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FACTORS THAT CAUSE WITH DRAW AL OF JOINT MARITAL PROPERTY THAT HAS BEEN GRANTED BY THE PARENTS TO THEIR CHILDREN (NORMATIVE ANALYSIS APPROACH STUDY)

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ABSTRACT: *The purpose of this article is to explain the law of common property that granted by the parents to their children according to Islamic Law Compilation (KHI), the factors that cause the with draw al of property that has been granted to the children, and legal considerations of judges in with drawing a grant of property that has granted to their children in religious courts. The method used is the method of content analysis from relevant references and study of normative analysis approach. Legal arrangement of common property that granted by the parent to the children according to Islamic Law Compilation (KHI) is not in excess of one third of the joint marital property and counted as a legacy. The common property that has been donated belongs to the child who received the grant but it still may be withdrawn by the parents. Factors that cause the with draw al of property are the improving economic and health of the child or grantee, the child's behavior was not good after receiving the grant, the grantee died and does not have any child. Legal consideration of judges in the with draw al of a common property grant that had been donated to the children in the Religious Court decision is in accordance with KHI, which are if the property is granted without the consent of the wife/husband or the grants exceed one third of the number of common property and the endowment is still in control of the grantee.*

KEYWORDS: Factors, With Draw Al of Grants, Joint Marital Property.

INTRODUCTION

Islamic Sharia teaches people to do good and help each others as fellow human beings to feed the poor, *infaq*, charity, grants and so forth. As mentioned in Surat Al-Baqarah verse 177, which means: "And give the treasure of the loved one those his relatives, orphans, the wayfarer (who need help) and those who beg".[1]

It gives the sense that the goodness includes giving property to people in need, whether to the relatives or others, such as orphans, the poor, the traveler, beggars and so on. So with the grant also includes any action intended by the verse.

There are three conditions that must be met in terms of doing the grant according to Islamic law, namely:

a. *Ijab* (Consent), which is a statement about the gift of giving parties.

[1]Departemen Agama RI, Al-Qur'an dan terjemahannya, p. 43.

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b. *Qabul*, the statement of the party who receives the grants;

c. *Qabdlah*, the receipt or possession of the handed over property.[2]

Among scholars of Shafi, *ijab-qabul* (hand over) is a condition of validity of a grant. Moreover, they define some terms relating to the *ijab-qabul*, namely: *qabul* is in accordance with his *ijab*, *qabul* is binding *ijab*, and *aqad* of grants are not associated with anything. *Aqad* is not dependent to such words: "I planned to donate this stuff to you, when somebody came from Mecca." In addition, grants are basically gift that is not related to in heritance unless it turns out that the grant will affect the interests and rights of heirs. In such case, there should be a limit on grants, not to exceed one-third of one's possessions, in harmony with he will limit that should not exceed one third of the in heritance.[3]

The grant also has the limit in number or to be fair, especially in doing grant to the child. Because it is not fair for one to over state his children most of the other children in the provision of grants, such as it would lead to hostility and break relationship among these children. As stated by Sayyid Sabiq that Ahmad Iman's teaching forbids unfairness among the children, if there is no special condition in that direction. If there is special condition that brings to overdo among the children, then there is no problem. It says in al-Mughni: "If some of the children need to take care specifically, for example because the child was in need of his deep defects, blindness, many families, busy with science, or other advantages that the form was not due to distances on of giving, because of wickedness, heresy, using the provision for sinners, it has been narrated from Ahmad what shows permissibility to exaggerate on it. Specialization in some children with endowments, there is no obstacle when it is done out of necessity and was forced to exaggerate and give the sense that like this.

While Ibn Hazam argued that if the parents give a grant to one of the children, the parents are obliged to do the same thing to other children and must not exaggerate any of the others. This opinion was expressed Ibn Hazm in Al-Muhalla, which means: "a person may not for grant or charity to each of his children as he gave it." However, according to Rasheed Sulaiman, if intent was the same among some children, it can be given the same amount of grant in between them but if their intent is different, then there is no obstacle to hold excessor reduced distribution.[4] Thus, parents grant the child should be fair according to its portion.

Compilation of Islamic Law (KHI) regulates the amount of assets that can be granted to the children, as the provisions of Article 210 KHI, namely:

(1) Persons who have been aged at least 21years, has normal intelligence and without coercion can donate as much as one third of their property to another person or institution in the presence of two witnesses.

(2) The treasures that be granted should be the right of grantor.

KHI determines that the grant can only be given by adult person and donated property is the right of grant or, which is limited as much as one-third (1/3) of the property of the grantor.

[2] Eman Suparman, *Hukum Waris Indonesia, Dalam Perspektif Islam, Adat, dan BW,* (Bandung: Rafika Aditama, 2005), p. 90.

[3] H. Zainuddin, *Pelaksanaan Hukum Waris Di Indonesia,* (Jakarta: Sinar Grafika, 2008), p. 76-77.

[4] Sulaiman Rasyid, *Fiqih Islam,* (Jakarta, Attahiriyah, 1986), p 313.

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Then in Article 211 and Article 212 KHI stated that grant from parents to their children may be taken into account as a legacy. The grant cannot be withdrawn, except the grants from the parents to their children. The parents may revoke the grants to their children. KHI determines the position of joint marital property, which is granted to a child, still may be withdrawn by the grantor.

The withdrawal of the grant must be done by the grantor and cannot be replaced by others because the grant is the prerogative right of one person to his property as decided on Jakarta High Religious Court verdict, No.90/Pdt.G/2007/PTA.JK. In this decision occurs lawsuit between parents (grantor) to the daughter (as grantee). In which the plaintiff's claim in the Religious Court, according to thedecisionNo.405/Pdt.G/2006 /PA.JS dated March 8, 2007 M which coincides with the 18th Safar1428 H, Religious Court decides a request for cancellation/withdrawal of grant is granted, so occurs sequestration of the donated property. However, at the appeal in the Religious High Court of Jakarta, the judge abort lawsuit over the cancellation/withdrawal of the grant property because during the due process before the High Religious Court, the plaintiff passed away, so that the plaintiff was replaced by others as a substitute plaintiff to continue the ongoing case. The consideration of the judge to reject the request for cancellation of the grant was the provision of Article 210 and 212 KHI, which states that grant is a prerogative right of someone to his property, vice versa, then the withdrawal of grants was also the prerogative rights of someone that cannot be replaced by others.

Related to the cancellation of the joint property grants donated to the children also occurred in the jurisdiction of Medan Religious Court, namely DecisionNo.691/Pdt.G/2007/PA-Mdn. The verdict in the case grants a request for cancellation by another biological child (Plaintiff I and Plaintiff II) on joint property that granted by their parent (Defendant) to one of the biological children of the grant or after his wife died. According to the legal consideration, Defendant's wife had died, then½ (half) part of the property that is the right of the deceased is to be *boudel* of heritage that must be distributed to the deceased's heirs (Plaintiff I and Plaintiff II). However, without the knowledge and consent of the Plaintiff I and the Plaintiff II (other biological children), Defendant has donated property to one biological child, in the form of land and existing permanent building of house on it, which include the inheritance of the other heirs. Therefore, the religious court granted Plaintiffs' claim as the heirs of the property and cancel the grant to defendant's (another) child.

Based on this background, the issues discussed in this paper is the joint property arrangements that were granted by a parent to his/her child according to Islamic Law Compilation (KHI), the factors that cause the withdrawal of property that had been donated to the children, judge considerations on withdrawal the grant on property that had been donated to the children in the Religious Courts.

The method used in this study is a content analysis,[5] the research is in-depth discussion of the contents of written documents from the book and other relevant scientific literature and an analysis of the religious court rulings related to the withdrawal of joint property of grants donated by the parent to the child.

[5] R. Babbie, *The Practice of Social Research Practice (*Belmont: Wadworth, 1977), p. 75.

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The Arrangement of Joint Marital Property that was donated to the Children According to Islamic Law Compilation (KHI)

According to Islamic Law Compilation (KHI), the presence of joint property in marriage was not close any respectively property of each spouse. Mentioned in Article 86 KHI essentially no mixing between the property of husband and wife because of marriage. Wives treasure remains the property of the wife and mastered by her, as well as the husband's assets remain the property of the husband and mastered by him.

Mentioned in Article 87 KHI that innate property of their respective husbands and wives and each treasure obtained as a gift or inheritance is under his/her own control, respectively, as long as not specify in the marriage contract. Thus a husband and wife have the full right to take legal actions on each property, for example, did grant.

The husband and wife are responsible for maintaining the common property, as well as the inherent property of each party, the husband and the wife are equally responsible for the default property. So it does not mean that the property is in default under the responsibility of each one, because according to the provisions of Article 89 of KHI, the husband is responsible for maintaining the joint property, the property of his wife or his property. Conversely states in Article 90 KHI, wife also responsible for maintaining the common property or her husband property. Therefore, KHI specified in Article 92, the husband or wife without the consent of one party is not allowed to sell or transfer the joint property, as well as in making grants.

Grant in KHI was set out in Chapter VI Article 210 to Article 214. Article 210 determines that people who at least 21 years old and of normal intelligence without coercion can donate as much as one third of his/her property to another person or institution in presence of two witnesses. Donated property must be the right of grantor. So, if the donated property is a joint property, then it must be approved by both parties. Further, Article 211 KHI, expressed parents' grant to their children may be taken into account as a legacy.

As suggested by *jumhur hadith* scholars, then in the Compilation of Islamic Law (KHI) Article 212 declared irrevocably grant, except a parents' grant to their children. However, withdrawals can only be made if the endowment is still in control of the grantee.

Muslim jurists agree that a person can donate all his wealth to the people who are not his/her heirs. But Muhammad Ibn Hasan and most of Hanafi's school argued that it is unauthorized to grant all of property, although for the purposes of goodness. They consider those who practice such things as fools who must be restricted his/her actions.[6]

The above case can be divided into two terms, if the grant was given to another person (other than an heir) or a legal entity, the majority of Islamic legal experts agree there is no limit, but if the grant was given to the children of the grantor, according Imam Malik and Ahl-ul-Zahir, they do not allow it, while jurists Amsar declared *makruh*. In connection with Rasulullah action against Nu'man ibn Bashir cases how that parent's grants to the children should be equated,

[6]Chairuman Pasaribu and Suhrawarni K Lubis, *Hukum Perjanjian Dalam Islam*, (Jakarta: Sinar Grafika, 1994), p. 118

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even many other *hadith* sex plain parents cannot give to their children differently, which is one more than the other.[7]

Grants are canceled if there is superiority of one another. Parents are not allowed to donate their property to one of their children. It must be fair among their children. If it has been already done, then it should be revoked. There is still disputed among Muslim jurists on how attitude and treatment of the children equalized. Some argue that it is giving the same among boys and girls, some have opinions that the equation between the boys was with how to assign a section to a boy the same with the two daughters, according to the division of the inheritance.[8]

According to some Islamic jurists, it is not true equation that must be implemented (*wajib*), but *sunnat* alone. They stated that the *hadith* which states the need for equating his children are weak in awarding grants, as well as the *hadith* which states that the provision of all treasures in the form of grants to children who behave not good or naughty. Opinion that obliging equated giving to his children and a ban on the provision of all property in the form of grants to their children is a strong opinion. Therefore, if the terms of the grant was not in accordance with this provision, then its grant is canceled.[9]

As noted above, that the Compilation of Islamic Law (KHI) adheres to the principle that the grant should only be done one third of its assets and parents' grants to their children may be taken into account as the legacy. If the grant will be implemented not with standing, it is expected that there was no breaking of the family. The principle adopted by Islamic law is in accordance with the culture of Indonesia and also in line with what was stated by Muhammad Ibn al-Hasan that people who eliminate all these riches are stupid and not worth legal action. Because of the person who donated the property deemed in competent legal act, the grant is deemed null and void, because he is not qualified to do the grant. If the actions of the person associated with the welfare of the family and their heirs, it is not justified because in Islamic law were ordered to each individual to keep himself and his family from the fire of hell. In this context there is an obligation on the individual self to the welfare of the family.[10]

In some *hadith*, they argued that they should get equal and may not give all his possessions to one. If the grant is given by parents to their children in excess of the provisions of a portion of inheritance, the grant can be considered as a legacy. According to KHI, this attitude is based on habits which is considered positive by the community. It is not an odd thing if a portion of inheritance that would be unfair to inflict suffering on certain parties, especially if the solution brought up to the Islamic Court, it will certainly cause a family problems. In this regard, Umar Ibn Khattab had argued that the verdict was returned between relatives, so that they make peace[11] because the court decision was actuallyvery painful and cause suffering.[12]

Thus the property that had been donated by parents to their children will become the property of the child who receives the grant, however, in granting the property, it must also be taken into account along with the right so other children if any. Therefore, in Islamic law and the

[7]Abdul Manan, *Aneka Masalah Hukum Materiel Dalam Praktek Peradilan Agama,* Editor Iman Jauhari, (Jakarta: Pustaka Bangsa Press, 2003), p. 185.
[8]*Ibid.,* pp. 185-186.
[9]Ash Shan'ani, *Ibid.,* p. 186.
[10]*Ibid.,* pp. 186-187.
[11]See, M. Yahya Harahap, *Hukum Acara Perdata,* (Jakarta: Sinar Grafika, Jakarta, 2006), p. 236.
[12]*Ibid.,* p. 187.

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Islamic Law Compilation (KHI) as positive law in the implementation of grants in Indonesia has given there strict on son property that may be granted by the parents to their children. Islam recommends that parents in providing the joint property as a gift to his children should be fair because the joint property is inherited from all the children when they had died.

The Causes of Joint Property Withdrawal

In general, Jumhur scholars say that grant or is forbidden to withdraw its grant if the property handover has been performed perfectly, even if the grant took place between fellow brother or husband and wife. But they allow a father pulling back grants that have been handed over to his son. This jumhur opinion is based on the *hadith*, which states: "If someone has given a gift or donated an item to someone, then he should not revoke that gift or grant, except a father take back what has been given to their children. People who with draw its grant is like a vomiting dog and lick the vomit back".[13]

There are other scholars who argue that it is okay to pull back the grant if the granted property has not changed its nature. Cleric provides an overview of the grant that may be withdrawn, the grant was done in the hope of receiving compensation and the grant; while the person receiving the grants do not want to pay indemnities. In cases such as this grant, the scholars argued that the grant could be withdrawn. Thus, according to Ibn al-Qayyim Al Jauziah, grant sshould not be pulled back if the grant is implemented purely for pleasure, not to get in return for compensation. Grants those are made to expect indemnity maybe withdrawn if the grantee does not want to pay compensation.[14]

Granted objects are irrevocable, unless a grant from the parent to its descendants (children). Object thats have been granted remains in the power of persons who were granted. The right to withdraw the grant by parents to their children, limited as long as the object is still in power of the children who were granted. In contrast to the will, donated objects have switched from *Qabul*, do not need to wait for grantor's death.

If a father or a mother or a grandfather grants something to his/her child or grandchildren and has been handed over to him, then in this case the grant or may withdraw its grant. If it is as charity then according to the texts he may withdraw its grant, while the other opinion stated it should not be revoke.[15]

Jumhur jurists argue that a father may be mastered by its own goods given to small children who are in authority or to adults who are stupid. Similarly, he must master the grant given by others to both. Enough for him in the event to witness the presence of the control to the grant and announced it. All this is in addition to gold and silver, as well as the items that are not certain. In this case jumhur jurist shold with what is narrated by Imam Malik from Ibn Shihab from Sai'id ibn al Munayyab that Uthman had said, "He who gives gifts to little children who have not been able to master this gift, then he announces the administration and witness it, then such provision is mastery, although he manages it.[16]

[13]Hadist by Al Allamah Abu AthThoyib Muhammad SyamsulHaq Al 'AdzimAbadi, "AunulMa'bud: Baitur Dar Al Ilmi, 1974 Juz 10, p. 108 No. 3536.

[14] "Ensiklopedi Islam", Depdiknas, Faskal II, (Jakarta: PT. Ichtiar Baru Van Hoeve), p. 107.

[15] Ibnu Rush, *Bidayatul Mujtahid,* (Semarang: Keluarga Semarang, tanpa tahun), p. 247.

[16]*Ibid.*,pp. 27-248.

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Imam Malik and his followers argue about the existence of the maintenance of the goods to be occupied and used. If the it emis a gift that is occupied house, then the house must be vacated. Neither does clothes. If the clothing is worn, then the grant is void.[17]

Explained by Wahbah Zuhaily in his book" *Al-Islami wa Fiqhul adillatuhu*" that it might be taken back something that was given or granted to a person as stated in the *hadith*, "The grant or is more entitled to granted goods before he gets the predetermined goods". He may withdraw a grant that had been given to her child as long as his father still alive. However, if the father died, the grant cannot be drawn because the grants that have been given to the orphans cannot be withdrawn.[18]

Furthermore, the revocation of grant that has been given to the children in the community may be due to several reasons and considerations, including health factors, economics, grantee's behavior, and grantee's death, as further described below:

Improved Health or Economy of the child or grantee

In case the grantee is a hard diseased child (acute) so that parents donate common property to the child as a source of disease treatment costs for grantee (child). Such grant is a grant that is very good and large function in providing protection for children who are sick at any time when his parents died. Also grants by the consideration to improve the child's economic weakness. So that when the condition of weakness both healthy and economically have improved, the child's parents might withdraw the grants of the joint property.

The behavior of the grantee after receiving the grant

Withdrawal of the property that is granted to a child can also be motivated by fear that the grantee will sell and spend it without any compromise with his parents, so that parents do recall property that has been granted to the child.

Parents give a grant to one of his children is expecting the use of property as well as possible so that the child can get benefit from it. So when parents see the grantor's property that is granted has been wasted by the child, it can lead to disappointment of the parents and they pull back property that had been donated to the child.

Then also related to the grantee's behavior as described above was the grant or concerns over the use of granted property. In addition, parents will also conduct a recall because the child as grant recipient behave arbitrarily or do not care for elderly parents who live with him on the donated land and house.

Associated with the grantee's arbitrarily behavior to her parents after receiving a grant so that parent stake back granted property, as a comparison of one case of cancellation of grants and lawsuits have been settled on the Simalungun Religious Court Decision Number87/Pdt.G/2009/PA.Sim, the claims was made by the grantor (parents) and two other children as heirs. Plaintiffs plead that the grant declared invalid or void, which one of the reasons as follows: "3. After the granting of property, the second defendant and his wife had changed the nature and arbitrary objects in the house as he pleased and the Plaintiff I had made

[17]*Ibid.*,p. 248.
[18]Abdur Rahman I Doi, *Hudud dan Kewarisan,* (Jakarta: PT. Raja Grafindo Persada, 1996), p. 210.

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mistake in giving consent and therefore the Plaintiff I revoke the consent made at the office of Defendant III". But the lawsuit on the grounds of ill-arbitrary actions of the grant recipients (defendant) against the first plaintiff (the parent or the grantor) cannot be proven, then the argument of this claim was rejected by the judge. Similarly, on appeal to the High Religious Court of Medan Number: 1/Pdt.G/2010/PTA-Mdn justified Simalungun's religious court refusal because such argument cannot be proven by the plaintiff (the parent).

According to the authors, the claim of arbitrary actions against physically (persecution) may be easier to prove, but if it acts arbitrarily in question is mentally, like a rant or a strong voice (yell) to the parents, that has been done by the children so hurting soul of the parent is indeed difficult to prove, even though the act was indeed experienced by the parents.

Grantee (the child) passed away andhe/she had no children

Then in addition to the above factors, in the community canal so occur parents pullback property that has been granted to the child if there is a family consisting of a husband and wife without a child who has a piece of land which is received by the husband as a grant from the parents, then the grant recipients firstly died of the parents who donated the land in question, then the donated land might be withdrawn by the parents.

Legal Consideration of the Judges in the Cancellation of Joint Property Grant That Has Been Presented by the Parents To Their Children In Religious Court

The principal in this case is the Plaintiff by letter dated 19th September 2007, filed a lawsuit against the Defendants to cancel the grant, where a lawsuit filed in the Registrar's Office Religious Court of Medan No.: 691/Pdt.G/2007/PA.Mdn on September 20th, 2007 contents among others:

1) That the Plaintiff I and Plaintiff II are the biological children of the results of his marriage to Sinah (mother of Plaintiff I and Plaintiff II) who has died on March 18th, 2002;

2) That the First Defendant during marriage with Sinah has been blessed with five (5) children, namely: Karju, boy (Plaintiff I); Siman, the boy had died on March 13rd, 2006; Ngadikun, boy; Wagini, girl (Plaintiff II); and Suman, son.

3) That Siman has been married to Defendant II and has been blessed with a daughter named Puja is now 9 years old.

4) That the Defendant I during the marriage with Sinah have a piece of land in the form of land and building.

5) Whereas pursuant to applicable law, because of the First Defendant's wife had died, then½ (half) part of the property that is the right of Sinah become a *bodel* of legacy that should be distributed to his heirs;

6) That the later without the knowledge and consent of biological children of Defendant I, especially Plaintiff I and Plaintiff II, Defendant I has donated most of the land following the existing building of permanent house on it to his son, who was named Siman;

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On the basis of the suit, the judges of Medan religious court cancelled the grant with legal considerations as follows:

1) That based on the testimony of the witnesses of the Plaintiff, after Defendant I knows the contents of the letter, which is marked by the thumb print and the late Simanget the letter, Defendant I has ever come to the head of Environmental and Headman, even to the head of sub-district that the head of Environmental has divided the property of the deceased Defendant I and his wife to his son named Siman, after Sinah's death, which when Defendant I came to the headman, Siman come suddenly and went crazy and wanted to kill the first Defendant;

2) That moreover, the Head of Environmental makes the distribution to other children of Defendants I, with different sizes completed with letters of application, so that the Defendant I only gained about 7 meters, even Defendants no longer stay in his home because the deceased had been expelled by Siman;

3) That on the basis of the above considerations, it was found that a letter dated May 2nd, 2002 thumb print marked by the first Defendant, made even on the basis of knowledge and willingness of Defendant I, but it was done in a way of coercion, whereas grants under the provisions of Islamic law should be made voluntarily in closer to Allah without expecting something in return, so that the Assembly believes that the act of giving grant via a letter dated May 2nd, 2002, aquo is not a correct implementation of the grant and not with the procedure, so it should be declared invalid, which is in line with the provisions of Article 210 Compilation of Islamic Law;

4) That, the second defendant has nor buttal evidence submitted a trial, because the Council believes that the second defendant cannot prove there buttal;

5) That, other than that, even though Defendant I donated the property by the of non-coercive, it is also contrary to the provisions of Islamic law, because the object property is still associated with late Sinah property that has not been distributed to the heirs, which within their terms of Jurisprudence No.322K/AG/2000 dated August 3rd, 2005, states that if the grants made to other parties against the estate which have not been distributed to the heirs, then the grant is null and void, because one of the requirements of grant is donated goods must be owned by the grantor, not an inheritance that has not divided nor treasure that is still bound to dispute;

6) That based on the above considerations, Assembly concluded that the Plaintiff's claim in the petition number 2 is reasonably necessary, and should be declared null and void the grant of First Defendant to the deceased Siman on May 2nd, 2002 to an area of 384 m2 property located on the road....and so on.

7) Then, because of the object of such property is now evidently dominated by the second defendant, the petition number 3 also is reasonably necessary and reasonably granted to punish Defendant II to vacate and hand over the property to the heirs of the late Sinah.

Thus, from the Religious Court of Medan Decision No.691/Pdt.G/2007/PA.Medan above, it appears that the property that has been donated by the parents to one child without the consent

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of the other biological children as heirs, so according to the judge granted the property that it also includes the inheritance of other children who did not receive the grant when their mother had died. Consideration of the judge is based on the provisions of Article 210 KHI that grants should be one third as much as their property and possessions were assigned to be the right of grantor. Therefore, the Religious Court of Medan granted the grant withdrawal law suit of the plaintiffs (the other children who did not receive the grant), then the grant is null and void. Then, also in this case, the endowment is still in control of the grantee (defendant) so it can be pulled back.

Judge in making the decision of grant withdrawal that have been awarded to the children is legitimate if it is still there and the property is in the power of the grantee, but when it is transferred to a third party for example is already on sale, so if parents remain well demanding repayment, it would arise resistance (*derdenverzet*) and if there is a request of seize, it is not found the object case in the field (*nietbevinding).*

Furthermore, according to the informant, the defendant appealed to the High Religious Court of Medan (in this case the wife of the deceased Siman, Ponijem as endowment receiver) as second defendant in the case of withdrawal of grantin above Decision No.691/Pdt.G./2007PA.Medan. However, the appeal lawsuit also still cancel the grant, as seen in Decision No.27/Pdt.G/2008/PTA.Medan, on the basis of the High Court judgment after studying the docket, certified copies of Medan Religious Court decision dated December 17th, 2007 No.691/Pdt.G/2007/PA.Medan carefully, think of all the reasons and considerations of the judges in the first level is right and correct (in canceling the grant), therefore it was taken over and used as a reason and its own legal considerations in deciding and prosecuted the case.

In the above case, law judge to be considered in the grant cancellation due to proven parental property donated to one of his children more than one third of the joint property and therefore, according to this law is contrary to the common property because there is still treasure of other heirs. Judge's consideration has indeed been in accordance with applicable law.

However, in giving judgment against the grant claims in excess of a third property should also be seen with the background of the grants that exceed one third to the child. Due to the fact it can be a parent grants greater or exceeds one third of the estate to one child with consideration of the child's condition at that time, both health conditions and economic conditions of the child when the grant is given.

Generally jurists distinguish Islamic law in the field of worship and *mu'amalah*.[19] For the field of worship, texts had been the guideline. Human reasoning does not need to interfere in matters of worship set. While the field of *mu'amalah*, human reason is required, in addition to knowing the negative things are also things that are useful.[20]

In the implementation of Islamic law, Allah told mankind not only to have to run what was ordered. In addition to the specific circumstances, mankind is given the opportunity to choose which way is considered in accordance with their respective capabilities as well as the way that most believed as the truth. Thus Islamic law is not rigid as other law generally without exception or must be lived with no given certain choices. For example in Islamic law, for those

[19]Yusdani, *Peranan Kepentingan Umum Dalam Reaktualisasi Hukum*, (Yogyakarta: UI Press, 2000), p. 5
[20]Asymuni Abdurrahman, *Qaedah-Qaedah Fiqh*, (Jakarta: Bulan Bintang, 1976), p. 43.

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who have violated the oath, the penalty given to him to choose what punishment the might be able to live. Unlike the criminal law in general, a person who violates the oat his not no other option for him except what has been established by law. Similarly, in deciding cases grant by the parents to their children, because each child has certain or different conditions and circum stances from each other, both in economic conditions, health or knowledge. The difference in these conditions leads to differences in the law that will be applied to him. In other words, the law can be determined types of situations and conditions as the background for the life of the grantee.

The purpose of Shari'a law is none other than to realize the benefit for humans from all facets and aspects of their lives in the world and avoid the various forms which can lead to damage.[21] Therefore, people expect benefits in the implementation or enforcement. Laws are for humans, then the implementation of the law or law enforcement must provide benefits or usefulness to society. Do not let it be the implementation or enforcement of law creates legal conflicts in the community.[22]

CONCLUSION

The regulation of property that granted by legal parent to the child according to Islamic Law (KHI) is not in excess of one third of the property and it is counted as a legacy. Donated property that it belongs to a child who received a grant still may be withdrawn by parents as a grantor. Factor causing the withdrawal of property that has been granted by the parents to the child because of the improving economic health of the child or grantee, the grantee or the child's behavior was not good after receiving the grant, the grantee passed away before the grantor and have no child, so parents pullback the endowment. The legal reasoning of judges in the withdrawal/cancellation of grants on property that has been granted in the Religious KHI is applied in accordance with the law. The grant cannot be done if the property is donated to a child without the consent of the wife/husband or exceed one third of the number of joint property because there is also still parts of otherchildrenasheirs. Then the judges also consider the cancellation of grants can be done if the endowment is still in control of the grantee.

Furthermore, it is suggested to Judge of religious court in the cancellation of granted property that is exceed one third of the joint property should be able to consider the background on the basis of the economic condition of the child. To parents in providing grants of property should remain with justice that takes into account the rights of other children as heirs and if giving grants he should openly talk to other children who do not receive grants so as to avoid the occurrence of jealousy or even disputes in later between the children. To the parties who perform the grant, although in the KHI expressed grants can be given orally but should be made in writing and in front of witnesses or the competent authority to grant certificates that have strength of perfect evidence in front of the court.

[21]Hasballah Thaib, *Hukum Benda Menurut Islam,* (Medan: Universitas Dharmawangsa, 1992), p. 28.
[22] Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar),* (Yogyakarta: Penerbit Liberty, 1988), pp. 134 – 135.

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