



## **Legal Strength of Grant Deed for Adopted Children**

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### **Abstract**

This study wants to answer how the juridical strength of the grant deed for adopted children is in the case of the XXX/Pdt.G/2012/MS-Aceh case concerning the Cancellation of Grants. A grant is a gift made by a person to another party that is carried out while still alive and its implementation is carried out while the grantor is still alive. Grants in any law are essentially non-cancellable, unless certain conditions are met the grant can be cancelled. By using the juridical normative method, the research found that grants for adopted children normatively through a grant deed No. 04/V/2007 are valid and have legal force, because they have fulfilled the requirements in the grant agreement both formally and materially. The decision to cancel the grant in case Number XXX/Pdt.G/2012/MS-Aceh is in accordance with applicable law. The judge considers that adopted children in Indonesia have the same status as biological children, so what applies to biological children also applies to adopted children.

**Keywords:** legal force; grant deed; adopted children.

### **Introduction**

The family has an important role in human life as social beings and is the smallest community group in the wider community, which consists of three elements, namely: a father, mother and child. But not always the three elements are met, so sometimes there is a family that does not have children or descendants. Descendants in a marriage can come from their own flesh and blood or biological children who in Law Number 1 of 1974 concerning Marriage are referred to as legal children, as in Article 42 of this Law it is explained: A legitimate child is a child born in or as a result of legal marriage. If the husband and wife are not able to have children in their marriage, then they can also continue their descendants so that the tribe / and does not become extinct by adopting children or often also called adoption. Therefore, the purpose of adoption is, among others, to continue offspring, when in a marriage there are no children. This is one way out and a positive and humane alternative to the presence of a child in the arms of the family. However, the development of society today shows that the purpose of adopting children is not solely motivated by the motivation to continue their offspring, but also because of political, socio-cultural factors and so on. Adoption of children, can be distinguished from two points of view, namely understanding etymologically and terminology. Etymologically, adoption comes from the word adoptie in Dutch, or adopt (adoption) in English which means adoption, adopting a child. The definition in Dutch according to the legal dictionary means the adoption of a child to be considered

as his own biological child. Adoption if interpreted in Indonesian means an adopted child or adopting a child.

In terminology, experts put forward several formulations regarding the meaning of adoption, including Soerojo Wignjodipuro in his book *Introduction and Principles of Customary Law*, giving the following limitations. Adoption is an act of taking another person's child into one's own family in such a way Between the person who adopts the child and the child who has been adopted, a legal relationship arises similar to that between a parent and his or her own biological child. There is the term adopted child because someone takes a child or is made a child by someone else as his child. The adopted child may be a boy or a girl. Although there are differences between the notion of adoption and the notion of adopted children, this is only seen from the etymology and legal system of the country concerned. Law Number 23 of 2002 concerning Child Protection Article 1 point 9 explains: Adopted children are children whose rights are transferred from the family environment of parents, legal guardians or other people who are responsible for the care, education and rearing of the child into the parent's family environment. appointment based on a decision on a court order. In the *Compilation of Islamic Law (KHI) Book II Chapter I, Article 171 letter h*, regarding adopted children it is explained as follows: An adopted child is a child who in terms of maintenance for his daily life, education costs and so on, shifts his responsibilities from his biological parents to adoptive parents based on court decisions Humans as social beings by nature live and need each other. In the process, peer relations are related to efforts to maintain different interests, sometimes these different interests lead to disputes between several parties. For this purpose, legal provisions or rules are made in order to create order in society. Various legal regulations were created to regulate people's lives, one of which is agrarian law, which has been regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations. Along with the times, land problems that are present in people's lives have become so complex. Daily events that arise related to land, from various policies and changes in land needs, one of which is related to land grant.(Abdoeh, 2019)

A grant is a gift from one person to another which is usually done when the giver or recipient is still alive. Hadiyanti, Safa'at, Ansari, In the grant there is no counter-achievement element, the grantor surrenders his ownership of part or all of his assets to another party without any compensation from the grantee. In this regard, the legislators make rules that oblige the grantee to re-enter all the assets he has received into the inheritance of the grantor to be recalculated. Everyone who is at least 21 years old, has sound mind and is not coerced in donating a maximum of 1/3 of his property to another person or to an institution to be owned. The grant must be made in the presence of two witnesses and the property that is donated must be the personal property of the person giving the grant. As mentioned in Article 1666 of the Civil Code (KUH Perdata), a grant is an agreement whereby the donor, while alive, freely and irrevocably, delivers something for the purposes of the grantee who receives the delivery. Grants in Islamic law receive special attention and have certain requirements. This is intended so that the grant will always remain in its function, namely to strengthen the relationship between Muslims. Likewise with the laws and regulations in Indonesia, grants are regulated in Presidential Instruction No. 1/1991 on the

Dissemination of the Compilation of Islamic Law. Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law regulates grants in Article 210 to Article 214, namely Article 210 paragraph (1) which states that "A person who is at least 21 years of age, is of sound mind without any coercion, can donate as much as possible. the amount of 1/3 of his property to another person or institution in the presence of two witnesses to be owned. (2) "The assets that are donated must be the rights of the donor", Article 211 states that "Grants and parents to their children can be counted as inheritance", Article 212 states that "Grants cannot be withdrawn, except for grants from parents to their children" , Article 213 states that "Grants given when the grantor is in a state of illness close to death, must obtain approval from his heirs" and Article 214 states that "Indonesian citizens residing in a foreign country can make a letter of grant before the Consulate or the local Embassy of the Republic of Indonesia as long as the contents do not conflict with the provisions of these articles".

The grant will have legal consequences that the property or goods donated are no longer the property of the grantor. Islamic law stipulates that goods that have been donated or have been given to others cannot be returned. In other words, Islam forbids the cancellation or withdrawal of grants. However, if the grant is made from parents to their children, the grant can be withdrawn or cancelled. This is based on the hadith of the Prophet Muhammad narrated by Abu Dawud, An-Nasa'I, Ibn Majah and At Tirmidhi, namely: "It is not lawful for a man to give a gift or donate a gift, then he takes back the gift unless the grant is a gift. from parents to their children. Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law, this is also regulated in Article 212 that "grants cannot be withdrawn, except for grants from parents to their children." The implementation of grants often leads to cross disputes between families due to human negligence. In the end what happened was the opposite, instead of tightening the ties of kinship like the purpose of the grant, but the severing of ties between people, even families. This is like what happened in the provision of grants from adoptive parents to adopted children which in the end led to disputes between adoptive parents and adopted children. Adoptive parents adopt an adopted child with the aim of helping, namely by nurturing, nurturing, and sending the adopted child to school like his own biological child. However, the position of adopted children in Islam is different from biological children, including in terms of receiving inheritance. If the biological child has the right to inherit from his parents, the adopted child does not have the right to receive an inheritance from his adoptive parents. Therefore, many adoptive parents give or donate part of their wealth to their adopted children. (Azni Umar, 2015)

The grant was made because of the concern that the adopted child would not receive a share of his wealth after his adoptive parents died. Grants from adoptive parents to adopted children are carried out in accordance with the pillars and terms of the grant, so that the grant is valid (Muliana, Khisni, 2017: 739-744; Haryanti, 2015:176). However, after the implementation of the grant, the adoptive parents cancel or ask for the grant that has been given to their adopted child for some reason. The cancellation of the grant becomes a dispute between the adoptive parents as the grantor and the adopted child as the grantee. The grant was initially intended to help adopted children according to the purpose of the grant in Islam, but in the end it caused a dispute. This grant dispute

even caused the severance of the relationship between the adoptive parents and the adopted child. Based on Islamic law, the cancellation of the grant does not become a problem if the withdrawal of the grant is made from the parents to their children. This has also been regulated in Article 212 of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. It will be different if the dispute over the cancellation of the grant is made from the adoptive parents to their adopted child. (Malahayati, 2019) The dispute over the cancellation of the grant is resolved by filing a lawsuit with the Religious Court, where the Religious Court is the court authorized to examine and adjudicate grant disputes. In examining and adjudicating disputes over the cancellation of grants, the panel of judges must have considerations as the basis for making a fair decision for the disputing parties. As has happened in the community in Aceh, Sy as the giver of grants to his adopted son DK a plot of land with an area of 316 M2 and a house unit on it with a title certificate Number 11 of 1986 located in Gampong Pineung, Banda Aceh as stated in the deed of grant Number: 04V /2007. For consideration, the donated property is a joint property between Sy and his wife. Sy's wife, RT, passed away on December 30, 2009. After RT's death, Sy lived in the house that was donated with her adopted child. However, due to a dispute, Sy left the house and lived with his new wife by renting. Sy is not happy with his adopted son because he has done things that hurt him as his adoptive parents. So Sy decided to file a lawsuit for the cancellation of the grant to the Syar'iyah Court for the grant he had given when his wife RT was still alive. Previously, Sy and his wife gave grants to their adopted children without any coercion or pressure from their adopted children. Giving the grant sincerely with a PPAT deed which has legal force for the adopted child if a problem arises at one time. On one side of the land grant, a grant deed has been made by PPAT, but along the way, the right of the deed was canceled by the Syar'iyah Court because the grantor withdrew the grant. So what is the power of the grant deed? Because on the one hand there is a deed and on the other hand the deed is revoked. Whereas the form of transfer of grant rights is carried out by the parties before the PPAT who is in charge of making the deed. By carrying out the relevant legal action before the PPAT, it is fulfilled with clear conditions (not a "dark" legal act, which is carried out secretly). The deed signed by the parties clearly shows the act of the grant being made. Thus, the three properties of the grant, namely cash, light and real, are fulfilled. The deed proves that the relevant legal act has been carried out. Because the legal action taken is the law of the transfer of rights, the deed also implicitly proves that the recipient of the right has become the new right holder. Therefore, this research is important to be studied and investigated by researchers.

Based on the background of the problem above, this research wants to explore how is the juridical strength of the grant deed for adopted children in the case of the XXX/Pdt.G/2012/MS-Aceh case regarding the Cancellation of Grants? Is the decision to cancel the grant at the Aceh Syar'iyah Court in case Number XXX/Pdt.G/2012/MS-Aceh regarding the cancellation of the grant at the appeal level in accordance with the applicable legal provisions? What is the judge's consideration of the cancellation of the PPAT grant deed Number 04/V/2007? and What are the legal consequences of the grants requested for cancellation in case Number XXX/Pdt.G/2012/MS-Aceh regarding the cancellation of grants at the appeal level?(Husni, 2006)

## **Literature Review**

### **1. Definition of Grants according to the Compilation of Islamic Law**

The word grant according to language is to give alms or give something, either in the form of property or otherwise, to others. According to the term syar'i, grant is a contract that results in the transfer of ownership of property from one person to another without compensation, and is carried out while still alive. Daud Ali explained that grants are expenditures of property during life on the basis of affection for the benefit of a person or the interests of religious social bodies, as well as to people who are entitled to be his heirs. In the formulation of the Compilation of Islamic Law Article 171 letter 9, a grant is the giving of an object voluntarily and without compensation from one person to another with a lifetime to be owned. From the description above, a grant is a legal process of transferring property rights from one person to another, carried out when the person who gave it is still alive and free to be sold, loaned or given back to others for free. Grants are usually given to families or heirs or to children who have not been able to start their own business as business capital because they cannot afford it. (Syafe'i, 2005)

### **2. Grants according to the Civil Code**

Grants in the Civil Code are contained in Article 1666, grants (Dutch: schenking, English: donation). In Article 1666 of the Civil Code it can be understood that: A grant is an agreement in which the donor, in his lifetime, freely and irrevocably, hands over an object for the purposes of the grantee who receives the delivery. The law does not recognize other grants other than grants among living persons. This grant is classified in the so-called "free of charge" agreement (Dutch: "om niet"), where the word "free of charge" is intended only for the achievements of one party, while the other party does not have to provide counter-achievements in return. Such an agreement is also called a "unilateral" agreement as opposed to a "reciprocal" (bilateral) agreement. Many agreements are, of course, reciprocal, because what is common is that people undertake an achievement because they will receive a counter-achievement. The word "at the time of his life" the donor, is to distinguish this gift from gifts made in a testament (will), which will only have power and take effect after the giver dies and at any time while the giver is still alive, can be changed. or withdrawn by it. The giving in the testament is in B.W. called "legaat" (will grant) which is regulated in inheritance law, while this grant is an agreement. Because the gift according to B.W. it is an agreement, then by itself it cannot be withdrawn unilaterally by the donor. (Hidayat, 2021)

### **3. Power and Authority in Civil Procedure Law .**

Talking about judicial power in relation to the Civil Procedure Code, usually it involves two things, namely "Relative Power" and "Absolute Power", as well as discussing the place to file a lawsuit/application and the types of cases that fall under the jurisdiction of the Court. Relative power is defined as: Court power of the same type and level, in contrast to the power of the Court of the same type and level. Each Religious Court has a certain area or is said to have

"relative jurisdiction" regarding in this case covering one municipality or one district. or in certain circumstances as an exception. This relative jurisdiction has an important meaning in relation to which religious court a person will file his case in and in relation to the defendant's right of exception. The Civil Procedure Law of the General Court (regarding the place to file a lawsuit) if the plaintiff files his lawsuit to any district court, it is allowed to hear the case as long as there is no exception from the opposing party. It is also permissible for people to choose to litigate before any district court as long as they agree. In this case, the District Court may accept the registration of the case in addition to rejecting it. However, in practice the District Court from the beginning was not willing to accept such a lawsuit/application, and at the same time gave advice to the district court where the lawsuit/application should be filed. The general provisions of General Courts also apply to Religious Courts as indicated by Law Number 7 of 1989. Absolute Power is defined as: Court power relating to the type of case or type of Court or level of Court in its difference with the type of case or type of Court or level of Court Another example is: the Religious Courts have power over the marriage cases of those who are Muslim, while for non-Muslims it is the power of the General Courts. The Religious Courts have the power to examine and adjudicate cases in the first instance, they may not proceed directly to the Religious High Court or at the Supreme Court. An appeal from the Religious Courts is submitted to the Religious High Court, it may not be submitted to the High Court. With respect to this absolute power, the Religious Courts are required to examine the cases submitted to them whether they are included in their absolute powers or not. If it is clear that it does not include absolute power, the Religious Court is prohibited from accepting it, if the Religious Court accepts it as well then the defendant can file an objection called an "Absolute exception" and this type of exception may be filed since the defendant first answers the lawsuit and may even be filed at any time, even until at the Appeal or Cassation level. At the Cassation level, this absolute exception is one of the three reasons that allow people to request a Cassation and can be used as an excuse by the Supreme Court to annul the decision of the Religious Court which has exceeded the absolute limits of its power. Power of attorney.(Putri, 2019)

According to the existing laws and regulations, proceedings before the court can be carried out directly, but also indirectly by representing the case to another party, namely the recipient of the power of attorney. The granting of power of attorney is regulated in Article 123 HIR/147 Rbg which states that litigants can submit their case to other people with a special power of attorney. The plaintiff may include the grant of power of attorney in the lawsuit. If the lawsuit is filed orally, the power of attorney can be given orally and the head of the District Court will record or order to register. For the record, a special power of attorney is not required for a prosecutor or civil servant who represents the state. Likewise, a special power of attorney is not required for the management/directors of a company. In article 1729 BW it is stated: "The granting of power of attorney is an agreement with a person giving power to another person who receives it, for and on his behalf to carry out an affair" thus the acceptance of the power of attorney acts on behalf of the power of attorney. In Article 1795 BW it is also emphasized that "the granting of power of attorney can be carried out specifically, meaning that it refers to

certain types of cases with details as stated in the power of attorney granted, for example regarding inheritance, buying and selling and so on. If the judge is in doubt, he can order the power of attorney to appear in person before the court to explain what the contents of the power of attorney are to the power of attorney, with the aim of avoiding the possibility of exceeding the power given and so that the power of attorney is not harmed, in the event that the power of attorney exceeds the power of attorney. given, then the event is deemed to have never existed/happened and the power of attorney can demand the recipient of the power of attorney to stop an action that exceeds the power of attorney called action en desavue. The legal requirements for the Special Power of Attorney; There are several legal requirements for a special power of attorney, namely: (1) Must be in written form, namely: (a) Registrar of District Court legalized by KPN or judge, (b) Deed under the hand, (c) In the form of authentic deed made by a notary ; (2) State the identity of the parties (the giver and recipient of the power of attorney, i.e. name, occupation, address, etc.), (3) Confirm the object and case being litigated or the subject matter of the dispute, (4) The contents of the power of attorney granted, explain the specifics the contents of the power of attorney within certain limits means that if it is not mentioned in the power of attorney, the recipient of the power of attorney is not authorized to do so, (4) confirmation of relative competence, namely which State Court area will be examined, (5) contains the right of substitution (delegation). If the recipient of the power of attorney is unable to delegate to someone else the case is not jammed. Basically, the conditions above are cumulative, not alternative, meaning that all requirements must be met. If one of the conditions is not fulfilled, the power of attorney becomes legally invalid by itself, the position of the power of attorney is invalid, so that the lawsuit must be declared unacceptable or all legal actions taken by the power of attorney are invalid and not binding. The formulation of the special power of attorney was confirmed in the SEMA dated January 23, 1971.(I, 2018)

#### **4. Adoption of Children Under Customary Law.**

Taking a child, adopting a child, adopting a child is a legal act in the context of familial customary law (descendants). If a child has been adopted, fostered, or adopted as an adopted child, he or she will be seated and accepted in an equal position, both biologically and socially, which was not previously attached to the child. Ter Haar as quoted by Bushar Muhammad, states: ..That by means of a legal act, people can influence relationships that act as biological bonds and certain in their social position, for example it can be mentioned marrying and taking children or inlijfhuwelijk. The position in question brings two possibilities, namely: a. as a child, as a family member to continue the lineage, as an heir (juridical), and b. as a (social) member of the community and according to customary procedures, the act of appointment must be carried out clearly and in cash.” The opinion of B. Ter Haar clearly states that a child who has been adopted as an adopted child gives birth to juridical and social rights both in the aspect of inheritance, obligation to support and protect children, marriage and social life. Adoption of children in customary law communities can be done by: a. Cash/cash means that the child is released from his original environment and put into a relative who adopts him with a payment for magical objects, money and/or clothes, and b. It means that the adoption is carried out with

ceremonies with the help of the tribal chiefs, it must be clearly appointed into the legal system of society.

In customary inheritance law, adopted children receive rights and obligations as heirs like biological children, both material and immaterial. Material objects such as houses, rice fields, gardens and so on, while those belonging to immaterial assets include customary titles, customary positions and the dignity of descendants. Specifically, the issue of adoption has the same nature between various jurisdictions, although the characteristics of each particular area color the cultural diversity of Indonesian ethnic groups, including: There is no provision on age limits and who may adopt children. This is based on information obtained from customary law in force in several regions. In general, indigenous peoples in Indonesia do not distinguish between boys and girls, except for some areas where the community adheres to the male lineage (patrilineal). Adoption of children in different indigenous peoples can be done to close family, outside the family or foreigners. The adoption of a child must be clear that it must be carried out with traditional ceremonies and with the help of the traditional head. Adoption in this case must be clear, meaning that it must be carried out with a traditional ceremony with the help of a traditional head. The legal position of the adopted child is the same as the biological child of the husband and wife who adopted him, while the family relationship with the parents themselves is traditionally broken, as is known in the Gayo, Lampung, Nias and Kalimantan areas. The legal force of adoption according to customary law can be seen from several decisions of the District Court, among others, in the jurisprudence of the Supreme Court Number 516 K/Sip/1968, according to customary law in force in East Sumatra, adopted children do not have the right to inherit the assets of their adoptive parents. He only gets gifts or grants from adoptive parents while living.(Cry Tendean, 2014)

## **Research Method**

The type of research used in this research is normative legal research (juridical normative), namely research that is focused on examining the application of rules or norms in positive law (Ibrahim, 2012: 295). Research conducted to examine legal materials and main books related to the problem being studied. Data collection techniques are carried out through document studies, to obtain conceptions of theories or doctrines, opinions or conceptual thoughts or research related to the object of this research study, can be in the form of applicable laws and regulations, books, scholarly scientific works, search results from the internet and other literature related to research.(Kamaruddin, 2008)

## **Results and Discussion**

### **1. Juridical Strength of the Grant Deed for Adopted Children.**

Based on the explanation in Article 49 letter a number 20 of the Compilation of Islamic Law, it states that "The determination of the origin of a child and the determination of adoption is based on Islamic law." Article 209 of the Compilation of Islamic Law as the author has mentioned behind that adopted children are entitled to a mandatory will. However, the status of



adopted children as referred to in Article 209 of the Compilation of Islamic Law is to remain in the status of adopted children who do not have nasab with respect to their adoptive parents and status in inheritance cannot beat the status of inheritance of biological children. So what is meant by the inheritance of adopted children in the article is a mandatory will, not inheritance. (Jainuddin, 2020)

Mandatory will is a will that is intended for heirs or relatives who do not get a share of the inheritance of the person who died, because of a *syara'* obstacle. does not depend on the will or will of the deceased. The definition of an adopted child who gets a mandatory will based on the decision of the Religious Court/Syar'iyah Court, there are several considerations and conditions when a child gets a mandatory will Article 209 Compilation of Islamic Law. There is legal certainty regarding the adoption of children through the decisions of the Religious Courts. In the Elucidation of Article 49 letter a number 20 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. There is a pledge and contract in the provisions issued by the Religious Courts regarding the provisions of mandatory wills for children who will be adopted after the death of the adoptive parents. Social factors such as the important role of adopted children in adoptive parents' families, giving rise to a sense of kinship between children and adoptive parents and bonds of love and affection between adopted children and adoptive parents in a family. This is also based on the jurisprudence of the Supreme Court's decision Number K/Pdt/1987 dated April 27, 1989, which emphasizes that the purpose of adopting a child is not to receive back the remuneration of the adopted child to his adoptive parents, but instead to transfer the love of the parents to the child. So that the legal relationship of adoption that has been ratified by the court cannot be declared without permanent legal force only on the grounds that the adopted child neglects or does not take good care of his adoptive parents. The closeness of an adopted child with his adoptive parents to the point of causing deep affection is not a final factor in the right of an adopted child to obtain a mandatory will. In a more precise analysis, the right to obtain the mandatory will is due to the determination factor as well as the contract and pledge from the Religious Court, from the legitimacy of the adopted child and the right of the adopted child to obtain the mandatory will. Of course, the stipulation must have permanent legal force. So, according to the author, those who are entitled to a mandatory will as referred to in Article 209 of the Compilation of Islamic Law are for children who have all of these factors, namely having legal status as adopted children issued as a determination of the Religious Court/Syar'iyah Court with permanent legal force, and the existence of a pledge and contract factor to obtain a mandatory will stated in the determination, as well as social factors such as a deep bond of affection between the two. Regarding the right of the adopted child regarding the mandatory will of the inheritance that has been granted and has been stipulated in the deed of grant. Article 1866 of the Civil Code and Article 165 of the HIR deed are written evidence in court proceedings, the position of the deed is very important in a proof. The grant deed in this case includes an authentic deed, this is in accordance with Article 1868 of the Civil Code, Article 165 HIR, and Article 285 Rbg deed which states that an authentic deed is a deed made by an official authorized for it by the

authorities, according to the provisions that have been determined, either with or without the assistance of the interested parties. (Suisno, 2017)

The deed is divided into two, namely the authentic deed and the private deed. The grant deed as an authentic deed according to Article 1870 of the Civil Code and Article 165 HIR and 285 Rbg has authentic power according to Article 1870 of the Civil Code and Article 165 HIR and 285 Rbg have absolute and binding evidence, what is stated in the deed is perfect evidence so that it is not need to be proven by other evidence as long as the untruth can not be proven. An authentic deed provides between the parties including the heirs or the person who has rights from the parties a perfect proof of what was done or stated in this deed. However, the deed can become inauthentic, for example, when the deed blocks a person's rights in terms of inheritance. The power of perfect proof contained in the authentic deed is a combination of several strengths of proof and the requirements contained in it. The authentic deed will result in not having a perfect and binding proof value if there is no proof or requirement in it, so that it will lose its authenticity and no longer be an authentic deed. A grant deed in the distribution of inheritance can be proven valid if: The making of a grant deed must meet the following requirements: The deed must be made by and before a public official; The deed must be made in accordance with the provisions of the legislation; The deed must have the authority to make the deed before whom the deed was made by a public official. An authentic deed must meet the strength of outward, formal and material proof, namely the strength of external evidence, namely a deed whose birth appears as an authentic deed and fulfills the specified requirements so that the deed can be valid or be considered as an authentic deed.

Formal strength, namely what is stated and included in the deed in the form of certainty of the day, date, month, year, time (time), the parties who appear, the signatures of the parties, notaries and witnesses and the place where the deed was made is a true description of the will of the the parties who appear at the time stated in the deed. The strength of material evidence, namely the material of a deed stated in the deed is valid evidence against the parties who made the deed. The information submitted by the appearer to the notary as stated in the deed is considered correct. If the information is not true in the future, then the contents of the information are the responsibility of the parties. A grant deed that already has authentic legal force if it does not prevent other heirs from getting their rights in the inheritance that has been stipulated in the deed. If in the future the grant deed can prevent the heirs from getting their rights, then the grant deed that has been made by a notary or authorized public official is null and void. (Khosyi'ah & Asro, 2021)

## **2. The deed has elements in accordance with the provisions in Article 165 HIR,**

Loading posts. Events, facts or circumstances that form the legal basis of a right or engagement. Signed by the parties concerned; and. With the intention of being used as evidence, the grant deed basically has benefits for the property rights owned by the grantee, such as the grant deed will protect the rights and written evidence for the grantee so that they have legal certainty or legal guarantees in the future, the grant deed can be used as a protector for grantees if in the future a lawsuit is filed by other parties, and the existence of a grant deed will minimize

disputes in the family or other heirs. Related to the mandatory testamentary rights contained in the deed of grant. The grant deed is considered null and void, but what is meant by cancellation here is that the substance is replaced with the cancellation of the grant, so the deed has no legal force and is not null and void, on the grounds that the statutory will provisions for adopted children have not been fulfilled in accordance with Article 209 of the Compilation of Laws. Islam about mandatory wills. The definition of a mandatory will is a will that is considered to have existed before the testator dies and can only be obtained based on the decision of the Religious Court/Syar'iyah Court. The large part of the mandatory will is not more than 1/3 of the inheritance. However, in a judge's consideration, it is not only focused on the placement of the Syar'iyah Court which explains the legalization of children, but also has to consider the social aspect between the adopted child and his adoptive parents as a manifestation of justice as stated in the formulation of the process of making Article 209 of the Compilation of Laws. Islam The motivation of Article 209 of the Compilation of Islamic Law is the basis for a sense of humanity and justice. Because it feels unfair, inhumane and unworthy if the reciprocal relationship between an adopted child and his adoptive parents is going well during his life, but after the death of one of the two this relationship is felt to be cut off, because the assets from the inheritance of his parents are not in the least obtained from good relationship during this time and in the end it had a bad effect due to heartache.

This concern is then anticipated by Article 209 of the KHI, so that it is hoped that the anxiety and worry and sadness will not happen again. The presence of mandatory wills in Muslim society in Indonesia is a demand for the feeling of legal justice of the community. Disappointment of an adopted child or vice versa who has been with his adoptive parents or adopted child for years, takes care and looks after him, but when the adoptive parent dies, the adopted child can no longer live in his adoptive parent's house because the property will be handed over to his heirs or *baitul mal*. normatively that the deed of grant is valid and has legal force, because it has fulfilled the requirements in the grant agreement. For example, the goods that are donated are the property of the donor, they are not forced to give the grant. As in this case, both adoptive parents have donated joint property to their adopted children without any coercion and both signed the deed of grant before PPAT to be granted to their adopted children. However, regarding the grant, did the adoptive parents donate the whole property or only 1/3 of the total owned by the adoptive parents. If we refer to Decision number XXX/Pdt.g/2012/MS-ACEH, that the plaintiff (adoptive father) admits that the property is their only property. So the Panel of Judges canceled the deed of grant because it exceeded 1/3 of the total assets. Based on Decision Number xxx/Pdt.g/2012/MS-ACEH, there was an error in determining the decision, the panel of judges of the Aceh Syar'iyah Court should in their decision strengthen the decision of the Banda Aceh Syar'iyah Court, namely to return 2/3 of the grant property to his adoptive father and 1/3 becomes the property of the adopted child (defendant/apparator) (Judge Interview, 28 March 2018).

The case of cancellation of the appeal level grant at the Syar'iyah Court of Aceh with case number XXX/Pdt.G/2012/MS-Aceh which decided to cancel the decision of the Syar'iyah

Court of Banda Aceh number 117/Pdt .G/2011/MS-Bna, which stated that the grant that has been given by Sy and RT (his wife) to DK is canceled by law with the consideration that DK (grant recipient) has committed an act against his disobedience to I'm his adoptive parent and grantor. With the decision of the Aceh Syar'iyah Court, the grant becomes null and void and as a result of the law the object of dispute in the form of land covering an area of  $\pm$  316 M2 and 1 (one) house on it which has been given by Sy and RT (his wife) to DK becomes ownership of the object of the grant property. In addition, the DK must sell the grant property in order to be able to return of the grant property or submit it in the form of money to his adoptive parents after an estimation of the price of the land area of  $\pm$  316 m2 and 1 (one) house on it has been carried out. By submitting of the assets in the form of money, the deed of grant which has been in the name of the DK becomes null and void. Therefore, the deed of grant is no longer valid. The results of the interview above, in the opinion of the author, that due to the cancellation of the grant deed, the legal force of the grant deed for the adopted child is automatically canceled.(SAPUTRA, 2017)

### **3. Grant Cancellation Decision at the Aceh Syar'iyah Court**

Based on the results of research on the decision of the Aceh Syar'iyah Court with Case Number XXX/Pdt.g/2012/MS-Aceh where the deed of grant with Number 04/V/2007 on May 4, 2007 which has been granted or granted is declared canceled or revoked by the grantor because it is proven to be legally flawed and does not have legal force to be used as evidence that there has been a transfer of land rights. The litigants in this case, DK as the defendant is now the appellant, against Sy as the plaintiff, now the appellate. Civil case Number XXX/Pdt.g/2012/MS-Aceh, derived from an appeal against the decision of the Syar'iyah Court of Banda Aceh Number: 117/Pdt.G/2011/Ms.Bna, dated April 12, 2012 M. This decision contains the following: the following: (a) the judge partially granted the plaintiff's claim; (b) declare the grant of the plaintiff and the plaintiff's wife to the defendant against the object of the case as null and void; (c) the judge also stated that the deed of grant number 04/V/2007 had no legal force; (d) certify that the plaintiff's grant with the plaintiff's deceased wife Ramlah binti Raji Tambunan to the defendant 1/3 part of the object of the case; (e) Stating that 2/3 of the object in the case in accordance with the certificate of land title number 11 of 1986 became part of the plaintiff and his deceased wife, RT; (f) Sentencing the defendant to surrender 2/3 of the object in the case to the Plaintiff; (g) Sentencing the defendant to pay court fees of Rp. 1,041,000 (One Million Forty One Thousand Rupiah). Reading the deed of statement of appeal made by the Registrar of the Banda Aceh Syar'iyah Court that the Plaintiff/Appellant on April 12, 2012, has filed an appeal against the decision of the Syar'iyah Court of Banda Aceh Number 117/Pdt.G/Ms-Bna dated April 12, 2012. The appeal request has been notified to the opposing party. The Aceh Syar'iyah Court accepted the appeal from the DK which had authorized the Advocate at the Rasminta Sembiring Law office in Banda Aceh, based on a special power of attorney dated May 7, 2011 which was legalized by the Banda Aceh Syar'iyah Court Number MS/I/P/SK/42 /2011 dated 09 May 2011, which was filed by the Defendant/Appellate within the time limit and in a manner according to the provisions of the laws and regulations. After

carefully studying the appeal file for the aquo case and the decision of the judge of the first instance, the Aceh Syar'iah Court is of the opinion that what has been considered and decided by the judge of the first instance is correct and some is not. The considerations of the judges at the first instance that were appropriate as the opinion of the Aceh Syar'iyah Court and against the inappropriate ones, the Aceh Syar'iyah Court Council considered the case, as follows: in the defendant's exception, and therefore this consideration became the opinion of the Aceh Syar'iyah Court itself. In the main case, After the panel of judges of the Aceh Syar'iyah Court paid attention to the answers to the Plaintiff with the defendant and accompanied by written evidence and witnesses both submitted by the Plaintiff and the Defendant were found. (NIM., 2015)

#### **4. Facts by the Panel of Judges of the Aceh Syar'iyah Court**

The Plaintiff (adoptive father) together with RT (Plaintiff's wife) have granted to the defendant (adopted son) a plot of land with an area of 316 m<sup>2</sup> and a house on it certificate of ownership rights No. 11 of 1986 located in Gampong Pineung Deed of grant No. 04/V/ 2007 dated May 4, 2007 before PPAT, Syiah Kuala Sub-district, Banda Aceh; The assets donated are joint assets between the Plaintiff and R. The Plaintiff's wife, RT, died on December 30, 2009; After RT died, the Plaintiff lived in the house that was donated by the defendant, but due to a dispute, the Plaintiff left the house and now lives with his new wife by renting. The Plaintiff was not happy with the Defendant because he had done an act that offended the Plaintiff as his adoptive parent. The Plaintiff intends to cancel the grant that the Plaintiff has given to the Defendant. Taking into account the facts mentioned above, the panel of judges of the Aceh Syar'iyah Court is of the opinion that the grant has been implemented in accordance with applicable law because it has fulfilled the pillars and conditions required in the grant transaction. However, regarding the issue of those who have donated their assets to adopted children, whether the grant can be withdrawn or cancel it. The Panel of Judges of the Aceh Syar'iyah Court in their considerations referred to Article 212 of the Compilation of Islamic Law which states that grants cannot be withdrawn, except for grants from parents to their children. (Rismahayani, 2018)

The consideration is that adopted children are placed as biological children because based on the provisions of Article 209 of the Compilation of Islamic Law, adopted children and adoptive parents can be given mandatory will rights as much as 1/3 of the inheritance. Based on the above considerations, the plaintiff as the adoptive parent has the right to withdraw the grant that has been given to the defendant as his adopted child without being associated with certain conditions. However, because the assets donated by the plaintiff and his wife, RT, are joint assets, according to the Aceh Syar'iyah Court of Justice, half of the grant that can be taken back and/or canceled by the plaintiff, because the other half is the right of his wife (RT) which has been granted to him. defendant while still alive. Based on these considerations, it is determined that half of the property in the form of land and houses is the right of the plaintiff and the other half is the right of the defendant. (Anggita, 2017)

The judge of the Aceh Syar'iyah Court granted the Plaintiff's claim, and canceled the grant of the Plaintiff and RA (his wife) given to the Defendant in the form of a plot of land with an area of 316 m<sup>2</sup> and a house on which certificate of ownership rights No. 11 of 1986 is located in Gampong Pineung. The judge also stated that the Deed of Grant number: 04/V/2007 had no legal force; Stating that the Defendant's rights from the object of the grant are part; Determine that the object of the dispute over the grant becomes the right of the Plaintiff; To order the Defendant to surrender of the said assets in the decision of point 2 to the Plaintiff; Reject the Plaintiff's claim other than and the rest. Sentencing the Defendant to pay the cost of this case in the amount of Rp. 1,041,000, -; Sentencing the defendant/appellate to pay court fees at an appeal level of Rp. 150,000,- The deed of grant made by the Temporary Land Deed Officer (PPATS) first in coordination with the Gampong Government of the grantor. In the case of the cancellation of the grant deed Number 04/V/2007, the PPATS was not asked for testimony as a witness by the judge. This case is also not related to PPATS, but between the grantor and the grantee. There is no coercion from any party in making the grant deed. PPATS should be asked for information to add basic information on the issuance of the grant deed. In order to assist the judge in his consideration in making the final decision on the case of canceling the grant deed. According to the informant, adoption according to Islamic law does not change the legal status and inheritance of adopted children as contained in the Compilation of Islamic Law Article 171 letter h that adoption is only aimed at maintaining children in their daily lives, education costs and so on shifting their responsibilities from original parents to adoptive parents based on court decisions. Indonesia gives what is called a will. The Compilation of Islamic Law has accommodated positive law, thus giving a positive position to adopted children to be entitled to a share of the inheritance of their adoptive parents. A grant creates a legal relationship between the grantor and the grantee. In giving a grant, it is necessary to first examine the appropriateness and appropriateness of the recipient of the grant to receive the grant, so that later problems such as cancellation of the grant will not arise which causes the legal relationship between the two parties to become problematic. The Civil Code determines that grants that have been given cannot be withdrawn. However, the grantor can file a claim for cancellation of the grant if the grantee has done things as stated in Article 1688 of the Civil Code. The grantor can apply for the cancellation of the grant and it can be proven in court. The consequences of the cancellation that arise because it is null and void or after a claim for its cancellation has the same effect, namely that it does not have a (desired) legal effect. The legal consequences arising from the grant property that is requested for cancellation in court with a decision to cancel the grant that has permanent force, the ownership of the grant property will return to the grantor so that all the grant assets that have been donated will return to his own right. If the object of the grant has been reversed or has been certified on behalf of the grantee, then the certificate is declared invalid. (Husni, 2006)

##### **5. Adoption of Children in Islamic Law and Its Legal Consequences**

As it has been explained that the term "Adoption of Children" developed in Indonesia as a translation of the English "Adoption", to adopt a child, which means "to adopt another

person's child to be used as one's own child and have the same rights as biological children.” At the time Islam was conveyed by the Prophet Muhammad SAW, adoption had become a tradition among the majority of Arab society known as "tabanni" which means "taking adopted children." In terminology, tabanni is the taking of a child by someone to a child whose lineage is clear, then the child is attributed to him. In another sense, tabbani is a person, both male and female, who deliberately assigns a child to himself even though the child already has a clear lineage to his biological parents. Adoption of a child in such a sense is clearly contrary to Islamic law, then the element of assigning a child to another person who is not a lineage must be cancelled. Adoption (adoption, tabanni) is the adoption of another person's child as one's own child. Adopted children are called “adopted children.” The legal event is called “adoption of a child” and the last term which will be discussed later will be used to represent the term adoption. Adoption of children can be found in the field of civil law, especially in the field of family law. Adoption of children according to Islamic law also recognizes the term nasab (descendants due to blood ties) which cannot be removed from their biological parents. The lineage of the adopted child still refers to his biological father. Zaid is not called Zaid bin Muhammad but Zaid bin Harithah. So, in Islam still ascribed to his biological father. Article 39 paragraph (2) of the Child Protection Law also states that the adoption of a child as referred to in paragraph (1) does not break the blood relationship between the adopted child and his biological parents. In Article 40 paragraph (1) it is emphasized that adoptive parents are obliged to notify their adopted children of their origins and their biological parents. Islamic law does not allow its adherents to adopt children assigned to him, but Islamic law pays attention to the fate of abandoned children, either because their parents died (orphans), divorce or because of the low economic situation of the family. In such circumstances, Islam commands its people to support them by nurturing and educating them so that the child will become a useful child for his religion, nation and country. The maintenance is not like that of an adopted child, but that maintenance is based on humanity, love and affection, without assigning rights to those who cause him to be married to those who take care of him and his biological children, and not assigning him to receive inheritance as such. biological children and so are other laws. Adopted children, in customary law are defined as a social bond that is the same as biological kinship bonds. Adopted children in customary law have almost the same position as their own children, namely in terms of inheritance and marriage. On the other hand, in Islamic law this is not the case. Islamic law expressly prohibits the adoption of a child that results in a nasab relationship between the adopted child and the adoptive parents and does not cause inheritance rights.

However, related to the problem in this study, that adoption has been carried out in different ways and motivations, in line with the legal system and legal feelings that live and develop in the community concerned. This fact can be seen, among others, in the KHI it is stated that an adopted child is a child who in terms of maintenance for his daily life, education costs and so on, shifts the responsibility from the original parents to the adoptive parents based on the Court's decision. The intended adoption of the child is intended to help or just lighten the burden of life for the biological parents. Meanwhile, adoption of children is also often carried

out with the aim of continuing offspring if in a marriage there are no offspring. There is also a purpose as an inducement, by adopting a child, the family will be blessed with their own biological child. Thus it is clear that Islamic law prohibits legal acts of adoption which make the adopted child a biological child. According to Article 171 letter h of the Compilation of Islamic Law, it is stated that an adopted child is a child who, in terms of maintenance for his daily life, education costs and so on, shifts his responsibilities from his original parents to his adoptive parents based on a court decision. In Islamic inheritance law, adopted children are not entitled to inherit property from their adoptive parents. Basically, Islamic law has stipulated that there are heirs who, if they meet the requirements and are not hindered, still have the right to inherit the inheritance of their deceased parents (heirs). Among them are children, both boys and girls. Children here are children born from legal marriages, not children born out of wedlock (zina). According to Yusuf al-Qardawi, in the matter of inheritance, wrote: Adopted children are not entitled to inherit the inheritance of their adoptive parents because adopted children do not have blood relations, marital relations and actual kinship relations. This kind of thing by the Qur'an is not seen as a cause for receiving inheritance. and in marriage, Allah has said in QS. al-Nisa' verse (23) : that among women who are forbidden to marry are widows of biological children, not widows of adopted children. According to formal law in Islam in Indonesia, adoption refers to the Compilation of Islamic Law. Article 171 letter h explains the notion of adopted children while matters relating to the inheritance rights of adopted children based on Article 209 paragraphs (1) and (2) KHI, namely adopted children and adoptive parents each receive inheritance in the form of a mandatory will. If the adopted child dies, the adoptive parents are automatically entitled to the inheritance of the adopted child. On the other hand, if the adoptive parent dies, the adopted child is also entitled to a mandatory will from the inheritance. A mandatory will is where a person, in this case both adopted children and adoptive parents, only gets 1/3 (one third) of the inheritance of his adopted child or adoptive parents. However, further explained by the deputy chairman of the Banda Aceh Sharia Court, Drs. Salahuddin Mahmud, adopted children do not inherit the inheritance of their adoptive parents in a faraid manner because it is based on the consideration that all the needs and needs of the adopted child have been met and taken care of by the adoptive parents so that the adopted child only gets a mandatory will. If in the distribution of this mandatory will, the heirs of his adoptive parents object to this mandatory will, then the heirs can file a lawsuit to the Religious Court or the Sharia Court. Therefore, according to him, it is important to make a will before his adoptive father dies. In submitting an application for adoption for legalization of adopted children to the Sharia Court, the requirements submitted by the applicant must refer to the Circular Letter of the Supreme Court Number 6 of 1983 concerning the completion of Circular Letter Number 2 of 1979 that the ratification or adoption of children among Indonesian citizens must take into account: (1) The terms and form of the application letter submitted, and (2) The contents of the application letter, state the basis (motive) that encourages the application for ratification of the adoption of the child to be submitted. Another thing must also show that the application for



ratification/appointment is carried out primarily for the benefit of the child concerned and the possibility of the child's future after the adoption takes place. (Sabir & Mutmainnah, 2020)

The requirements that must be met for prospective adoptive parents or applicants are: (1) The adoption of a child directly between the biological parents and the adoptive parent is allowed, (2) The adoption of a child by someone who is not bound in a legal marriage / unmarried (single parent adoption) is allowed. Meanwhile, the requirements that must be met by prospective adopted children are: (1) If the child to be adopted is under the care of a social foundation, a written permit from the Minister of Social Affairs must be attached that the foundation in question has been allowed to engage in child adoption activities, and (2) Prospective children who to be adopted must also have written permission from the Minister of Social Affairs or the appointed official that the child is allowed to be handed over as an adopted child. The application submitted by the applicant in the adoption of a child must be accompanied by: (1) Letter of approval from the biological parents regarding the adoption of the child, (2) Photocopy of the applicant's ID card, (3) Photocopy of marriage book, (4) Certificate of Good Behavior from the Police, (5) Health certificate of the prospective adoptive parents from the doctor, (6) Certificate stating the economic capacity of the prospective adoptive parents, usually this letter is issued by the local village head and whether or not it will be able to be proven in court, (7) Child's birth certificate , and (8) Present witnesses (at least two witnesses). In addition, it is important to remember that the religion of the adopted child must be the same as the religion of the prospective adoptive parents. This is also regulated in Article 39 paragraph (3) of the Child Protection Law which states that prospective adoptive parents must be of the same religion as the religion of the prospective adopted child.

## **6. Grants and Wills in the Compilation of Islamic Law and the Civil Code**

Grants and wills are legal acts that have different meanings and events and at first glance seem so trivial when viewed from the legal actions and events themselves. Although it seems trivial, but if the implementation is not carried out in the right ways and to strengthen or as evidence of the trivial legal event, even though the material treasures of Islamic law in the field of grants and wills are not laws created by humans, but the law is determined by Allah SWT and His Messenger. , in the Qur'an. In Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts and the Compilation of Islamic Law (KHI) the word will is mentioned before the word grant, but in fiqh books and the Civil Code the law grants first. discussed, then the will. There is no principle that between the first mentioned or discussed between the law of grants and the law of waqf, but the systematic discussion of these materials in this study of grant law and waqf law begins with discussing grants, legal actions that take effect after the death of the testator. Grants and wills are based on Islamic law in the context of The absolute competence of judicial bodies in Indonesia is the authority of the Religious Courts (article 49 paragraph (1)), while grants and wills in the KHI are guidelines for judges of the Religious Courts in particular to resolve problems related to the legal field contained therein.

The grants and wills that are formulated in article after article of the KHI cannot be separated from the books of fiqh and are indeed sourced from the Koran, hadith and books of fiqh. Linking KHI material with fiqh studies in this paper, because the grants and wills contained in the KHI are not a final provision and have covered the issue of grants and wills. It is stated in the Presidential Decree, that KHI is a guideline that implies general standards that require further development and study which is none other than the development referring to the study of fiqh, because the book of fiqh explains the background and the birth of the opinion of the Fiqh Ulama on the object being studied and all the possibilities that will arise. , so that referring to the books of fiqh is the basis for developing and further interpreting the results of existing studies. Besides that, it is natural that the law formulated in the legislation, including in this case the KHI does not accommodate legal problems that arise in human life, which are constantly changing by mixing new problems, especially grants and wills that have not been regulated in the KHI only. consists of several articles that do not rule out the possibility of legal problems in the field of grants and wills that have not been regulated that require legal interpretation in their application. Almost every law regulated in laws and regulations is not able to accommodate legal problems that accelerate with the development of society. It is natural to say that the law is limping behind the times, because the law is not able to anticipate the developments that occur in human life. However complete a law book is, it is not able to anticipate legal problems that arise in people's lives. It is a nature, that the life and behavior of human association is continuously changing. Social scientists teach that there is no static, immovable society, but rather a human society that is constantly changing. It's just that the movement of change from other societies, some are fast, but some are slow. This is a characteristic of community life. W. Fridmann followed by Teuku Muhammad Radhi, SH. That said, the tempo of contemporary social changes has accelerated to the point where today's assumptions may not hold true for years to come. Ibn Khaldun (1332-1440) said that the condition of mankind, customs and civilization is not in a fixed motion and khittoh, but changes and varies according to changes in time and place, so this situation also occurs in the world and the country. It is sunnatullah that applies to His servants. As for this paper, inserting a discussion of grants and wills in the Civil Code is intended to provide an overview of the provisions contained in Islamic law with the provisions stipulated in the Civil Code, because wills and grants regulated in the Civil Code cannot be separated from the influence of Islamic law. Although under the influence of Islamic law, the ideal value differs from Islamic law, because in the Civil Code grants and wills are classified as free agreements that do not contain elements of love and help. while in the case of Islam the legal action is seen from its principle (Surah al-Baqarah verses 177 and 180). Grants in the Civil Code are part of the law of the agreement and are classified as agreements to give or surrender something at the time of his life. In principle, an agreement is reciprocal, a person undertakes to fulfill an achievement because he will receive a counter-achievement from the other party. Even though the grant is included in the law of the free agreement, because there is only one party's achievement (the grantor), while the grantee is not obliged to provide counter-achievements to the grantor. It is said at the time of his life to

distinguish grants with testaments or grants between husband and wife in Islam is allowed. Grants in the Civil Code cannot be withdrawn, while in Islam they can be withdrawn, specifically grants from biological parents to their biological children. Grants and Wills in the Civil Code (BW). (Rismahayani, 2018)

The legal material regarding grants and wills in the Civil Code itself is not taken from the *codex justinianus corpus juris civilis* which according to historians is a source of modern law and neither grants and wills are taken from the law book created by Napoleon's imagination contained in the *codex napolion* which is the origin of the civil code (BW), but the *codex napolion* is actually the basic idea transformed from the book of *fiqh* by Imam al-Syarkawi which then in its application there is a fundamental difference between grants and wills in the Civil Code with grants and wills in Islamic law. It is still inherent among the legal world, that modern law is always associated with European countries, because the history of law has always been associated with Roman law, considering the influence of Roman law on legal developments in European countries, especially in the field of civil law which was developed through universal law. or common law (*jus comune, jus gentium*). *Jus comune* or *jus gentium* is a *codex justinianus* which in the VI century was codified as a written law by European countries in the XV and XVI centuries. *Codex Justinianus*, especially civil law, is the main source of Modern Civil Law. Although *Codex Justinianus*, especially in the field of civil law, is said to be the main source of modern civil law, the BW (Civil Code) currently in force in Indonesia, which is enforced under Article II of the Transitional Rules of the 1945 Constitution, is sourced and imitates *fiqh* books produced by Islamic scholars. The school of thought has existed since 800 AD while European BW was only at the beginning of the XIX century AD, namely based on the Napoleonic code which was compiled after Napoleon returned from living in Egypt for approximately 15 months between May 1798 and August 1799. History of the Indonesian Civil Code (BW) itself is following the BW codeification in the Netherlands (1838), while the Dutch BW follows the famous French BW Code Napolion (1807). The codification of French law which is the forerunner of modern European civil law now actually stems from 2 (two) sources, namely Roman Law and Islamic Law, Roman law is known as Justinian's codification (483-565) which is called *Codex Justinianus* or *justinianus corpus juris civilis*.

Meanwhile, the law of Islamic jurisprudence was taken by Napolion and published in the *Code Napolion* derived from the book of *fiqh* by Abdullah al-Syarkawi (1737-1812 AD). At the time Napolion occupied Cairo, Egypt, al-Sharkawi's position was Shaykh al-Azhar whom Napolion asked to assist with French law, namely Portalis, Tronchet, Bigot De Preameneu and Mallevilie, all four of whom were French Law Scholars who joined Napolion to Egypt. The result of the work of the French legal team, assisted by Imam al-Syarkawi, is that the French BW is compiled in European countries which are said to be the sources of modern law, including those adopted by the Dutch and enforced in colonial countries including Indonesia, which until now the Dutch BW is still valid in Indonesia, which is still positive. known as the Civil Code, even though in the Netherlands itself the Civil Code has been amended. Therefore, it is not strange that the Civil Code contains or discusses the legal material of grants and wills

in its articles which are none other than taken from the fiqh book of Imam al-Syarkawi, even though changes have been made that actually contradict the provisions of grants and wills in Islamic law. . Articles 874 to 1022 of the Civil Code concerning wills and grants are based on the principles of the book of fiqh. Articles 1666 to 1693 of the Civil Code are about grants that are close to the similarities discussed in fiqh books, except under certain conditions there are fundamental differences. If we continue to review the contents of the Civil Code with fiqh books, then regarding the safekeeping of goods in article 172 of the Civil Code is a free translation in the fiqh books about wadiah (custodial goods) based on the Word of Allah SWT in QS. al-Nisa verse (58). Grants and Wills in Islam The provisions regarding the law of grants and wills are based on the arguments in the Qur'an and hadith, so that all fiqh scholars agree (Ijma) about the enactment of wills and grants. The provisions of the will in the Qur'an are mentioned, among others, in the QS. al-Baqarah verse 180, QS. al-Nisa verse 12 and verse 58, while in the Hadith is the hadith of Bukhari Muslim. Provisions of grants mentioned QS. al-Baqarah verse 177 and QS. al-Maidah verse 2, while the hadith is the hadith narrated by Imam Bukhari and Imam Muslim. Grants and wills themselves are basically for good purposes, because in principle they are gifts from one person to another without expecting a reward from Allah SWT. The most important factor in this grant and testament is the humanitarian factor, sincerity and sincerity of the willed donor. Even if it will be distinguished only when it is implemented, namely the grant is carried out while the grantor is still alive, while the will is carried out after the testator dies.(Rismahayani, 2018)

## Conclusion

The juridical strength of the grant deed for adopted children is normative that the Grant Deed Number 04/V/2007 is valid and has legal force, because it has fulfilled the requirements in the grant agreement both formally and materially. Article 209 of the Compilation of Islamic Law states that adopted children are placed as biological children. Adopted children and adoptive parents can be given a mandatory will as much as 1/3 of the inheritance. The assets granted by the Plaintiff and his wife are joint assets, so the grant that can be canceled by the Plaintiff is half. Thus, the decision to cancel the grant at the Aceh Syar'iyah Court, case Number XXX/Pdt.G/2012/MS-Aceh, is in accordance with applicable law. The legal consequences arising from the grant property requested for cancellation still make the ownership of the grant property back to the grantor.

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