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Legal conflict resolution for the demand of the absolute right of the heir in relation with fulfilling the concept of fair grant

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Abstract
National development in Indonesia is done through several sectors that constitute an attempt systematically to achieve the national goal which is to actualize a fair and prosperous society as stated in the Opening of the Constitution of the Republic of Indonesia 1945 that serves as the basic concept in the life of the nation, and to ensure the country's goal then in the constitution is made clear that Indonesia is a State of Law. Inheritance and Grant/Bequest are two different things but have a close correlation with the law if in the will/process of inheritance it turns out that there are grants/bequests given throughout one's lifetime. Grants/bequests will have a close relationship with the process of inheritance. The provision of Article 920 of the Civil Code that governs the grant and inheritance in the development of the existing law could lead to conflict in society that is not simple. Legal clashes among heirs who feel that they have an essential role to the grantee will occur if in the process of inheritance there is a dispute among the heirs or involving a third party. Therefore, the problem that is presented in this study is: How is the resolution of legal conflict in the case of fulfilling absolute compliance that is related to grant/bequest? And how is the concept of equitable grant? The purpose of this study is to identify and analyze the legal conflict resolution in the case of demands to fulfill absolute parts related to the Grant; and to analyze the provisions concerning Inkorting and Inberg that can be put aside with an Authentic Deed. This study is a legal normative study to examine the principles of law and legal doctrine, the principles of law to answer the problems studied. This study was conducted by collecting data through secondary data research. Analysis of the data in this study used a qualitative approach. The data was analyzed extensively from existing sources and in unity, which was further developed systematically.

Keywords: conflict resolution, heir, grant, fairness

1. Introduction

Development of national laws is something that continually must be done and designed by the government, given the Indonesian Law especially in the field of Civil Law remains largely a product of law inherited by colonial occupation that certainly plenty of said law is no longer relevant to the atmosphere of an independent and sovereign state and also the development of laws occurring in a society that continues to move rapidly with the advancement of science, technology and economy, both globally, regionally and locally.

National development in Indonesia is carried out in various sectors which is done in a systematic effort to achieve the country's goal that is to realize a just and prosperous society as enshrined in the Opening of the Constitution of the Republic of Indonesia 1945 which became the basic concept in the life of the nation, and to ensure the objectives of the country then Indonesia as affirmed by the constitution is a State of Law.

Development in the field of law is something significant and strategic especially with regard to law reform, given that Indonesia has inherited plenty of Dutch Colonial laws which may be irrelevant in terms of the development of society and the spirit of Indonesian independence. Legal reform in Indonesia should be interpreted as an effort to create a just and civilized society, as such laws are established by the State to be able to satisfy the feeling of justice that lives and grows in the society, able to provide legal protection and bring about benefits, so that the law can prevent and resolve legal conflicts that may occur in people's lives as a result of abandoning the law from the development of that society itself, thus the process of the development in the field of law may lead to the establishment of legal systems that guarantee the proper functioning of the law as a means of social change.

Conflicts or disputes in the realm of Civil Law, among others, can occur as a result of the civil rights between two or more legal subjects who feel that their civil rights have been violated or unfulfilled, therefore in this case it is expected for the law to function in society as a means of resolving disputes or conflicts that occur, in addition to other functions.

To be an heir is to replace the rights and obligations of a person who has passed away. In general what needs to have a replacement are only rights and obligations in the field of the wealth of law. The function of bequeathing personal or familial roles (for example a trust) is not transferred [1]. The provisions governing everything about inheritance can be defined as a set of rules that govern the laws regarding property, because the death of a person that is the transfer of wealth left by the deceased and the result of this displacement for the people who earn it, both in relation among themselves, and in relation between them and other third parties [2].

Inheritance and grant are two different things but they have a close law correlation when there is an allotment/distribution of grant made during the lifetime of the testator. Grant itself is an

[1] H.F.A. Vollmar, *PengantarStudiHukumPerdata*, Rajawali Press, Jakarta, 1983, p. 375.
[2] A. Pitlo, *HukumWarisMenurutKitabUndang-UndangHukumPerdataBelanda*, (Alih Bahasa M. Isa Arief), p. 1

allotment of an object that was done during the lifetime of the subject of law free of charge in accordance with the provisions of Article 1666 of the Civil Code, thus the momentum of the grant is whilst still alive/living, while inheriting happens after someone passes away.

Grant will have a close relationship with the process of inheritance, especially when the demands of the fulfillment of the absolute right of the heirs or better known as legitimeportie as defined by Article 913 of the Civil Code as a part of the legacy/inheritance that should be given to the heirs in a straight line according to legislations and on the part of the deceased is not permitted to set something whether as an allotment between those still living (Grant) or even as a will (Grant Will). Therein lies the point of contact between inheritance and Grant.

Furthermore, Article 920 of the Civil Code regulates Grant or even Grant Will which results in reducing of the absolute part of the heir, the reduction can be done in the future (inkorting) where the inheritance as claims of the absolute heirs or successors.

Article 1086 stipulates that the heirs who have obtained a grant from the testator during their lifetime should execute inclusion (inberg) in the inheritance unless the testator states otherwise.

According to the provisions of article 921 of the civil Code to determine the absolute part of the heirs, one must first sum up the entire wealth that is being left behind including the wealth that has ever been granted during the testator's lifetime, objects which should be reviewed in case of when the grant was given, but the price should be according to the time when the granter or the testator passed away.

Based on the provisions stated above, stipulations in the Civil Code related to Grants and Inheritance when looked upon with the development of the existing law could lead to conflict in society that could inflict legal conflict that is not simple. Legal clash between heirs who feel that they have an essential/absolute part to the grantee will occur if in the process of inheritance dispute happens between heirs or even involve a third party.

Based on the author's experience as a practicing Notary and Official of Land Deeds, there is often found that members of the society who come that wish to have made an Authentic Deed regarding Grant, after the intent of the parties has been observed it can be seen that the society is not fully aware of what Grants are and the legal consequences that will occur as a result of the legal action of Grant which has occurred.Grantees feel that with the Grant Deed made their position as the holder of a new right for Grant objects is strong and they do not comprehend that said Grant one day when the testator/giver of the Grant passes away that it can be reduced (inkorting) or that it may be mandatory to have inbreng done in order to fulfill an essential part of the heirs.

The provision which specifies that the price of a grant object that is counted is the price at the time the testator/Grant giver passes away if applied in the economic development of today's society will certainly be very severe and burden the grantee. Suppose that someone had received a grant 10 (ten) years ago for a piece of land that at the time of the giving of the grant was worth Rp. 100.000.000.- (one hundred million rupiah) subsequently at this time the testator/giver of the grant passes away and the heirs demand their absolute parts, so the price of the object of the grant has been reviewed with the current price that is estimated to be Rp. 1.000.000.000.- (one billion rupiah), of course this will lead to a sense of injustice and legal certainty for the grantee.

Based on the description that was written in the background of the problems stated above, the problems in this study are formulated as follow:

1. How the legal conflict is resolved if there are demands to fulfill the absolute part relating to Grant?
2. How is the concept of equitable Grant?

This study is aimed to determine the provision of grants in relation to the demands of the fulfillment of the absolute right of heirs causing recalculation or reduction of the Grants that have been allotted during the lifetime of the testator, and therefore is found the concept of providing Grants that are equitable, so then the aims of this study can be described as follows:

1. To identify and analyze the case of legal conflict resolution if there happens to be demands to fulfill the absolute part relating to Grant.
2. To analyze the provisions concerning whether it is possible to cross Inkorting and Inberg with an Authentic Deed.

2. Framework of Reference

2.1 Theoretical Framework

2.1.1 The Justice of Law Theory

Justice according to John Rawls is the main virtue of social institutions, as truth in the thought system [3]. John Rawls considers the role of the principles of justice assumed by society. A society is an independent association of people who interact with each other by recognizing specific rules as a binding and a majority if its members act in accordance to these rules [4]. These rules establish a system of cooperation designed to show the kindness of the people within. Although a society is a cooperative effort for mutual benefit it does not rule out the possibility of conflict and also the identity of interest.

There exists conflict of interests because of the differing views in terms of how the profits are generated for their cooperation, because in the pursuit of their goals, everyone prefers a larger part rather than a smaller part [5].

It takes the principle of choosing among the various social arrangements to determine the distribution of profits in order to reach an agreement on the distribution of profits in order to reach agreement on the distribution it deserves. These principles are the principles of social justice which give way to provide rights and obligations on the basic public institutions as well as to determine the distribution of benefits and burdens of social cooperation worthily [6].

The rational thinking of the society is to have to decide something useful for themselves, the system of rational objectives to be pursued, so then a group of people have to decide about what they think is just and unjust. Choices to be made by the rational people in a hypothetical situation of equal liberty as assumed by John Rawls that this option has a solution, will determine the principles of justice. The

[3]John Rawls, translated by Uzair Fauzan and Heru Prasetyo in A Theory of Justice (*TeorihukumKeadilan, Dasar-dasarFilsafatPolitikUntukMewujudkanKesejahteraan*PustakaPelajar, Yogyakarta, 2006). p. 3.
[4]*Ibid.*
[5]*Ibid*, p. 5.
[6]*Ibid*

perspective on the principle of justice is called justice as fairness [7].

Justice as fairness, the original position of equality is connected to the natural condition in the traditional theory of contracts. People do not regard the inclination and tendency of the majority of people as something that leads automatically, and then searches for the best manner to fulfill them straightaway. However, passion and inspiration, restricted since the beginning with the principles of justice that demonstrates the limits that must be respected by the system of destination for many people [8].

Justice as fairness (equality) accentuates the concept about rights rather than the concept of benefit [9]. The priority of the principle of rights rather than the principle of benefits becomes the main conception of justice as fairness [10]. Gustav Radhbruch in Sajipto Rahardjo teaches the concept of 3 (three) basic ideas of law, including Justice, Certainty, and Usefulness [11].

According to Hans Kelsen, law as a social order could be declared just if it can regulate human actions as a satisfactory way so that they can find happiness within it [12]. Hans Kelsen believes that justice is a consideration of subjective values. A fair order assumes that an order is not only for the happiness of every individual, but for the greatest happiness for as many individuals as possible in the means of a group, that is the fulfillment of certain needs, by the authority or the legislator, is perceived as necessary/essential needs. Which human needs are worth being considered as important by using rational knowledge, which are considered values, are determined by emotional factors and therefore subjective [13].

Kahar Masyhur argues that there are 3 (three) things to be called fair, namely:

a. Putting things in their right place.
b. Receiving rights without adding and giving to others without deducting.
c. Giving rights to those who completely deserve, no more and no less, in the same circumstances, and punishment for the wicked or unlawful people, in accordance with the mistake and offense [14].

2.1.2 The Conflict Theory

The term comes from the English language that is the conflict theory, while in Dutch it is referred to as *conflict theorie* [15]. The term conflict does not have a unified view of terminology by experts, such as the use of the term 'dispute'. *Sengketa* is a transaltion of the English language, which means dispute or lawsuit or legal action.

Richard L. Abel in Salim HS views conflict from the aspect of mismatch or incompatibility of parties about something of value. Something of value means something that has a price or worth money. Richard L. Abel defines dispute as: "A public statement of an inconsistent claim to something of value." [16]

2.1.3 The Dispute Resolution Theory

The Dispute Resolution Theory is a theory that examines and analyzes the categories of disputes that arise in society, the factors that cause disputes, and the means or strategies used to end disputes. This theory was developed and put forward by Ralf Dahrendorf, Dean G. Pruitt, Jeffery Z. Rubin, Simon Fisher, Laura Nader, and Harrt F. Todd Jr. The scope of the settlement of dispute theory includes the types of disputes, the factors that cause disputes, and the strategies in dispute resolution.

Dean G. Pruitt and Jeffery Z Rubin put forward a theory about dispute resolution. There are 5 (five), aspects to it, namely:

a. Contending, that is to try to apply a preferred solution by one party to the other.
b. Yielding, that is to lower one's aspiration and willing to accept the reduction of what is desirable.
c. Problem solving, that is to look for a satisfactory alternative from both parties.
d. Withdrawing, that is to choose to leave the situation of the dispute, both physically and psychologicaly.
e. Silent/inaction, that is to not do anything [17].

Laura Nader and Harry F. Todd Jr. present 7 (seven) ways of dispute resolution in society:

a. Lumping it (let alone), by those who have been unfairly treated, failing to pursue their demands. This party decides to ignore the problem that was the starting point of their demands and continue their relationships with the party who they felt had harmed them.
b. Avoidance/evasiveness, which is the party that feels harmed, chooses to reduce dealings with the party that had harmed them or to stop the relationship altogether.
c. Coercion, one party imposes a solution to the other party, which is unilateral.
d. Negotiation, the two opposing parties are the decision makers. Problem solving is done by both parties, both parties agree without the interference of a third party.
e. Mediation, a third party helps both parties to find an agreement for the dispute.
f. Arbitration, which is when both parties agree to request an intermediary from a third party, an arbitrator and since the beginning have agreed to accept the decision from said arbitrator.
g. Adjudication, which is a third party who has the authority to interfere with problem solving, regardless of the wishes of the participating parties in the dispute. The third party is also entitled to make a decision and enforce said decision meaning that the third party is working so that the decision is implemented [18].

2.1.4 The Theory of Legal Protection

According to Satjipto Raharjo, legal protection is an attempt to protect the interests of an individual by allocating a power to them to act in the framework of their interests. The allocation

[7] *Ibid p. 13.*
[8] *Ibid.*
[9] *Ibid, p. 35*
[10] *Ibid.*
[11] SatjiptoRahardjo, *PenegakanHukum, SuatuTinjauanSosiologis*, Genta Publishing, Yogyakarta, 2009, p. 2
[12] Hans Kelsen, *General Theory of Law and State*, translated by RasisulMuttaqien, Nusa Media, Bandung, 2011, p. 7.
[13] *Ibid.*
[14] KaharMasyhur, *Membina Moral danAkhlak*, KalamMulia, Jakarta, 1985, p.71
[15] Salim, HS, *Op. cit*, p. 81.
[16] *Ibid*
[17] Dean G Pruitt &Z. Rubin, *KonflikSosial*, PustakaPelajar, Yogyakarta, 2004, p. 4-6.
[18] Laura Nader & Harry F. Todd Jr, *The Disputing Process Law in Ten Societies*, Columbia University Press, New York, 1978, p. 9-11.

of power is measured in terms of its breadth and depth. Such power is known as a right. But not every power in society can be called a right, only a certain power which is the reason said right is attached to an individual. Furthermore, it is argued that one of the purposes and nature of the law is to provide protection for the society, therefore legal protection must be realized in legal certainty [19].

The formulation of the principles of legal protection in Indonesia renders the Pancasila as the foundation, the principle of legal protection in Indonesia according to Philipus M. Hajon is the recognition and protection of human rights because historically speaking the concepts of recognition and protection of human rights are directed to the restrictions/limitations and laid obligations by the public/society and the government [20].

2.1.5 The Development of Law Theory

The Development of Law Theory is a theory that was first constructed by Mochtar Kusumaatmadja. Mochtar was influenced by the theory of Morthop Myres McDougal, Roscoe Pound and Laswell [21].

The law according to Mochtar Kusumaatmadja's conception in H. Juhaya D. Praja, does not only cover the entire principles and rules governing human life in society but also includes institutions and processes that manifest the rules' validity in reality [22].

The Development of Law Theory to this date is a legal theory that exists in Indonesia because it was formed by the Indonesian people by viewing the cultural dimensions of Indonesian society. Therefore, with this dimensions as a benchmark, the Development of Law Theory is born, grows and develops in accordance with the conditions and situations of pluralistic Indonesian society.

The Development of Law Theory uses a frame of reference from the view of the life of the people and the nation of Indonesia based on the principle of Pancasila that is familial then towards the norms, principles, institutions and rules contained in the Development of Law Theory is relatively already in a dimension that includes structure, culture and substance as stated by Lawrence W. Fredman [23].

The Development of Law Theory provides the basis for the functioning of the law as a "tool of social engineering" and the law as a system is indispensable to a nation.

If further elaborated, theoretically, the Development of Law Theory of Mochtar Kusumaatmadja, was influenced by the thoughts of Herold D. Laswell and Mayers S. McDougal coupled with the legal theory of Roscoe Pound (minus its mechanical conception). Mochtar then processed all of these inputs and adjusted them to the conditions of Indonesia [24].

[19] SatjiptoRahardjo*PermasalahanHukum Di Indonesia, Alumni, Bandung, 1993, p.*

[20] Philipus.MHadjon, *PerlindunganHukumBagi Rakyat Indonesia,* Bina Ilmu, Surabaya, 1987, p.38.

[21] Lili Rasjidi-I.B Wyasa Putra, *HukumSebagaiSuatuSistem*, MandarMaju, Bandung, 2003, p. 182.

[22] H. Juhaya D. Praja, *TeoriHukum Dan Aplikasinya*, PustakaSetia, Bandung, 2011, p. 149

[23] Lawrence W. Friedman, *AmericaLaw: an Invaluable guade to the many faces of the law, and how it effect out daily our daily lives*, W.W. Northon& Company, New York, 1984, p 1-8.

[24] Shidarta, *KarakteristikPenalarandalamKonteksKe-Indonesiaan*, Utomo Jakarta:, 2006,. p. 411.

2.2 Literature Review

2.2.1 Inheritance in Private Law

The Civil Law System in Indonesia consists of 3 systems:

a. Western Civil Code System (KitabUndang-UndangHukumPerdata / *BurgerlijkWetboek* and KitabUndang-UndangHukumDagang / *Weboek van KoophandelvoorIndonesie*) which is applicable to citizens of descendants of Europeans, Chinese, and Foreigners who are not Chinese (except family law and inheritance law)
b. Customary Civil Law System, which is applicable to native Indonesian citizens.
c. The Islamic Law System (about marriage, divorce, reconciliation, phasakah, dowry, inheritance, waqf, grants, sadakah, baitul mal and related others) is applicable to Islamic Indonesian citizens [25].

Civil law (*burgerlijkrecht*) was mainly taken from *Burgerlijk Wetboek* or Civil Code applicable in Indonesia since May 1, 1848, the Civil Code is applicable based on the principle of concordation.

Civil law (*burgerlijkrecht*) is a set of legal rules that govern the legal relationship between one individual and another individual by focusing on their individual interests. Civil law is the provision that regulates and limits human behavior in fulfilling their interests.

The Civil Code consists of 4 (four) books:

a. Book I: regarding persons (*van personen*).
b. Book II: regarding objects (*van zaken*). in Article 499 of the Penal Code, the so-called material is, every item and every right, which can be controlled by property rights.
c. Book III: regarding engagement/connection (*van verbintennissen*), which contains the Law of property with respect to the rights of the obligations applicable to certain persons or parties. Legal relationships/connections among people in the field of property law, where one receives the right (achievement/performance) and the other fulfills the obligation for the right (achievement/performance). There are 2 (two) sources for engagement/connections, namely: laws, and agreements.
d. Book IV: regarding evidence and expiration or over time (*van bewijsenvejaring*), which contains the subject of evidentiary tools and the effects of time on legal relationships.

The systematics of civil law according to science/knowledge, are: [26]

a. The law concerning individuals or personal right (*persoonenrecht*) which among other regulates:
    1. The individual as the legal subject.
    2. The individual in their ability to have rights and act alone to exercise said rights.
b. Family law (*familierecht*) which among other contains:
    1. Marriage, divorce and legal relationships that arise therein such as the property law of husband and wife.
    2. The legal relationship between parents and their children or the power of parents (*ouderlijkemacht*).
        a. Guardianship (*voogdij*).
        b. Pardon/amnesty (*curatele*).

[25] H. RiduanSyahrani, *SelukBelukdanAsas-AsasHukumPerdata*, Alumni, Jakarta, 2009, p.9.

[26] http://ilmupengetahuanhukum.blogspot.com,

c. The law of wealth or the property law (*vermogensrecht*) which regulates the legal relationships that can be rated by money. These property laws include:
   1. The absolute right is the right applicable to anyone.
   2. Individual rights are rights that are applicable only to an individual or a particular party.
d. The law of inheritance (*erfrecht*) regulates the objects or wealth of an individual if they pass away (regulates the legal consequences of a family relationship to one's inheritance.

According to J. Satrio, inheritance law is essentially a regulation governing the transfer of the wealth of a deceased individual to another individual or several other individuals. which in essence is a regulation governing the legal consequences of a person's death towards the property in the transfer of the heirs' property and the effect of the law of transference to the heirs, whether in the relationship between heirs and between them and a third party [27].

According to the Civil Code the rightful heirs of an inheritance can be divided into 4 (four) groups, namely:

a. Group I, consists of children, or descendants and widow/widower, whose number of shares is set forth in Article 852, 852a, 852b, and 515 of the Civil Code.
b. Group II, consists of parents (fathers/mothers), brothers or descendants, whose number of shares is set forth in Articles 854, 855,856, and 857 of the Civil Code.
c. Group III, consist of grandparents, or ancestors in a straight line upwards, whose shares are set forth in Articles 853 and 858 paragraph (1) of the Civil Code.
d. Group IV, consists of relatives in a sideways line to the 6th degree, whose shares are set forth in Article 858 paragraph (2), 861, 832 paragraph (2), 862,863,864, 856 and 866 of the Civil Code.

2.2.2 Grant as a Treaty/Agreement

Schenkingonder de opschortendetermijn tot na de dood van de schenker, of onder de opschortendevoorwaardedat de begiftigdeschenkeroverleeft. Schenking is translated as grant, i.e. present, gift [28].

Grant (*schenking*) is an agreement (*overeenkomst*), with/in which the granter (*schenker*), while they are alive, free of charge (*omniet*) and irrevocable, surrenders/releases something to/for the purposes of the grantee (*begiftidge*) receiving the grant [29].

Grants are regulated in the Third Book of the Tenth Chapter of the Civil Code of Engagement/Connection starting from Article 1666-1693 of the Civil Code. Some provisions on grants include: [30]

a. Grants can only be made on existing items upon the allotment of the grant.
b. Between husband and wife it is prohibited to make grants, with the exception of gifts or the provision of moving bodies (*roerendeenlichamelijkevoorwerpen*).
c. Grants to public or religious institutions is only valid after the president or his appointed officials grant power to the board of said institution to receive the grant.
d. Neither the notary nor the witnesses of any deed of grant can enjoy the effects of any of the deed they have made.
e. The Deed of Grant must be authentically made.
f. A Grant can only be withdrawn or removed if:
   1. The terms stated in the deed are not met
   2. The grantee is guilty of committing or aiding a crime aimed at killing the granter or other crimes towards the granter.
   3. The grantee refuses to provide allowances to the grant, after the grant falls into poverty.

Article 1666 of the Civil Code states that grant as a treaty/agreement whereby the granter whilst living/alive freely and irrevocably, gives something for the good of the grantee. Based on the formulation provided by Article 1666 of the Civil Code grant is a form of agreement and therefore grant allotment must also be subject to the general terms of the agreement.

According to Article 1313 of the Civil Code a treaty/agreement is an act in which one or more persons commit themselves to another person/other people.

Abdulkadir Muhammad felt the need to perfect the understanding of the meaning of treaty/agreement because of its formulation in Article 1313 of the Civil Code only concerns one party, the formulation should be mutually binding to both parties (there is a consensus). In addition, the meaning of act in Article 1313 of the Civil Code can be translated widely including the actions of carrying out duties without power (*zaakwaarneming*), unlawful acts (*onrechmatigedaad*) which do not contain a consensus, then the meaning of treaty/agreement in this article becomes too broad, when the actual meaning of treaty/agreement desired by the Third Book of the Civil Code is of material nature, not a personal treaty/agreement. Abdulkadir Muhammad then formulated the understanding of treaty into an agreement between two or more people to commit themselves to doing something in the field of wealth [31].

According to R. Setiawan, actions in the treaty/agreement must be interpreted as legal actions, that is, actions that aim to cause legal consequences. Therefore the treaty/agreement is a legal action whereby one or more individuals commit or bind themselves to one or more other individuals [32]. The importance of being bound to one another in the treaty/agreement is also confirmed by R. Soebekti who interpreted treaty/agreement between two parties or more as a promise of two people to do something [33].

R. Wiryono Prododikoro emphasizes the treaty/agreement as a legal relationship regarding property that can be prosecuted [34].

The author is more inclined to J. Satrio's opinion which defines the treaty/agreement as an event that raises and contains the terms of rights and obligations between two parties. Or in other words, the treaty/agreement contains the engagement [35].

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[27] J. Satrio, *HukumWaris*, Alumni, Bandung, 1992, p. 8.
[28] Martin Basiang, *Law Dictionary, Red &White Publishing*, Indonesia, 2009, p. 390.
[29] KomarAndasamita, *Notaris II ContohAktaOtentik Dan Penjelasannya*, Buku I, IkatanNotaris Indonesia, Jakarta, 1990, p.451.
[30] *Ibid*
[31] Abdulkadir Muhammad, *HukumPerikatan*, PT. Citra Aditya Bakti, Bandung, 1992, p. 78.
[32] R. Setiawan, *Pokok-pokokHukumPerikatan*, Bina Cipta, Bandung, 1979, p. 49.
[33] R. Subekti, *HukumPerjanjian*, PT. Intermasa, Jakarta,1963, hlm. 1.
[34] R. WiryonoPrododikoro, *Asas-asasHukumPerjanjian*, Cet. VII, Sumur Bandung, 1987, p. 7.
[35] J. Satrio, *HukumPerikatan, Perikatan yang LahirdariPerjanjian*, PT. Citra Aditya BaktBandung,1995), p. 5.

2.2.3 Conflict Resolution

Conflict comes from the Latin verb configure which means to hit one another. Sociologically, conflict is defined as a process between two or more individuals in which one party attempts to deliver the other by destroying them or by making them helpless.

According to Taquiri in Newstorm and Davis, conflict is a legacy/heritage of social life that may be applicable under various circumstances resulting from the emergence of disagreements, controversies and contradiction between two or more parties on a continuous basis.

Conflict prevention is done by:

a. Maintaining a peaceful condition in the society
b. Prioritizing the settlements of disputes peacefully;
c. Calming down potential conflicts; and
d. Developing an early warning system.

The usual forms of conflict resolution are:

a. Conciliation: Derived from the word Conciliatio or peace is a way to bring together disputing parties to reach a mutual agreement tomake peace.
b. Mediation: Derived from the Latin word mediation, that is: a way to solve the dispute by using an intermediary (mediator).
c. Arbitration: Derived from the word arbitrium, meaning through the courts, with a judge (arbitrator) as a decision maker.

3. Research Method

3.1 Approach

This research was a normative legal study, because it was an effort of searching the rule of the law, legal principles, and legal doctrines, general principles of law to answer the problems that have been raised [36]. This research was conducted by researching the secondary data, so it can be categorized as normative legal research [37].

3.2 Research Specification

This research was analytical descriptive towards the grant that has been arranged in Civil Code and other legislations, Court decision that has relation with the grant to give a complete description regarding the grant which is related to the demand for the fulfillment of the absolute right of the heirs, and was then analyzed and concluded.

3.3 Data Source and Data Collection Technique

Considering that this research was normative legal research, the data needed was the secondary data. The secondary data collected in this research consisted of primary legal materials, which were relevant legislations to the research formulation, like: Indonesian Civil Code, Basic Agrarian Law Act, Islamic Law Compilation, the Acts on Notary's Occupation, and the Occupation Regulation of an Official Certifier of Title Deed and Court Judgment that has a permanent legal judgment. The secondary legal materials were derived from the legal material books and the other relevant legal writings. The tertiary legal materials like articles, magazines, news paper, dictionary, and compilation of papers were used to complete the primary and secondary legal materials.

Data Collection was conducted through library research by doing the steps of library identification as the source of secondary data and the identification of necessary legal materials. Next, data processing of the analyzed legal materials was done to find the truth.

3.4 Data Analysis Method

Data analysis in this research used a qualitative approach. Data analysis was conducted comprehensively from the reliable provided sources and in unity, which was then arranged systematically.

4. Discussion

4.1 Position of a Notary as a Public Official Making Grant Deed

Article 1682 in Indonesian Civil Code affirms that any gifts, with the exception of those stipulated in article 1687, may only take effect by notaries' deed, and the original document of such gift remains with the notary. Thus, any grant should be given using authentic deed made by the notaries.

Article 1868 of Indonesian Civil Code states that an authentic deed is one which has been drawn up in a legal format, by or before public officials who are authorized to do so at the location where this takes place. Based on the explanation of this article, authentic deed is constructed by authorized public officials, if not, that deed is categorized illegitimate or does not fulfill the formal regulations as authentic deed, then it cannot be treated as authentic deed, that kind of deed is only effective as private deed as long as it has been signed by every party [38], then the elements of authentic deed based on Article 1868 of Indonesian Civil Code are:

a. formulated by authorized acts;
b. formulated by public officials;
c. public officials who have the authorization at the location where the deed takes place

The deed which is constructed by not fulfilling the Article 1868 of Indonesian Civil Code is not authentic deed or can be perceived as private or illegitimate deed [39].

Article 165 HIR states that authentic deed is a writing that has been made by and/or in front of public officials who have the authority to make it, and can become a sufficient evidence for the heirs and other parties who get rights from it, regarding every case that has been stated on that deed and there are some issues that have been put on the deed as notification only, in the latter case, this is only when the issue notified has direct relation with the case that has been mentioned on the deed.

Under the provisions of the article 165 HIR, it is stated that a deed has several components: [40]

a. A script consists of facts, events, or condition that has become the foundation of a right or alliance;
b. Signed by both parties;
c. With the intention to be an evidence.

[36]Peter Mahmud Marzuki, *Penelitian Hukum,* Prenada Media Group, Jakarta, 2005, hlm. 35.

[37]Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 1985, hlm. 13-14.

[38]M. Yahya Harahap, *Hukum Acara Perdata*, PT Sinar Grafika, Jakarta, 2008, hlm. 566.

[39]N.G Yudara, *Pokok-pokok Pemikiran Diseputar Kedudukan dan Fungsi Notaris serta Akta Notaris Menurut Sistim Hukum Indonesia*", R,envoi, Nomor 10.34.III, tanggal 3 Maret 2006, hlm 74.

[40]Mochammad Dja'is dan RMJ.Koosmargono,*Membaca dan Mengerti HIR*, Badan Penerbit Universitas Diponegoro, Semarang, 2008, hlm. 153.

Different from authentic deed, private deed is made by parties that have relation to each other (Article 1874 of Indonesian Civil Code), the signatures should be acknowledged so then can be claimed as a perfect proof. If the originality is refuted, the party who uses the deed should give evidence to its originality [41].

Dogmatically (based on positive legalism), what is claimed as authentic deed is derived from article 1868 of Indonesian Civil Code article 165 HIR, 285 Rbg) : Authentic deed is the deed whose form is determined by the acts (*welke in de wettelijke vorm is verleden*) and constructed by or in front of public officials (*door of ten overstaan van openbare ambtenaren*) who have authority for it (*daartoe bevoegd*) where it takes place [42].

Authentic deed is a deed that has been constructed by or in front of authorized public officials, it has its own perfect proving strength and if its originality is being refuted, the parties who refute it should prove the unoriginality [43].

A notary is a public official who has been given an authority by the acts initiator to construct an authentic deed. Notary is a noble profession (*nobile officium*). Being called as *nobile officium* because notary's profession is closely related to humanity. The deed that has been constructed by a notary can be legal foundation for the status of assets, someone's rights and responsibilities. A mistake on the deed that has been constructed by a notary could cause someone loses his right or cause burden for someone over such responsibility [44].

A notary is a professional figure in his or her profession which needs a special intellect to do this profession [45].

A notary's authority, based on Article 15 The Acts on Notary's Occupation is making authentic deed regarding actions, agreement, and decisions that should be required by the regulations of the acts and nor that has been desired by the interested people to be implemented on authentic deed, guarantee the certainty of the date when the deed has been made, save the deed, give grosse, the copy and the citation of the deed, during the process of constructing the deed, other authorized public officials can help in the process.

The explanation of the Acts on Notary clarifies about how important a notary's profession which is related to authentic deed making. Some of the manufacture of authentic deeds should be done based on the regulation of acts in order to get certainty, orderliness, and legal protection. Authentic deed that has been made by or in front of notaries, not only required by the acts regulation, but because of it is the wish of interested parties either to make sure the rights and responsibilities from every party in terms of certainty, orderliness, and legal protection for interested parties as well for the whole society. Important meaning from a notary's profession is caused of notaries have given authority by the acts to create an authorized evidentiary instrument, In that sense of what has been claimed in authentic deed is absolutely true. This matter is very important for them who need evidentiary instrument for some needs, whether for personal benefit or benefit for a business. In the case of personal benefit, for instance having a testament, acknowledge a child who was born not from legal marriage, give and accept the grant, manage the sharing of heritage, and other reasons.

4.2 Resolution of legal conflict of an occurring demand for the fulfillment of an absolute part related to grants

Based on the author's experience as a notary practitioner and Official Land Registrar, some citizens often come to make authentic deed regarding to grants, after the intent and purpose from the parties have been observed, it can be found that actually people do not really know about grants and legal effects that will happen as the result of legal grant deeds that they have made. The grantees think that by making the grant deed, their position as the heirs of the grant is strong and they do not understand very well that sometimes when the ones who give the Grant passed away, the Grant can be deducted (*ingkorting*) or should do *inbreng* to fulfill absolute rights of the heirs.

In order to solve such a conflict, several efforts need to be considered. They are:

a. *Problem solving*, finding some alternatives to satisfy both parties.
b. *Negotiation*, both parties being involved are the decision makers. The problem is resolved by both parties, they agree without any interference from a third party.
c. *Mediation*, a third party helping both disputing parties to find an agreement.
d. *Arbitration*, both disputing parties agree to ask for a mediator, which is a third party, an arbitrator, and from the beginning agree that they will accept any decision from the arbitrator.
e. *Adjudication*, a third party who has authority to interfere for finding a solution, regardless of the disputing parties. The third party also has the right to take decision and enforce the decision. It means that the third party tries to make the decision works.

According to Satjipto Raharjo, legal protection is an attempt to protect someone's interest by allocating a power to that person in attempt to protect his interest. The allocation of the power is done measurably, in the sense of its breadth and depth. That kind of power is called right. But not every power in the society can be called as right, but rather the power is only a reason to make the person has the right. Hereafter, it is stated that one of several attitudes and the purposes of law is giving protection to the society, because of that, legal protection should be realized in legal security [46].

The formulation of legal protection principles in Indonesian makes *Pancasila* as its foundation, Philipus M Hajon claims that legal protection principles in Indonesian are confession and protection toward human rights because historically, the concepts of confession and protection of human rights are directed to the limitation and responsibility positioning for society and government [47].

4.3 A Fair Grant Concept

A provision determines that price of a grant object which is counted is the price which will be given when the one who

[41] *Ibid*, hal. 155.
[42] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia, Edisi Ketujuh, Cetakan Pertama*, (Yogyakarta: Liberty, 2006), hlm153.
[43] Mochammad Dja'is dan RMJ.*Op. Cit*, hlm 155.
[44] Abdul Ghofur Anshori, *Lembaga Kenotariatan Indonesia, Perspektif Hukum dan Etika*, UII Press, Yogyakarta, 2009, hlm. 25
[45] A. Kohar, *Notaris dan Persoalan Hukum*, PT Bina Indra Karya, Surabaya, 1995, hlm. 100.
[46] Satjipto Rahardjo *Permasalahan Hukum Di Indonesia, Alumni, Bandung, 1993, hlm.*
[47] Philipus.M.Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Bina Ilmu, Surabaya, 1987, hlm.38.

gives the grant passed away. If the price is implemented on recent society economic development, it will absolutely burden those who get the grant. If this case is observed based on the reality, for instance if there is someone who gets the grant 10 (ten) years ago of a land which had a price around Rp. 100.000.000,- when it was granted, and when nowadays, the one who gives the grant passed away, and the heirs demand their share, the price of the grant material should be observed based on current price, and the price can be Rp. 1.000.000.000.-(one billion rupiahs), absolutely, this event will cause injustice and legal protection to the grantee.

Basically, a justice should be materialized in every aspect of our life because men's products and behaviors are unfair and it will cause instability, imbalance, and that will cause damage for themselves and even the universe. When men agree of justice existence, whether they want or not, justice should be attached on their behaviors and life in the relation with their God, among human beings, society, governments, nature, and other creations.

Justice should be materialized, so that legal supremacy will be occurred, eliminate legal impartiality and we can keep staying on entity of justice. The feeling of justice sometimes lives outside of the acts. Apparently, the acts will get hard time to balance it. Similarly, the acts themselves are thought to be unfair [48].

Law is an external legal manifestation and justice is authentic internal and the essential soul of the law itself, so legal supremacy is justice supremacy and vice versa, both are commutative. Law will not survive if the soul of justice is vanished. People often ask about where the justice is and the government and legal apparatus always answers by giving procedural legal arguments. Honestly, legal apparatus do not realize that that behavior is legal ignorance expression (*ignorantiajuris*), where the law subverts the justice [49].

The existence of personal interest conflict as a result of different perception from several parties in case of the benefit sharing which is obtained from their cooperation because for fulfilling their goal. Every party prefers to choose more gains for themselves rather than choosing fewer gains [50].

Strong principles should be needed to choose the best one among many social orders of the society which determines the benefit sharing to get agreement for getting a fair sharing. These principles are social legal principles that provide a way to give rights and responsibilities in basic society institutes along with determining appropriate sharing of benefits and social job responsibility in a fair way [51].

So, it can be said that if a conflict occurs when the grant is processed, the law as social order could be perceived as fair if it can manage men's deeds in a satisfied way so men might find happiness through it. This issue has been affirmed by Hans Kelsen who stated that justice is a subjective value judgment. A fair order assumes that an order is not just for some people's happiness, but happiness for all people in a group, where all of the specific needs are fulfilled, where the rulers or legislators perceive as the needs which have to be fulfilled. What are men's needs that should be prioritized can be realized by using rational knowledge, which is a value order determined by emotional factors and therefore it is subjective.

5. Closure

Notary's position is as a public official who produces grant deeds, therefore the process of giving grants should be realized by using an authentic deed made by a notary. The article 1868 of Indonesian Civil Code states that an authentic deed is a deed which is formulated in a form that is determined by the acts, and produced by or in front of public officials who have authority where the deed is made. Based on the explanation of this article, an authentic deed is a deed which is formulated by authorized public officials. If that deed is illegal or does not fulfill formal regulations as an authentic deed, that deed cannot be perceived as authentic deed.

A fair grant concept occurs when the grants fulfill all fair elements for the heirs because all heirs have the same rights for the heritage. This matter aims to clarify that the heirs should be treated fairly by the grantor and other heirs. That is why the grantor should be fair to all of the heirs because if the grantor is unfair, it shall cause injustice and legal security for the grantee.

The efforts for resolution of legal conflict when there is a demand for the fulfillment of the absolute parts related to the grant are *Problem solving*, *Negotiation*, *Mediation*, *Arbitration*, *and Adjudication*.

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[48]Gustaf Radbuch reminds us that in a legislation product (*g*ezets) there is sometimes *Gezetsliches Unrecht*, that is, unfairness in the law with not much of *ubergezetsliches Recht.* This opinion of Gustaf Radbuch is presented in one of his articles entitled *Gezetsliches Unrecht und ubergezetsliches Recht*, published in *Seddeutche Juristen-Zeitung*, in August 1946, number 5, approximately three years before this well-known German legal philosopher died in his country on November 23, 1949 (Laica Marzuki, M. SIRI Bagian Kesadaran Hukum Rakyat Bgis Makasar, 1995, Hasanuddin University Press, Makasar, hal 95.)

[49]Todung Mulya Lubis, *Pendidikan HAM Ada Pada karya Sastra*, Berita Harian Kompas, 20 Oktober 1991.

[50]*Ibid.* hlm. 5.

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