youth. The second respondent together with Mr Bustari (former Geuchik of Gampong Maheng) requested for the first plaintiff to move the Puskeswan office to land owned by the first plaintiff. Plaintiff I agreed to donate the land on the condition that Plaintiff II was employed as a temporary employee and proposed to become a CPNS.[13]

Land measuring 751 m² was donated by plaintiff I with the assurance that his son would be employed, however after the construction of the Puskeswan Office was completed, this promise was not fulfilled.[14] Plaintiff I repeatedly contacted defendant I to collect this promise, but there was no clarity. After a change of officials, the plaintiff's son was accepted as a community service worker without an official decision letter. Then, in the programme to collect data on honorarium workers to be proposed as CPNS, the name of plaintiff II was not listed in the decision letter, even though there had previously been an agreement to include his name. Plaintiff I felt cheated by defendants I and II because promises were not fulfilled even though the land had been donated. Therefore, plaintiffs I and II sued to have the promise fulfilled and plaintiff I's son recognised as an honorary worker in accordance with the initial agreement.[15]

As a result of the attitude, behaviour and injustice committed by the defendants I, II and IV as authorities by making false promises/expectations

[12] Wawan Muhwan Hariri, *Law of Engagement: Complemented by the Law of Engagement in Islam*, (Bandung: Pustaka Setia, 2011), pp. 97.

[13] Documentation Data of Jantho District Court Decision No. 3/Pdt.G/2023/PN Jth.

[14] C. Fahmi, 'The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia' (2024) 20 *AlterNative: An International Journal of Indigenous Peoples* 157–66.

[15] *Ibid*.

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which tricked the plaintiff I into agreeing to donate private property to the defendants I, II and IV to build a government office facility which gave the impression to the surrounding community that the plaintiffs I and II as civil servants, religious school principals, and former village chiefs had been trapped and deceived by the government (defendants I, II and IV), this has caused the plaintiffs I and II an immaterial loss estimated at Rp 2.000,000,000 (two billion rupiah).[16]

For this reason, the plaintiffs in their claim argued that there had been a default by defendants I, II and IV in the oral agreement between plaintiff I and defendant I, and therefore the plaintiffs requested that defendant I be declared in default and requested that the defendants compensate the plaintiffs for the losses they had suffered. In relation to the matters raised by the defendants in their exceptions, the plaintiffs responded that the claim was not vague because the plaintiffs had detailed the acts committed by the defendants.[17]

The dispute over the conditional grant of land as stated in Decision No. 3/Pdt.G/2023/Pn Jth ended with the panel of judges rejecting all of the plaintiff's claims. The decision of the panel of judges tends to be ironic and lame because the judge tends to ignore the fact that the defendant ignored the agreement clause which stated that the plaintiff's child would be employed at the Puskeswan Office, which was clearly stated in the agreement signed by both parties in the conditional grant contract. Therefore, the author is urged to further examine the consideration of the panel of judges on the facts of the trial that had taken place and did not receive attention and legal protection from the judge as the right of the plaintiff which is civilly valid and the plaintiff is clearly the aggrieved party.

RESEARCH METHODS

The method of researching this article is that the author uses a normative juridical research approach to examine the juridical aspects contained in the case of a default dispute on an oral conditional grant land agreement made by the plaintiff and denied the terms by the defendant whose decision was made by the judge of the Jantho District Court with Number 3

[16] *Ibid.*

[17] C. Fahmi, P.-T. Stoll, S. Shabarullah, M. Rahman, and S. Syukri, 'The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State' (2024) 8 *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1566–96.

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/Pdt.G/2023/PN Jth by examining the principles and principles of law and laws and regulations concerning grants and their validity. This study aims to analyse the plaintiff's lawsuit material, the facts revealed in the trial, and the judge's consideration in handing down the decision using the *case* study method.[18]

The data collection technique that the author uses is in the form of documentation data, namely the decision of the judge of the Jantho District Court decision Number 3 /Pdt.G/2023/PN Jth. This documentation data is the main data for researchers to find out the series of cases starting from the lawsuit material, trial facts, judge's consideration to the judge's decision. In addition to this data, the author must also require a review of other literature such as books, articles, internet media, dictionaries and various other research, whether published or not.

The data analysis step is the process of processing data obtained by researchers to produce answers to problems that have been formatted in problem formulations based on valid and objective data. At this stage, the data that has been collected completely will be processed to get the truth used to answer the raised in the problem formulation, then the data will be presented and conclusions drawn. Data analysis in this research uses a *case study* method through a qualitative approach.

RESULTS AND DISCUSSION

A. Definition of Default and Legal Effects of Default

The term default is often referred to as breaking promises or cidera janji comes from the Dutch language, namely from the word "wan" which means nothing, the word prestasi which means achievement / obligation. So default means bad performance or not fulfilling obligations as agreed. In addition, it can also mean the absence of an achievement.[19]

Article 1313 of the Civil Code states: "Agreement is an act by which one or more people bind themselves to one or more other people". So that default here gives legal consequences to the party who does something that is detrimental to one of the parties, so that the party who feels harmed can sue the party who made the default to provide compensation, so that by law it is

[18] 2003037702 Muhammad Siddiq Armia, *Penentuan Metode Pendekatan Penelitian Hukum* (Lembaga Kajian Konstitusi Indonesia (LKKI), 2022).

[19] Ahmad Muhammad Al-Assal, *An Nizamul Iqtisadi Fil Islam Mabadi "uhu Wahdafuhu*, (Surabaya: Bina Ilmu 1980), 18.

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hoped that neither party will be harmed because of the default. And Islamic default is when a contract that has been created legally according to the provisions of the law is not implemented by the debtor.

There are four forms of default according to Subekti, namely:

a. Not doing what you promised to do;
b. Delivering what he promised but not as he promised;
c. Does what it promises but is late;
d. Doing something that according to the agreement should not be done.

To say that someone is in default in an agreement, sometimes it is not easy because it is often not promised exactly when a party is obliged to perform the promised performance. According to Article 1238 of the Civil Code which states that: "The debtor is negligent, if he is declared negligent by warrant or by a deed of the same kind, or by the obligation itself, is if this stipulates that the debtor must be considered negligent with the passage of time specified. From the provisions of this article, it can be said that the debtor is declared *in default* if there has been a summons (*in gebreke stelling*). The forms of summons according to Article 1238 of the Civil Code are:

a. A warrant originating from a judge which usually takes the form of a judgement. With this order the bailiff verbally informs the debtor when he must perform at the latest. This is commonly called "bailiff exploit".
b. A deed that can be either a deed under hand or a notarised deed.
c. Embedded in the agreement itself means that since the making of the agreement, the creditor has determined when there is a default.

In its development, a summons or warning to a debtor who is neglecting his obligations can be made orally, but to facilitate proof before a judge if the matter continues to court, a written warning should be given. In certain circumstances, a summons is not required to declare that a debtor is in default, namely in the event that there is a time limit in the agreement (fatal termijn), the achievement in the agreement is in the form of not doing something, the debtor admits that he is in default.

Default occurs due to fault, negligence and intent. What is meant by the existence of "fault", the conditions must be fulfilled, namely that the act committed must be avoidable and the act can be blamed on the maker, namely that he can expect the consequences. Whether an effect is foreseeable or not, the objective and subjective elements are used to measure or determine the

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foreseeability of the effect. Objective, that is, if the normal conditions of the result are predictable, while the subjective element is the result that is suspected according to the judgement of an expert.

Intentionality is an act that is done knowingly and willingly. Therefore, when wilfulness occurs, there is no need for the intention to cause harm to others, it is enough that it is known and the perpetrator still carries out the action. Negligence, on the other hand, is an act in which the perpetrator is aware of the possibility of causing harm to others. The easiest way to determine whether a person has made a default is in an agreement that aims not to do an act. If the person does it, it means that he violates the agreement, he can be said to be in default.[20]

Every unlawful act will cause legal consequences for the perpetrator. Default is an expression used to explain a legal provision that regulates a negligence which includes, among others, breaking promises or breach of promise. Prof Subekti explains that because default has some very important weaknesses, it must be discussed in more depth with the debtor before proceeding whether it is a default or not, and if the debtor objects, it must be examined before a judge.[21] The determination of the debtor is settled in the Civil Code article 1238 which reads as follows: "The debtor is negligent, if he is by warrant or by a similar deed has been declared negligent, or by his own agreement if the ID stipulates that the debtor will be deemed negligent with the passing of the specified time."

If a debtor has been expressly promised but still lacks the required performance, it can be said that the debtor is a default. For defaults that have been made, the sanctions can be seen as described in Article 1243 of the Civil Code. The information below will explain the four forms of sanctions as a result of legal default. The initial form of sanction is compensation. Compensation contains three different elements, namely costs, losses, and interest. Any expenses or costs that have been incurred are the largest cost to the company. Loss is the loss due to damage to goods with creditor overdrafts due to debtor overdrafts. Interest, on the other hand, is the loss caused by the failure to receive profits that have been predicted or beaten by the creditor.

[20] I. Iwandi, R. Efendi, and C. Fahmi, 'THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM' (2023) 4 *Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah* 14–39.

[21] Dsalimunthe Dermina. Legal Consequences of Default in the Perspective of the Civil Code (Bw). *Al-Maqasid Journal*. Volume 3. Issue 1 (January) 2017

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In addition to damages, default can hinder the continuation of the agreement. According to Article 1266 of the Civil Code, the condition of nullity is always mentioned in the agreement, so when the sole power holder fails to reduce the agreement, the agreement turns into a battle. However, in the following paragraphs, it is mentioned that the event does not constitute a breach of law but rather the imposition of ham to the judge. Consequently, it aims to convey that, despite the fact that a voidable condition has been outlined in the agreement, it is not possible for the agreement to be involved in an actual dispute.

Good faith or honesty is the most important factor in the law of agreement law. Regarding this principle of good faith, Ridwan Khairandy writes in his book "Good Faith in Freedom of Contract" that although good faith is an important principle in various other types of law, the principle of good faith in question actually causes many problems.[22]

Article 1247 of the Civil Code states that "The debtor is only obliged to reimburse the costs, losses and interest that have actually been, or should have been expected when the obligation was born, unless the non-fulfilment of the obligation was caused by a deception committed by him". Then article 1248 of the Civil Code also says the same thing about deceit, namely "Even if the non-fulfillment of the obligation is due to the deceit of the debtor, the reimbursement of costs, losses and interest only regarding the losses suffered by the debtor and the benefits lost to him, only consists of what is a direct result of the non-fulfillment of the obligation".

B. Basic Concept of Grant Agreement in Fiqh Muamalah

Etymologically, hibah means gift or gift. This gift is done voluntarily in order to get closer to Allah, without expecting anything in return. In this case, the majority of scholars define it as a contract that results in the ownership of property without compensation that a person does while alive to another person voluntarily. [23]

The Hanbali school of thought defines it as the transfer of property from one person to another, which allows the giver to take legal action against the property, whether the property is specific or not, whether the property is present and can be handed over. The transfer is made while the giver is still

[22] Agus Yudha Hernoko, *Law of Agreement on* the *Principle of Proportionality in Commercial Contracts*, Kencana Pranada Media Group, Jakarta, 2013.

[23] Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007), p. 82. 82.

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alive without expecting anything in return. These two definitions both contain the meaning of giving property to someone directly without expecting anything in return, except to get closer to Allah SWT. Hibah as a form of helping in the framework of benevolence between fellow human beings is very positive.[24]

The fiqh scholars agree that the ruling on grants is sunnah based on the words of Allah swt in surah an-Nisa' verse 4 and surah al-Baqarah verse 177 as follows:

وَءَاتُواْ النِّسَآءَ صَدُقَتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوْهُ هَنِيْئًا مَّرِيْئًا

Meaning: Give the dowry to the women (whom you marry) as a willing gift. Then if they give you part of the dowry gladly, then eat (take) the gift (as food) that is delicious and good for you.

In Surah An-Nisa' above, it is explained that the gift is a mascawin, the size of which is determined by the agreement of both parties, because the gift must be done sincerely.[25]

لَيْسَ الْبِرَّ اَنْ تُوَلُّوْا وُجُوْهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلٰكِنَّ الْبِرَّ مَنْ اٰمَنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ وَالْمَلٰٓئِكَةِ وَالْكِتٰبِ وَالنَّبِيّٖنَۚ وَاٰتَى الْمَالَ عَلٰى حُبِّهٖۚ ذَوِى الْقُرْبٰى وَالْيَتٰمٰى وَالْمَسٰكِيْنَالسَّبِيْلِۙ وَالسَّآئِلِيْنَ وَفِى الرِّقَابِۚ وَاَقَامَالصَّلٰوةَ وَاٰتَى الزَّكٰوةَۚ وَالْمُوْفُوْنَ بِعَهْدِهِمْ اِذَاعٰهَدُوْاۚ وَالصّٰبِرِيْنَ فِى الْبَأْسَآءِ وَالضَّرَّآءِ وَحِيْنَ الْبَأْسِۗ اُولٰٓئِكَ الَّذِيْنَ صَدَقُوْاۗ وَاُولٰٓئِكَ هُمُ الْمُتَّقُوْنَ.

Meaning: It is not that turning your face towards the east and the west is a virtue, but it is believing in Allah, the Last Day, the angels, the books, the prophets, and giving away one's beloved possessions to one's relatives, orphans, the poor, travellers (in need of help) and the beggars; and (freeing) slaves, and establishing prayer, and paying the zakat; and those who keep their word when they make a promise, and those who are patient in adversity, in suffering and in war. They are the true believers; and they are the pious.12

Allah SWT prescribed grants because they bring hearts closer together and strengthen the bonds of love between people, as Rasûlullâh (peace be upon him) said:

[24] Zakiyatul Ulya, Grant Perspective of Fikih, KHI AND KHES, *Maliyah Journal* vol. 07, No. 02, 2017.

[25]

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تَهَادُوْاتَحَابَوا

Meaning: Give to each other, and you will love each other. [HR. Al-Bukhâri].

The Messenger of Allah (peace and blessings of Allah be upon him) also said:

لا يَحِلُّ لِرَجُلَ أنْ يُعْطِيَ عَطِيَّةً، أوْ هِبَةً، ثُمَّ يَرْجِعَ فِيْهَا، إلا الْوالِدَ فِيْمَا يُعْطِي وَلَدَهُ

Meaning: It is not permissible for a person to give a gift or a grant and then withdraw it, except for the gift of a parent to his child." [narrated by Ahmad, Ibn Hibban and Abu Dawud. This hadeeth has been judged saheeh by Shaykh al-Albani in Shahîh al-Jâmi, no. 2775.]

A grant is considered valid if it fulfils its pillars and conditions. According to the Hanafiyah scholars, the pillars of a grant are ijab and qabul because both are included in the contract, just like buying and selling. In Al-Mabsut}, they add qabd} (delivery/acceptance) on the grounds that in a grant there must be a determination of ownership. However, some Hanafis are of the view that the grantee's qabul is not a pillar. Thus, it is sufficient that there is ijab from the giver because according to the language of the grant is just a gift. In addition, qabul is only the effect of the grant, namely the transfer of property rights.[26]

According to the majority of scholars, there are four pillars of grants, namely:

1. *Wahib* (Giver) is the grantor, who grants his property. The majority of scholars are of the view that if a sick person makes a bequest and then dies, the bequest is one-third of the estate.
2. *Mauhub lah* (recipient) is all human beings. The scholars agree that it is permissible for a person to give away his entire wealth.
3. *Mauhub* is an item that is donated.
4. *Shighat* (Ijab and Qabul) is anything that can be said ijab and qabul, such as with lafadzh grant, athiyah (gift), and so on. Ijab can be done, such as someone saying "I give this to you", or it can be vague, which will not be separated from the conditions, time, or benefits.
   a) Ijab accompanied by time (Umuri), such as the statement, "I give this house for as long as I live or as long as you live". Such a gift is valid, while the time condition is void.16

[26] Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Setia, 2001), 244.

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b) Ijab is accompanied by a condition (possession), such as someone saying "This house is for you, on a raqabi basis (mutual waiting for death, if the giver dies first, then the property is given. Otherwise, if the recipient dies first, the goods return to the owner". Such an arrangement is essentially a loan. According to the Hanafis, the owner is allowed to take it whenever he wants because the Prophet (peace and blessings of Allaah be upon him) forbade umuri and allowed raqabi. Thus, the grant is cancelled, but it is regarded as a loan.

   The Shafi'iyah, Abu Yusuf and Hanbalis are of the opinion that if the recipient holds it, then it is said to be a grant, because the Prophet allowed umuri. The Maalikis agree with the Hanafis that umuri grants (while alive, if the recipient dies, it is given to the recipient's heirs) are permissible, while rabaqi grants are prohibited.

c) With the condition of benefit, such as saying, "This house is for you to live in," the Hanafis are of the view that this is not a grant but a loan. But the statement, "This house is for you to live in," is a grant.

Grants have various benefits, especially for the recipients. One of the main benefits is that it gives the recipient satisfaction with the donation received. Grants can also strengthen social relations, especially by providing assistance to people in need. For example, land grants can be used for social purposes such as places of worship, schools, foundations, or public spaces, which provide long-term benefits to the community.

Hibah is the transfer of ownership of property or assets from one party to another without compensation. Some of the benefits of hibah from an Islamic perspective include the voluntary relinquishment of property rights, which can avoid inheritance disputes, as well as providing goodness and charity. For example, donations for the public interest will provide continuous benefits even after the grantor has passed away. Grants can also prevent inheritance disputes between heirs by ensuring that the donated property is used according to the owner's wishes. In addition, grants provide direct benefits to the recipient, such as helping to ease the burden of people in need. It also enhances ukhuwah Islamiyah (brotherhood) by strengthening relationships between individuals and communities, and helps improve social

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welfare, especially for economically disadvantaged groups, such as the poor and orphans.[27]

C. Judges' Considerations In Decision No. 3/Pdt.G/2023/PN.Jth Towards Proof of Oral Conditional Grants Made by the Plaintiff and Denied the Terms by the Defendant

The decision that the author examines is a case of default on a land grant agreement in Kuta Cot Glie Subdistrict, Aceh Besar Regency, which has been finalised by litigation. The decision can be traced to the facts of the trial and also the polarisation of cases that occurred between the land grant owner and the government through the entity of the Agriculture Office as the budget owner in the construction of the Puskeswan Office which accumulated in a lawsuit filed by the land owner who felt disadvantaged by the government.[28]

Based on the claim of the landowner and also the trial process in the form of replication and duplicates, as well as all the facts of the trial, the panel of judges made several considerations on the case. The judge's consideration referred to in this study is the juridical judge's consideration contained in Decision No. 3/Pdt.G/2023/PN.Jth, that the oral agreement regarding the land grant was conditional on employing the plaintiff's child at the Puskeswan as a contract / service worker at the Aceh Besar District Agriculture Office and bearing all recommendation requirements and prioritising the plaintiff's child I to be proposed as a candidate for civil servant.

The evidence presented by the plaintiff as the person who granted the land was Bustari (former Geuchik of Gampong Maheng) who stated that he witnessed the negotiation process for the land grant to build the Puskeswan office. The result of these negotiations was an agreement that if the office was operational, the plaintiff's son would be appointed or made a permanent employee at the office.[29]

The Judge's consideration of the oral grant agreement stated that the plaintiffs could not explain concretely in the lawsuit. Regarding the object of

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[27] Hamdan Fadhli, Aslinda Gangga Sari, Za'imatul Ulya, Youliana, Edith Pradita, Saskia Sabrina Lajadda, Sulistiyani, Dwi Wulandari, Nur Rofiq, Grant Implementation Study in Islamic Law Perspective: Analysis of the Implementation of Grant Giving in the Islamic Framework, *JOURNAL OF LAW, POLITICS AND SOCIAL SCIENCE (JHPIS)* Vol.3, No.2 June 2024.

[28] C. Fahmi and S. Riyani, 'ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT' (2024) 11 *Wahana Akademika: Jurnal Studi Islam dan Sosial* 89–104.

[29] Documentation Data of Jantho District Court Decision No. 3/Pdt.G/2023/PN Jth.

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the agreement described by the plaintiffs, it cannot fulfil the elements of the requirements of an agreement according to statutory provisions, because one of the parties implementing the agreement is a party that does not have the authority to determine a person to become a contract / service worker must meet the procedures and requirements determined in accordance with applicable regulations. Therefore, the actions of the party implementing the agreement cannot be categorised as representing the Head of the Aceh Besar District Agriculture Office.

During the trial, the defendant seemed to avoid the evidentiary process by appearing to be unaware of the contents of the agreement that had been made together as a legal consequence arising from the land grant agreement for the Puskeswan location donated by the plaintiff and recalled the contents of the agreement. In this case the defendant denied the agreement as an agreement by questioning "what promise should the defendant fulfil". Therefore, the judge stated that the first defendant as the head of the Livestock Service Office could not make an agreement with a third party in oral form unless the agreement was made on behalf of himself. According to the legal provisions of Article 1320 of the Civil Code, the legal requirements of the agreement were not fulfilled, because the grant must be free and must not be conditional on a preliminary agreement.

Based on the explanation above, the agreement referred to by the plaintiffs in their lawsuit does not fulfil the elements and conditions as determined by the legislation because the subject of the agreement is not authorised and the object of the agreement is an unlawful clause, which in Article 1320 of the Civil Code explains that there are 4 (four) conditions for the validity of the agreement, namely: 1). Agreement of Those Who Bind Themselves; 2). The Capacity of Those Who Make the Contract; 3). A certain thing; 4). A Halal Cause. It also contradicts the legal provisions on granting where it is explained in Article 171 letter g of the Compilation of Islamic Law that "Grant is the giving of an object voluntarily and without reward from a person to another person who is still alive to be owned." That based on the explanation of the article it is expressly stated "without reward" which means that there should not be any compensation.

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D. The Facts of the Trial in Judge Decision No. 3/Pdt.G/2023/PN.Jth Able to Give Conviction So as to Reject the Plaintiff's Entire Claim in the Grant Dispute

In the main case the respondent stated that in July 2015, a meeting took place between the second respondent, village officials, and Yusri and the plaintiff I regarding a land grant application for the construction of a Puskeswan building. During the meeting, the respondent II explained that no compensation would be given for the grant, however the plaintiff I requested that his son, the plaintiff II, be promoted as an honorary worker. Defendant II then promised to facilitate this, although the appointment as an honorary worker was not under his authority. After the meeting, plaintiff I agreed to the land grant and made a request for a grant deed on 3 August 2015.

However, although there was a promise to fight for the appointment of plaintiff II as a community service worker, there was no formal agreement on this matter. At a subsequent meeting, the respondent I stated that the appointment of the plaintiff II as a community service worker might be considered, however, appointment as a contract worker must follow the applicable procedures and regulations. Neither plaintiff I nor plaintiff II ever submitted any requirements or willingness to be appointed as a contract worker, and after the head of the Aceh Besar Agriculture Office passed away, there was no further follow-up regarding the appointment. Therefore, there was no binding agreement between the parties regarding the appointment of plaintiff II as a community service worker, contract, honorer, or CPNS.

Considering, that the lawsuit filed by the plaintiff was rejected by the judge because the judge considered that the plaintiff's lawsuit was vague or unclear. According to the Defendants, regarding the existence of the oral agreement, the plaintiffs cannot explain concretely in the lawsuit, so that the plaintiffs' lawsuit is unclear or vague. Furthermore, regarding the object of the agreement described by the plaintiffs in their lawsuit, it cannot fulfil the elements and requirements of an agreement according to statutory provisions, because one of the legal subjects carrying out the agreement (Ahmad Tarmizi) is a party that does not have the authority to determine a person to become a service worker or contract worker, because to be appointed as a service worker / contract worker must meet the procedures and requirements determined in accordance with applicable regulations

The judge considered that the Aceh Besar Livestock Service Office was certainly led by a human being so that the agreement was true and whether it

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was carried out on behalf of the Aceh Besar Livestock Service Office or carried out personally needed to be examined further on the merits of the case so that this exception should be rejected.

The facts at the trial of the cause of the conditional grant that gave rise to the default, in this case the object of the agreement between Plaintiff I and Defendant I and Defendant II was to include the employment of Plaintiff I's son (Plaintiff II) as an honorary/civil servant in the work environment of Defendant I by providing land for a Puskeswan building in Maheng Village, The Panel of Judges is of the opinion that this cause is prohibited by law because there is no known mechanism for entering employment as honorary/civil servants by way of exchange for objects let alone making a grant of land as a result of an agreement, because a grant must be made freely and cannot be dependent on a preliminary agreement. Therefore, a lawful cause (objective requirement) in this agreement is not fulfilled, so according to the law the agreement is considered null and void.

E. Fulfilment of Justice by Judges in Decision No. 3/Pdt.G/2023/PN.Jth Against a Grant Lawsuit

The fulfilment of justice by the judge in Decision Number 3/Pdt.G/2023/PN Jth related to the conditional grant lawsuit can be seen from several important aspects that are considered in the judge's decision. The occurrence of default between the parties in the lawsuit which focuses on the conditional grant lawsuit. In Indonesian civil law, a grant is an agreement in which the grantor (defendant I) grants property rights over an item (in this case land) to the grantee (plaintiff I) without compensation, which may be accompanied by certain conditions or obligations

As an agreement, a conditional grant has conditions and pillars that must be fulfilled to be valid and applicable according to the law. The pillars of a grant include the will of both parties, a clear object of grant, and a voluntary gift without reward. If the grant is conditional, then the conditions set (such as plaintiff I requesting that his son be appointed as a community service worker) must be clear and fulfilled by the parties. However, even though the formal terms and conditions of the grant had been fulfilled, in the decision, there were problems related to the fulfilment of the grant conditions that led to default, or failure to fulfil the obligations agreed by the parties. In this case, plaintiff I requested that his son be appointed as a community service worker or honorary as part of the grant conditions, but defendant II, despite promising

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to facilitate this, could not guarantee or fulfil this promise because the appointment of community service workers was not under his authority. Furthermore, there was no evidence or documents showing any concrete action or further agreement regarding the appointment.

As a result, default in this case can be seen from the inability of one of the parties (the defendant) to fulfil its obligations in accordance with the promise that became a condition of the grant. This caused the plaintiff to feel that his rights were not fulfilled, which ultimately led to the lawsuit filed. Default, in this case, does not mean a deliberate violation, but rather the inability to fulfil agreed obligations, despite the initial agreement regarding the terms of the grant. The judge in his decision ruled that although the terms and conditions of the grant had been fulfilled, was no valid agreement or obligation regarding the appointment of the plaintiff's child as a community service worker, and therefore, there was no breach of contract or default for which the defendant could be held liable. This decision shows the importance of not only fulfilling the formal requirements, but also ensuring that all obligations that are part of the conditional grant can be fulfilled in reality by the parties to avoid default.

CONCLUSIONS

Based on the description as explained in the previous discussion, it can be concluded that in Decision No. 3/Pdt.G/2023/PN.Jth, the judge carefully considered the evidence of the conditional grant agreement made orally between the plaintiff and the defendant. Evidence from the plaintiff was presented by a witness, who stated that he witnessed a meeting between the plaintiff and the defendant regarding a land grant application for the construction of a Puskeswan Office. During the meeting, there was a promise from the second defendant to fight for the appointment of the plaintiff's child as a community service worker at the office. The defendant involved in the agreement did not have the authority to appoint the plaintiff II as an honorary worker, so this promise could not be fulfilled in accordance with the applicable procedures. In addition, in the judge's consideration, the agreement did not fulfil the elements of a valid agreement stipulated in Article 1320 of the Civil Code, namely the existence of an agreement between the binding parties, capacity to make contracts, clear and valid objects, and a lawful cause. In this case, the grant agreed by the plaintiff and the defendant was not in accordance with the legal provisions because there was a commitment that contradicted the nature of the grant, which should have been free and without reward. The fulfilment of the condition to appoint the

plaintiff's child as a community service worker or honorary worker was also contrary to the law which regulates the granting of grants without any compensation. The judge considered that this did not fulfil the requirement of "lawful cause", and thus the agreement in question was null and void. By considering all the facts of the trial, the judge ultimately rejected the plaintiff's claim. This decision confirms that although the terms of the conditional grant had been agreed between the plaintiff and defendant verbally, there was no obligation that could be legally accounted for in relation to the appointment of plaintiff II as a community service worker. Therefore, the plaintiff's claim could not be accepted because it did not fulfil the applicable legal provisions regarding grants and agreements. The judge's decision shows that to ensure the validity of a conditional grant, not only formal requirements need to be fulfilled, but also real and legal obligations must be implemented in accordance with the provisions of Islamic law and applicable legislation.

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