

Legal Implications of the Transfer of a Testamentary Grant's Object to Another Person by the Testator

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ABSTRACT

This research is motivated by a lawsuit filed by Imelda Sanny Chandra (Plaintiff) against her grandmother, Mrs. Tinningrum Tjandra (Defendant I), regarding the transfer of a testamentary grant object—a plot of land and a building in Surabaya—to Mrs. Koesoemo Dewi Raharjo (Defendant II) through a sale and purchase agreement. The Plaintiff argues that the object rightfully belongs to her based on Testamentary Grant Deed Number 119, which was executed by Defendant I before a Notary in Jakarta. One of the clauses in the deed states that the object would be transferred to the Plaintiff upon reaching the age of 30. Currently, the Plaintiff is 32 years old and intends to reclaim the testamentary grant object. Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN.Sby declared the Testamentary Grant Deed valid and annulled the agreement between Defendant I and Defendant II. However, in the context of Article 958 of the Indonesian Civil Code concerning the execution of testamentary grants and Article 996 of the Civil Code regarding the revocation of testamentary grants, this study aims to analyze the legal nature of testamentary grants and the juridical implications of the grantor transferring the object to another party. The goal is to provide legal certainty regarding the testamentary grant deed, the sale and purchase binding deed, the power of attorney to sell, and the sale and purchase deed issued in connection with this ruling. This research employs a normative juridical method with a legislative approach, a teleological approach, and a case approach. The data sources include primary, secondary, and tertiary legal materials. The analysis is conducted through grammatical and systematic interpretation.

KEYWORDS: Testamentary Grant, Transfer of Rights, Juridical Implications.



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I. INTRODUCTION

The law governs various aspects of human life, including wealth-related matters. Property is an essential aspect of a person's life, serving both as a means to fulfill daily needs and as a part of estate planning. In Indonesia, inheritance law is regulated, among others, in Book II of the Indonesian Civil

Code.¹ Inheritance law consists of provisions that regulate the transfer of rights and obligations over a deceased person's assets to surviving parties.²

Unlike general inheritance, according to Tan Thong Kie,³ a testamentary grant is a special form of testamentary disposition that grants one or more specific parties a certain number of goods or all goods within a particular category, such as all movable or immovable property.⁴ Regarding testamentary grants, Article 957 of the Indonesian Civil Code states:

"A testamentary grant is a specific disposition in which a testator grants to one or more persons certain goods, or all goods of a particular kind, for example, all movable goods, immovable goods, or the usufruct rights over part or all of their property."

The recipient of a testamentary grant only acquires specific assets without being burdened with any obligations. The recipient has the right to demand the execution of the testamentary grant from the heirs.⁵ In the process of transferring rights over a testamentary grant object, the testator or grantor may establish certain conditions that the recipient must fulfill before receiving the grant, provided that these conditions do not contradict applicable laws and regulations.⁶

In practice, the public often lacks an understanding of the essential aspects of a testamentary grant. Legal issues frequently arise when clauses regarding conditions for the transfer of rights over an object exist, which may lead to future conflicts, as seen in Case Ruling Number 3258 K/Pdt/2023. Furthermore, in Indonesian society, a testamentary grant is often equated with a contractual agreement, which needs clarification.

Based on Court Ruling Number 1270/Pdt.G/2021/PN. Sby, on June 23, 2000, Mrs. Tinningrum Tjandra (Defendant I) granted a testamentary gift to Imelda Sanny Chandra (Plaintiff) in the form of land and a building registered under Defendant I's name. The testamentary grant was executed through Notarial Deed Number 119 before Drs. Atrino Leswara in Jakarta, with the condition that the object of the grant could only be transferred, sold, or pledged after the Plaintiff reached the age of 30. The Plaintiff is now 32 years old and is entitled to the testamentary grant object following the deed's provisions.

However, one year earlier, Plaintiff discovered that the grant object had been transferred by Defendant I to Mrs. Koesoemo Dewi Raharjo (Defendant II) through the Sale and Purchase Binding Deed and Power of Attorney to Sell Number 52, dated December 16, 2013, Sale and Purchase Deed Number 193/2014, and Ownership Certificate Number 51. The Plaintiff felt disadvantaged as she was unable to own and utilize the land and building.

¹ Meita Djohan OE, "Kedudukan Dan Kekuatan Hukum Warisan Tunggu Tubang Menurut Adat Semende," *Keadilan Progresif* 9, no. 1 (2018):90-102.

² Djaja M. Meliala, *Hukum Perdata Dalam Perspektif BW* (Bandung: Nuansa Aulia, 2013).

³ Tan Thong Kie, *Studi Notariat: Serba-Serbi Praktek Notaris* (Jakarta: Ichtiar Baru van Hoeve, 1994).

⁴ Muhamad Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia," *Dih: Jurnal Ilmu Hukum* 16, no. 2 (2020): 372757.

⁵ Nurvannisa Fajrimustika and Fransiscus Xaverius Arsin, "Status Kepemilikan Rumah Yang Dibangun Di Atas Tanah Hibah Pasca Perkawinan Tanpa Perjanjian Kawin," *Kertha Semaya : Journal Ilmu Hukum* 11, no. 11 (2023): 2694-2703

⁶ Syaifullah et al., "Pengalihan Atas Harta Warisan Di Indonesia."

In Cassation Ruling Number 3258 K/Pdt/2023, the Supreme Court ruled that the Defendants had committed an unlawful act by selling the granted object that rightfully belonged to the Plaintiff and by failing to surrender it when requested. The judge annulled the Sale and Purchase Binding Deed and Power of Attorney to Sell Number 52, as well as the Sale and Purchase Deed Number 193/2014. Additionally, the judge declared the Testamentary Grant Deed, executed before a Notary in Jakarta, as valid and enforceable, establishing that the grant object rightfully belonged to the Plaintiff.

An unlawful act, as defined in Article 1365 of the Indonesian Civil Code, is as follows:

"Any act that violates the law and causes harm to another person obligates the person responsible for the harm to compensate for the damage incurred."

The elements of an unlawful act can be outlined as follows:

1. Unlawful Act

An act is considered unlawful not only based on written legal norms but also on unwritten legal norms within society, such as the principles of propriety and morality.

2. Fault

Fault can be classified into two types: intentional misconduct and negligence due to a lack of caution or recklessness.

3. Loss

In civil law, losses are categorized into material and immaterial losses. Material losses are tangible, whereas immaterial losses depend on the judge's assessment. The determination of immaterial loss is challenging due to the absence of a fixed benchmark, making it entirely dependent on the judge's objectivity.

4. Causal Relationship

Causality in civil law aims to examine the link between an unlawful act and the resulting harm, ensuring that the perpetrator can be held accountable for the damage caused.

A testamentary grant is a confidential declaration made between the grantor, a notary, and witnesses who sign the testamentary grant deed.⁷ This confidentiality aims to prevent disputes among heirs and ensure that the testamentary grant remains the absolute will of the grantor, free from any external interference.

The issue arises because the execution of a testamentary grant takes effect upon the testator's death, as stipulated in Article 958 of the Indonesian Civil Code. Meanwhile, Article 996 of the Civil Code regulates the revocation of a testamentary grant if the object itself has been transferred. However, in both court rulings—Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN. Sby—the judges upheld the validity of the testamentary grant deed and annulled the legal actions taken by Defendant I and Defendant II regarding the sale of the land.

⁷ M. Syahrul Borman, "Kedudukan Notaris Sebagai Pejabat Umum Dalam Perspektif Undang-Undang Jabatan Notaris," *Jurnal Hukum Dan Kenotariatan* 3, no. 1 (2019): 74–83.

Once a person has expressed their intent in a deed, the inheritance will be distributed according to the testamentary grant.⁸ A testamentary deed can be understood as the final request of a deceased person, as their wishes are executed only after their death.⁹ These wishes may include the transfer of assets, settlement of debts, or other provisions. The revocation of a testamentary grant may occur automatically if the object of the grant has been transferred.¹⁰

Therefore, there is a legal vacuum regarding the nature of ownership transfer, which is not explicitly regulated in positive law, leading to legal complexities. Policies related to testamentary grants and wills are generally necessary as guidelines for their implementation. This is because of judicial considerations in Ruling Number 3258 K/Pdt/2023 in conjunction with Ruling Number 1270/Pdt.G/2021/PN. Sby did not align with the fundamental nature of testamentary grants, Article 958 of the Civil Code, and Article 996 of the Civil Code.

II. METHODOLOGY

This study employs a normative juridical research approach, focusing on the discussion of the application of legal principles or norms within the Indonesian legal system.¹¹ The research is based on legal materials by examining relevant concepts, theories, and legislation related to the research issue.¹² Three types of approaches are utilized in this study: the statutory approach, the teleological approach, and the case approach.¹³

The legal materials used in this study include Primary legal materials, serve as the main references for the substance of this research. Primary legal materials are binding and authoritative. Secondary legal materials consist of books by scholars, experts, and other legal journals.¹⁴ Secondary legal materials provide analytical guidance by offering insights into primary legal materials, facilitating the research process.

Tertiary legal materials, assist researchers in identifying or explaining primary and secondary legal materials. These include dictionaries such as the Indonesian Dictionary, English Dictionary, Legal Dictionary, and other relevant sources.

The legal material search technique involves library research, where the researcher identifies, classifies, and inventories relevant legal sources. This process is intended to streamline the utilization of legal materials within this study. Meanwhile, legal material analysis is conducted using systematic and grammatical interpretation methods.

⁸ Bayu Indra Permana, Bhim Prakoso, and Iswi Hariyani, *Problematika Pengenaan Pajak Penghasilan Terhadap Objek Waris: Dalam Perspektif Kepastian Hukum* (Yogyakarta: Bintang Semesta Madani, 2023).

⁹ Juristie Widyadhana, Putri Kemalasari, and Shania Anindya Fitriani, "Urgensi Pembuatan Akta Kesaksian Dan Akta Pernyataan Ahli Waris Oleh Notaris," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 62–75.

¹⁰ Asriadi Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata Dan Hukum Islam," *Jurnal Al Himayah* 1, no. 1 (March 1, 2017): 92–105.

¹¹ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33.

¹² Muhammad Zainuddin and Aisyah Dinda Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum," *Smart Law Journal* 2, no. 2 (2023): 114–23.

¹³ E. Fernando M. Manullang, "Penafsiran Teleologis/Sosiologis, Penafsiran Purposive Dan Aharon Barak: Suatu Refleksi Kritis," *Veritas et Justitia* 5, no. 2 (2019): 262–85.

¹⁴ Suhaimi, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Jurnal Yustitia* 19, no. 2 (2018).

III. TRANSFER OF THE TESTAMENTARY GRANT OBJECT BASED ON THE INDONESIAN CIVIL CODE AND LAND LAW

A testamentary grant is part of a will but is not entirely the same as a will in its entirety. A will consists of two types: testamentary grants and wills for the appointment of heirs. The definition of a testamentary grant refers to Article 957 of the Indonesian Civil Code, which states:

"A testamentary grant is a specific provision in which the testator grants one or more individuals certain assets, or all assets of a certain type; for example, all movable assets, all immovable assets, or usufructuary rights over part or all of their property."

This article implies that in a testamentary grant, the grantor specifically determines the property or assets to be given or bequeathed to the recipient. The testamentary grant is made by the grantor while they are still alive, without any coercion from any party, and entirely based on their will.¹⁵ In a testamentary grant, the grantor also has the right to determine the portion of their assets that will be given to heirs or other parties who are not heirs.¹⁶

If a person passes away without making any provisions regarding their inheritance, the distribution of assets will be carried out by the applicable legal provisions. For Muslims, inheritance will be distributed based on Islamic Law, following the Compilation of Islamic Law. Meanwhile, for non-Muslims, inheritance distribution will follow Civil Law. In the Indonesian Civil Code, a will (testament) is divided into two categories:

a. A Will (Testament) Containing an Appointment of Heirs (*Erfstelling*)

The law regarding this type of will is regulated under Article 954 of the Indonesian Civil Code, which states:

"A will for the appointment of heirs is a will in which the testator grants one or more individuals the property they leave behind upon their death, either in full or in part, such as half or a third of the estate."

Furthermore, Article 955 of the Civil Code explains the position of heirs appointed through a will, stating:

"At the time of the testator's death, both heirs appointed by the will and those who are granted a portion of the inheritance by law shall, by operation of law, obtain possession of the estate left behind."

This type of will is generally intended for individuals classified as heirs under the general title (*onder algemene titel*), referring to individuals such as a spouse or those of lineal descent or blood relations.

b. A Will (Testament) Containing a Testamentary Grant (*Legaat*)

A testamentary grant is regulated under Article 957 of the Civil Code, which defines it as a special provision within a will. Therefore, recipients of this

¹⁵ Bayu Indra Permana, Dominikus Rato, and Dyah Ochtorina Susanti, "Kedudukan Pembagian Hak Bersama Waris Sebagai Peralihan Harta Yang Dibebaskan Pajak Penghasilan," *MIMBAR YUSTITIA : Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (2023): 44–62.

¹⁶ Misbah Imam Soleh Hadi and Bayu Indra Permana, "Kontruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris," *Jurnal Ilmu Kenotariatan* 3, no. 1 (2022): 1–13.

type of will are considered heirs under the special title (onder bijzondere titel), referring to individuals outside the legal heirs, such as adopted children or other individuals outside of the bloodline. Article 875 of the Civil Code further explains:

"A will or testament is a document containing a person's declaration regarding their wishes after their death, which may be revoked at any time."

According to the Basic Agrarian Law, there are two forms of land rights transfer, as follows:¹⁷

a. Transfer of Rights

The transfer of land rights through deliberate legal actions refers to the process in which land rights are transferred from the original rights holder to another party through intentional legal acts, such as sale and purchase, donation, or other agreements. Consequently, the recipient legally acquires ownership of the land in question.

b. Succession

The transfer of land rights through succession occurs when land rights pass from the original owner to another party due to the owner's death or inheritance.¹⁸

This study focuses on land rights transfer based on a will, which is regulated under Article 26, Paragraph (1) of the Basic Agrarian Law, stating:

"(1) Sale and purchase, exchange, donation, transfer by will, transfer according to customary law, and other acts intended to transfer ownership rights, as well as their supervision, shall be regulated by government regulations."

If the recipient of a bequest grant wishes to transfer ownership of land and/or buildings, the process can be carried out with the assistance of an executor of the will. The executor can draft a Deed of Grant before a Land Deed Official by attaching the Deed of Bequest Grant previously made by the testator before a Notary. This process ensures that the transfer of rights is conducted under the applicable legal provisions and is supported by legally valid documents.

In a bequest grant, the Notary plays a crucial role as a public official authorized to create the Deed of Bequest Grant and register it in the Central Register of Wills. This registration allows heirs to verify the document after the testator passes away. The execution of a bequest grant before a Notary provides legal certainty, as the deed is authentic and holds full legal force. Therefore, the Notary plays a vital role in ensuring that the document has binding legal authority.

A Deed of Bequest Grant is made by the grantor voluntarily, without coercion from any party. The process is confidential, involving only the Notary and designated witnesses. Based on Articles 930 to 953 of the Indonesian Civil Code, the making of a will only involve the grantor,

¹⁷ Zuman Malaka, "Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat Dan Hukum Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 21, no. 1 (2018): 101–24.

¹⁸ Diya Ul Akmal, Hanif Fitrianyah, and Fauzziyyah Azhar Ramadhan, "Reformasi Hukum Pertanahan: Perlindungan Hukum Hak Atas Tanah Terhadap Pengalihan Hak Secara Melawan Hukum," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, no. 2 (2024): 193–214.

Notary, and appointed witnesses. Furthermore, Article 16, Paragraph (1), Points a and f of the Notary Law emphasize the Notary's duty to maintain the confidentiality of the bequest grant deed.

As a result, a Notary cannot disclose the contents of the deed to the heirs before the testator's death. The original copy of the Deed of Bequest Grant is stored as part of the Notary's protocol and cannot be accessed without legal authorization. The contents of the deed can only be disclosed after the grantor's passing.

The confidentiality of a bequest grant is maintained to protect the interests of all parties, prevent conflicts or disputes between the heirs and the grantor during the grantor's lifetime, and ensure that the grantor's wishes are fulfilled without pressure or external interference.

Therefore, the formal requirements for fulfilling a bequest grant must be met:¹⁹

- a. The testator must be of sound mind, meaning that the grantor of the bequest must be mentally sound and not suffering from memory impairment. This requirement is stipulated in Article 895 of the Indonesian Civil Code.
- b. The property designated as the object of the bequest grant must be legally owned and verifiable as the testator's personal property. Article 966 of the Civil Code states that if the property does not belong to the grantor, the bequest grant is deemed null and void.
- c. A bequest grant must be unconditional and take effect only upon the testator's death. Thus, the execution of the bequest grant occurs after the testator passes away and is not subject to any conditions.
- d. The testator must be legally competent to perform legal acts, including creating a will or a bequest grant.

A will, including a bequest grant, must be executed before a Notary, who is responsible for recording its full contents and registering the will, including the bequest grant, in the Central Register of Wills. Consequently, upon the testator's death, the will serves as legally binding evidence that must be executed following the grantor's wishes.

A bequest grant is made solely based on the testator's will, without any external interference, including from the Notary handling the process. Therefore, the bequest grant remains confidential to prevent disputes among heirs and ensure that the testator's intentions are carried out without outside influence. A bequest grant is executed confidentially, and its secrecy is guaranteed under the Amendment to the Notary Law, which mandates that a Notary must maintain the confidentiality of both the deed's contents and the notarial protocol. This confidentiality serves several purposes, including protecting the testator's wishes, preventing conflicts, and safeguarding assets until the testator's passing. Any Notary who violates this obligation may face strict sanctions, both civil and administrative.

Article 16(1) of the Amendment to the Notary Law is further reinforced by Article 3(4) of the Notary Code of Ethics, which states:

¹⁹ Supriadi, *Hukum Agraria* (Jakarta: Sinar Grafika, 2007).

“A Notary and any other person (as long as they are carrying out the duties of a Notary) must: Act honestly, independently, impartially, with integrity, diligence, and full responsibility, following the applicable laws and the Notary's oath of office.”

The execution of a bequest grant takes place only upon the testator's death. To facilitate its implementation, a bequest grant deed must be presented along with other required documents before the Land Deed Official.²⁰

A bequest grant has distinct characteristics that must be understood, as outlined in the Indonesian Civil Code. These include its pure and unconditional nature, as well as the fact that it only takes effect after the testator's passing, at which point the beneficiary has the right to claim the bequeathed assets.²¹

The difference between a bequest grant and inheritance lies in their legal basis and distribution method. Inheritance is governed by applicable inheritance laws, which regulate the amount of assets heirs receive. In contrast, a bequest grant is a voluntary gift, with the value of assets entirely determined by the testator's wishes.²²

If a bequest grant causes detriment to legitimate heirs, a compromise can be sought to find a fair resolution for all parties. Ideally, a bequest grant should not disadvantage any party, particularly the legitimate heirs. A bequest grant may be revoked or annulled without a separate revocation process due to certain legal actions, as stipulated in Article 996 of the Indonesian Civil Code, which states:

“Any transfer of ownership of all or part of the property that has been bequeathed, whether such transfer is made by the testator through a sale with a repurchase right or through an exchange, shall result in the revocation of the bequest grant for the transferred or exchanged property unless such property later returns to the testator's estate.”

Additionally, Article 966 of Civil Code specifies:

“If a testator bequeaths a specific property that belongs to someone else, the bequest grant shall be null and void, regardless of whether the testator was aware that the property was not theirs.”

This provision aligns with Article 966 of Civil Code, affirming that a testator cannot bequeath property they do not own, whether they are aware or unaware that the property does not belong to them. In such cases, the bequest grant is deemed null and void.

From these legal provisions, it can be concluded that the object of a bequest grant remains under the ownership of the testator until their death. Therefore, the testator retains full rights over the property and may sell, transfer, or take any other legal action regarding the bequeathed property before their passing.

²⁰ Syaifullah et al., “Pengalihan Atas Harta Warisan Di Indonesia.”

²¹ Debby Flora Siahaan and Benny Djaja, “Kepastian Hukum Akta Hibah Wasiat Yang Objeknya Dijual Oleh Pemberi Hibah Wasiat Kepada Pihak Lain (Studi Kasus Putusan Nomor 1270/Pdt.G/2021/Pn.Sby),” *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 1894–1903.

²² Muhammad Afif Ma'ruf and Widhi Handoko, “Tanggung Jawab Notaris Terhadap Peralihan Protokol Notaris Yang Diserahkan Kepadanya,” *Jurnal Notarius* 16, no. 3 (December 12, 2023): 1528–42.

Land law in Indonesia also regulates how land ownership can be transferred to another party, whether through sale and purchase or other commonly used methods, such as bequest grants.²³

The execution of a bequest grant must follow a meticulous procedure to ensure its legal validity.²⁴ The grantor must draft the bequest grant in writing, witnessed by two individuals who also sign the authentic deed before a notary.²⁵ The will must specify the details of the assets to be granted, the recipient of the bequest, and any other provisions desired by the grantor, as long as they do not contradict existing legal regulations.²⁶

In Indonesian land law, a bequest grant is one of the legal mechanisms for the transfer of land rights from a testator to a recipient.²⁷ This process requires the involvement of the court to request a legal determination and a Land Deed Official to issue the necessary deeds.²⁸ This ensures a smoother process for obtaining a land certificate under the recipient's name.

IV. LEGAL IMPLICATIONS OF BEQUEST GRANT OBJECTS IN FIRST INSTANCE DECISION NO. 1270/PDT.G/2021/PN.SBY AND CASSATION DECISION NO. 3258 K/PDT/2023

Human life is inherently connected to law as a norm that regulates social order. This principle also applies to inheritance law in Indonesia, which is a part of both civil law and family law. Inheritance law provides legal certainty for heirs regarding the distribution of assets. In First Instance Decision No. 1270/Pdt.G/2021/PN.Sby and Cassation Decision No. 3258 K/Pdt/2023, the facts of the case are as follows, on June 23, 2000, Defendant I, Ny. Tinningrum Tjandra, executed a bequest grant in favor of the Plaintiff, Imelda Sanny Chandra.

The Bequest Grant Deed was notarized before Notary Drs. Atrino Leswara, based in Jakarta, under Deed Number 119. The object of the bequest was a plot of land and a building located at Jalan Plampitan X No. 12, Peneleh Subdistrict, Genteng District, Surabaya, as stated in Certificate of Ownership No. 51 under Ny. Tinningrum Tjandra's name. The grant deed stipulated that the object could only be transferred, sold, or mortgaged after the beneficiary, Imelda Sanny Chandra, reached the age of 30 years. The Plaintiff is now 32 years old, meaning that, under the terms of the bequest grant, she is legally entitled to the object of the bequest.

In both the First Instance Decision No. 1270/Pdt.G/2021/PN.Sby and the Cassation Decision No. 3258 K/Pdt/2023, the courts examined the enforceability of Clause 119 in the Bequest Grant Deed, which states:

²³ Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Kencana, 2010).

²⁴ Bayu Indra Permana, Mohammad Rafi Al Farizy, and Ferdiansyah Putra Manggala, "Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence," *Jurnal Justiciablen* 7, no. 1 (2024): 66–75.

²⁵ Intan Nabila, "Implikasi Hukum Akta Hibah Wasiat Yang Obyeknya Milik Pihak Lain Dan Tanggung Jawab Notarisnya (Studi Kasus Putusan Pengadilan Negeri Surabaya Nomor : 559/PDT.G/2018/PN. SBY)," *Indonesian Notary* 3, no. 2 (2021).

²⁶ Ajie Ramdan, "Problematisa Legal Standing Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 11, no. 4 (2014): 737–58.

²⁷ Jozan Adolf and Widhi Handoko, "Eksistensi Wewenang Notaris Dalam Pembuatan Akta Bidang Pertanahan," *Notarius* 13, no. 1 (2020): 181–92.

²⁸ Resa Eka Nur Fitriasari, "Peran Jabatan Notaris Dalam Penyimpanan Protokol Notaris Yang Disimpan Dalam Bentuk Elektronik Arsip," *Jurnal Hukum Dan Kenotariatan* 6, no. 2 (2022): 1052–71.

"The bequest grant I have made may only be transferred, sold, or mortgaged after my granddaughter, Imelda Sanny Chandra, reaches the age of 30 years."

The courts likely considered whether this restriction on transfer was legally valid and whether the bequest grant remained enforceable given that Plaintiff had met the required age condition.

The judge's considerations further stated that Plaintiff has the right to claim the bequest object, as she has met the conditions stipulated in Bequest Grant Deed No. 119. Consequently, the court nullified all legal actions taken by Defendant I and Defendant II concerning the sale and purchase of the land and residential building located at Jalan Plampitan X No. 12, Peneleh Subdistrict, Genteng District, Surabaya.

The judge ruled that the Defendants' actions constituted an unlawful act, violating the following provisions of the Indonesian Civil Code: Article 1320 Civil Code – Establishes the legal requirements for a valid contract, including mutual consent, legal competence, a specific object, and a lawful cause. Article 1338 Civil Code – Stipulates that all agreements made legally are binding as law upon the parties involved. Article 1365 Civil Code – Regulates unlawful acts, where any act causing harm to another party must be compensated.

Additionally, the decision refers to Article 958 Civil Code, which states:

"All pure and unconditional bequest grants, from the day of the testator's death, confer upon the beneficiary (legatee) the right to claim the bequeathed object and this right transfers to all heirs or their successors."

The sale of the property violated the provisions in the bequest grant, which explicitly stated that the object could only be transferred after the Plaintiff turned 30 years old. There is an inconsistency with Legal Provisions – The bequest grant should be executed without conditions, as stated in Bequest Grant Deed No. 119. The fact that its implementation was subject to restrictions contradicts the material requirements for a valid bequest grant under Indonesian law.

Potential Conflicts – The failure to adhere to the legal requirements for bequest grants led to legal disputes, as seen in the case decisions. If a bequest grant does not comply with the relevant legal provisions, it risks creating conflicts among heirs and legal uncertainty regarding property ownership.

Based on Article 996 Civil Code, any transfer of ownership, including sale, exchange, or transfer with the right of repurchase, automatically revokes the bequest grant if the object has been transferred to another party. This legal principle applied in the case shows that:

The sale of the bequeathed property to Defendant II automatically nullified the bequest grant, as the testator (Defendant I) transferred the object before passing away. This aligns with Article 996 Civil Code, which states that:

"if the object is transferred, the bequest is revoked unless the object returns to the testator's estate."

Although the bequest grant was revoked, the sale and purchase agreement between Defendant I and Defendant II remained valid. This is because the transaction was conducted when the object was still legally owned by Defendant I, making it a lawful legal action at that time.

The judge in Case No. 1270/Pdt.G/2021/PN.Sby also cited Article 1320 Civil Code, which establishes the legal validity of an agreement. The four requirements for a valid contract are:²⁹

1. Mutual Consent;
2. Legal Capacity;
3. A Specific Object;
4. A Lawful Cause;
5. Violation of the Object Requirement

The judge determined that Defendant I violated the legal conditions of the agreement because the property was already designated under the bequest grant. Plaintiff argued that the object of the sale and purchase agreement was no longer legally owned by Defendant I.

Therefore, the object requirement was not met, making the sale and purchase agreement legally flawed.³⁰ Bequest Grant Revoked – Since Defendant I transferred the property before their death, the bequest grant automatically ceased to be valid under Article 996 Civil Code. The Plaintiff contested the validity of the sale, arguing that the property was no longer Defendant I's to transfer. This led to legal disputes over ownership. If the court finds the sale unlawful, Defendant II may be required to return the property or seek compensation.

Based on the explanation above, the object of the bequest grant in this case legally remained the property of Defendant I, as the execution of a bequest grant only takes effect upon the death of the testator—in this case, Defendant I as the grantor.

In Indonesian legal practice, bequest grants are often associated with contract law. While the concept of a bequest grant remains intact, its contractual interpretation suggests that both the grantor and the beneficiary must adhere to the terms set forth in the will. However, Article 1338 of the Indonesian Civil Code on freedom of contract is deemed irrelevant to the concept of a bequest grant, as a bequest grant is not a contractual agreement but rather a unilateral expression of the testator's intent to transfer assets to a specific person upon their death. Thus, as long as the testator (Defendant I) is still alive, the bequeathed object cannot be transferred to another party.

This issue cannot be overlooked, as a bequest grant is a gratuitous transfer from the grantor to another person, with the assets specifically designated. A bequest grant is not a contractual agreement but rather the testator's unilateral intent. Therefore, confidentiality in a bequest grant is essential to prevent disputes, such as those seen in Decision No. 1270/Pdt.G/2021/PN.Sby.

²⁹ Bella Adinda Purwasaputri, I Wayan Yasa, and Ajeng Pramesthy Hardiani Kusuma, "Tanggung Jawab Asuransi Astra Terhadap Tertanggung Atas Kehilangan Sepeda Motor Yang Masih Dalam Proses Kredit," *Acten Journal Law Review* 1, no. 3 (2024): 253–70.

³⁰ Vikriatuz Zahro, Iswi Hariyani, and Iwan Rachmad Soetijono, "Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 102–18.

According to Gustav Radbruch's legal certainty theory, legal certainty consists of four key aspects:

1. Law is Positive
Positive law refers to statutory regulations.
2. Law is Based on Facts and Must Be Certain
Law must be grounded in reality, and judges cannot rely solely on their discretion, such as through general clauses on decency and good faith.
3. Facts Must Be Clearly Formulated
Legal provisions must be clearly stated to avoid misinterpretation and ensure easy implementation.
4. Positive Law Should Not Be Easily Changed
Statutory regulations cannot be arbitrarily altered by any party unless adjustments are necessary due to societal and legal developments.

Based on the legal certainty theory, there is an element of legal certainty that has not been fully met. This element pertains to positive law, as certain norms remain unclearly regulated in statutory provisions, particularly regarding the nature of grants given to minors. Such grants are often made by parents to their children or to other individuals, necessitating more specific, clear, and distinct regulations alongside other types of grants. This would ensure clarity in implementation and stability in legal concepts, preventing frequent changes.³¹

Regarding bequest grants and other forms of wills, regulations have only addressed electronic registration, while no definitive government regulation comprehensively governs their practical execution. This absence of regulation increases the risk of misconceptions surrounding bequest grants. According to a journal by Ikhwan Ashadi, bequest grant practices in Indonesia often incorporate contractual concepts, despite bequest grants not being contracts but rather the absolute right of the grantor.³²

The revocation of Deed of Bequest Grant No. 119 represents an effort to uphold legal certainty for all parties involved. This revocation aligns with the legal validation of transactions conducted by Defendant I and Defendant II regarding the transfer of the contested property. Sudikno Mertokusumo defines legal certainty as a guarantee that the law must be implemented properly.³³ Legal certainty demands that legal regulations be established by competent authorities, ensuring that laws have a binding juridical aspect and function as mandatory legal provisions.³⁴

³¹ Debby Flora Siahaan and Benny Djaja, "Kepastian Hukum Akta Hibah Wasiat Yang Objeknya Dijual Oleh Pemberi Hibah Wasiat Kepada Pihak Lain (Studi Kasus Putusan Nomor 1270/Pdt.G/2021/Pn.Sby)," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 1894–1903.

³² Ikhwan Ashadi, Putra Hutomo, and Amelia Nur Widyanti, "Kepastian Hukum Mengenai Hibah Wasiat Ditinjau Berdasarkan Undang-Undang Nomor 1 Tahun 2022 Tentang Hubungan Keuangan Antara Pemerintah Pusat Dan Pemerintah Daerah," *SENTRI: Jurnal Riset Ilmiah* 2, no. 9 (2023): 3647–55.

³³ Zulfahmi Nur, "Keadilan Dan Kepastian Hukum (Refleksi Kajian Filsafat Hukum Dalam Pemikiran Hukum Imam Syâtibi)," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 2 (2023): 247–72.

³⁴ Ardian Kurniawan, Rafikah, and Nuraida Fitrihabibi, "Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan (Analisis Putusan No. 387/Pid.B/2021/PN.Jmb)," *Al-Jinayah : Jurnal Hukum Pidana Islam* 8, no. 1 (2022): 1–13.

V. CONCLUSION

The execution of a bequest grant must be pure and unconditional, taking effect only upon the death of the testator. This means that a bequest grant cannot be subjected to any conditions, except for the specification of the property being granted, and it may only be executed after the grantor's passing. Consequently, Deed of Bequest Grant No. 119, which states a conditional transfer of the granted property, contravenes statutory regulations. It can therefore be concluded that any transfer of the bequest grant's object may lead to its revocation. As a result, the legal actions taken by Defendant I and Defendant II remain valid under the law, as the property in question was still fully owned by Defendant I at the time. However, the judicial considerations in both decisions do not align with the applicable laws and regulations.

A bequest grant does not fall within the scope of contract law, as it constitutes a gratuitous gift from the grantor to the beneficiary. It is fundamentally confidential and should only be disclosed to the heirs after the grantor's death. Until that time, the contents of the bequest grant deed should remain undisclosed, except to the grantor, notary, and witnesses who signed the deed. Therefore, a government regulation is necessary to establish clear and detailed guidelines on the execution of bequest grants and other wills, preventing any misinterpretation or legal uncertainty.

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