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Indonesia's Regulation Model as a Harmonization of Arrangements and Implementation of Heirs' Approval on Asset Grants

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Abstract

Provisions on grants are regulated in Article 1666 of the Civil Code (BW), that grants are gifts by someone to another person free of charge and cannot be withdrawn, for movable goods (in front of a notary) and immovable goods (with a deed of Land Deed Official – "PPAT") when the grantor is still alive. The provisions of the grant as referred to (1) The grantor must be an adult (Article 1677 of the Indonesian Civil Code); (2) A grant must be made with a notarial deed originally kept by a notary (Article 1682 of the Indonesian Civil Code); (3) A grant binds the donor or issues a consequence starting from the grant with firm words received by the grantee (Article 1683 of the Indonesian Civil Code). But on the other hand, there is a provision that grants must pay attention to the approval of the heirs and do not violate their absolute rights, as stated in Article 913 Indonesian Civil Code. If the process has been carried out and does not violate the absolute rights of the heirs, then the object of the grant is legally transferred to the recipient of the grant. However, the practice is often considered to violate the rights of heirs, so most notaries and PPATs ask for a letter or statement of their approval. This condition shows that the arrangement of grants and the distribution of inheritance does not reflect the legal ideals of legal certainty, benefit, and justice. So based on these conditions, it is necessary to have a regulatory model that can be used as a reference in the formulation of arrangements for granting and guaranteeing inheritance distribution according to the *Legitieme Portie*. The regulatory model referred to in this paper is in the form of formulating a regulatory pattern that provides a comprehensive picture of the harmonization of grant arrangements and guarantees for inheritance distribution according to the *Legitieme Portie* which can guarantee the implementation of inheritance according to the *Legitieme Portie* that does not limit property owners in implementing grants on property. To describe the regulatory model, the research method used is a normative juridical method based on a statutory and conceptual approach. With the aim of being able to comprehensively present a form of a continuous pattern of arrangements that will form a protection system to ensure the implementation.

Keywords: Regulation Model; Harmonization, Arrangements, Implementation of Heirs' Approval

1. Introduction

The nature of the inheritance itself is different from the grant understanding grant according to Article 1666 of the Indonesian Civil Code is an agreement in which the grantor, in his lifetime, by giving the free and irrevocable property, handing over an object for the purposes of the grantee who accepts the surrender. However, if the gift is given by a person after he dies, then this is called a will grant, which is regulated in Article 957 of the Indonesian Civil Code. Although the grantmaking arrangements are not as strict as the granting of inheritance, the implementation of the grant must still pay attention to the applicable legal provisions so that the grant is legal according to the law (Herawati & Witasari, 2021).

Some of the provisions governing the granting include: Grants must be made authentically with a Notarial Deed. Article 1682 of the Indonesian Civil Code states that No grant except as contemplated in Article 1687 can be made without a notarial deed, which minut (the original manuscript) must be kept with a notary, and if it is not done so then the grant is invalid". Furthermore, as an exemption in Article 1687 of the Indonesian Civil Code a grant for tangible movable objects or a receivable letter to be paid in submission, does not require a notarial deed and is valid if the gift is simply handed over to the grantee.

Grants can only be made for those who are adults, namely reaching the age of 21 years or not yet 21 years but have been married according to Article 1677 of the Indonesian Civil Code, and Grants to the wife of the husband or vice versa are only allowed if the gift is in the form of gifts or gifts of movable goods that are tangible and the price is not expensive when compared to the amount of the benefactor's wealth as in Article 1678 Indonesian Civil Code. A grant

is irrevocable but may become null and void in the event of violating one or more provisions of the Indonesian Civil Code including the following: (a) Grants concerning new objects will exist in the future under Article 1667 of the Indonesian Civil Code; (b) A grant by which the grantor promises that he remains in power to sell or give to another person an object included in the grant, shall be deemed void. What is void is only related to the object based on Article 1668 of the Indonesian Civil Code; (c) A grant that makes a condition that the grantee will pay off debts or other expenses in addition to what is stated in the grant deed itself or in the list attached under Article 1670 of the Indonesian Civil Code (Mahasin, 2022).

A grant is the free will of the owner of the property to give to whomever he wills. So, the grantor acts actively handing over ownership of his property to the grantee. But freedom is always limited by the rights of others. Within the grantor's estate, there is an absolute right of share or *Legitieme Portie* which explains that the child is the heir and this right is reserved. This is based on the provisions of Article 929 of the Indonesian Civil Code for the benefit of inheritance, objects that have been donated can be "recalculated" in value into the total heritage property as if it had not been given. Under Article 920 of the Indonesian Civil Code, the heirs may make a claim for deduction of the grant in the event that the absolute share that the heirs should have received is not met. If the object has been under the power of a third party, the heirs still have the right to make a claim for the reduction or return of the object (Article 929 paragraph (1) of the Indonesian Civil Code). The right to advance this claim will die after 3 (three) years have passed since the heirs received the inheritance under Article 929 paragraph (4) of the Indonesian Civil Code.

The reason is to prevent future prosecutions, which always required a Letter of Approval from the grantor's biological son. Thus, the granting of grants should pay attention to the consent of the heirs and do not violate their absolute rights. Absolute rights are part of the inheritance that has been established by law for each heir based on Article 913 of the Indonesian Civil Code. But not all notaries do this so based on that. This research was conducted with the aim of knowing how the application of the practice carried out by notaries in implementing the provisions in order to avoid disputes in the future and based on this, it is used as the basis for establishing an arrangement model as an effort to harmonize the arrangement and the implementation of the heir's approval of the grant of property.

The researcher conducted a data collection method with Forty-eight Notaries and PPAT at the Jakarta-Bogor-Depok-Tangerang-Bekasi location and conducted a comparative study of the provisions, namely the Netherlands as a country that plays an important role in the development of Civil law in Indonesia. So that through this research can comprehensively present a sustainable regulatory pattern that will form a more integrated protection system related to the regulatory mechanism for grants that guarantees the implementation of the division of inheritance in accordance with the legitimate part of the inheritance.

2. Research Method

The method used is normative legal research through analysis of regulatory models that can be used as a reference in formulating regulatory models in civil law in Indonesia that provides guarantees of legal certainty for relating to grants and a legitime portion of the inheritance. The research was conducted using a comparative provisions-based approach by comparing the laws of the Netherlands, as the country has an essential role in the formation of civil law in Indonesia, as well as literature that focuses on reading and studying primary and secondary legal sources.

The primary source of law is the actual source of law, namely laws and court decisions related to the formulation of regulatory patterns that provide an overall picture of practices that guarantee protection for children born out of wedlock. This is reflected in every regulation from the Netherlands, which will be needed in formulating a civil law regulatory model that is more harmonious relating to grants and the legitime portion of the inheritance. Meanwhile, secondary legal sources contain legal reviews in legal literature and journals. The result is to comprehensively present a sustainable regulatory pattern that will form a more unified protection system related to regulatory mechanisms to grants that guarantee the implementation of inheritance distribution in accordance with the legitime portion of the inheritance.

3. State Of The Arts

The originality of this paper is shown from the 'gap problem research' from previous writing and research, which is described as follows:

First, through writing entitled "Legal Review of Selling Land of Inheritance without Approval of All Heirs", written by Fakhrizal Arief Firmansa, Isdian Anggraeny, Yelita Putri Pramithasari. Discussing related to immovable objects that are usually to be inherited is land because the land is a source of life that has economic value. Everyone can dispute to retain their land rights including disputes that occur in the inherited land for heirs, including buying and selling, renting rent, and matters that will become legal problems if they do not involve all the heirs. As happened in the Decision of the Raba Bima District Court Number 63/Pdt.G/2012/PN. RBI, 2012. Disputes that occurred with M. Amin's family, including Umi Yati, M. Saleh, Sarifah, and Kalisom M Amin who were the heirs of Mr. M. Amin as the previous heirs. With the formulation of the problem is as follows: (1) What is the position of buying and selling land against heirloom land without the consent of all heirs; (2) What are the legal consequences of buying and selling

land on inherited land without the consent of all heirs. The conclusion of this paper explains as follows (1) The purchase of land for undivided inherited land according to Article 1320 of the Indonesian Civil Code and the Government regulation on Land Registration must be made by all heirs or if sold by one of the heirs then it must seek the consent of the other heirs, as part of the holder of the right to land based on the right of inheritance and as the holder of the joint right overall heirs. Therefore inheriting land without the consent of all heirs is an unlawful act. (2) The legal consequences of the unilateral sale and purchase of inherited land, or without the consent of other heirs are null and void. With the cancellation of the sale and purchase, the sale and purchase between some or part of the heirs and the buyer is considered to have never existed, there is no sale and purchase agreement, and legally the title to the land remains with the right holder, namely the same heir.

Second, through writing entitled Legal Analysis and Its Consequences on the Transfer of Rights to Inheritance Without the Consent of All Heirs (Case Study of Kolaka District Court Decision Number 17/Pdt.G/2017/PN KKA) written by Nur Aliyah, Muhammad Sjaiful, Sukring. In this paper, it is explained that (1) The transfer of ownership rights to inherited property according to the Indonesian Civil Code (BW) is by means of division of inheritance which is held by manufacture or by mutual will. All parties must know and respect each other's rights to the Inherited Property which is a common property. The heirs' consent to the transfer of the Estate is in order to avoid a dispute over the estate between the heirs. Because any transfer of inherited property must be approved and known by all the heirs of the heir otherwise the transfer is invalid. (2) Civil Law and laws relating to the Acquisition of Land Registration, especially in Article 32 Paragraph (2) of Government Regulation No. 24 of 1997, provide an opportunity for parties who feel aggrieved by the issuance of certificates and to resolve disputes related to the issuance of land rights by the Office of the District / City Land Agency, then the party who feels aggrieved can file a lawsuit with the Court. As the Plaintiffs have done in the case of reissue of the name of Title Certificate No. 210. As an effort to defend the rights of parties who do not know or are asked for approval in the process of returning the name of the Title certificate which is the Estate. Kolaka District Court Decision No. 17/Rev.G/2017/Pn. Kka has provided legal protection and legal certainty, namely by granting the Plaintiffs' suit for the Certificate of Property Rights No. 210 which has been transferred without seeking the consent of all the Heirs from Nokke to Muh. Aliyas Nokke was reinstated by stating that the certificate was in the name of Muh. Aliyas Nokke is illegitimate and has no binding force. Also, the certificate in Nokke's name is valid and has binding force.

Based on the elaboration above, it is known that there is a research gap that has not been studied, so it becomes an aspect of the originality of this research; namely, it has not been discussed related to that the above research is that in previous research it is still at the stage of elaborating the problems and obstacles for grant mechanism that causes problems in the distribution of inheritance. This paper offers a regulatory formulation outlined in the regulatory model as an effort to harmonize a grant mechanism that can guarantee protection for the legitime portion of the heirs.

4. Results And Discussion

4.1. Regulatory Conditions and Practices relating to Grantors with the Consent of the Heirs

4.1.1. Regulatory Conditions related to Grantors with Heir Approval according to the Indonesian Civil Code and Implementing Regulations

Grants and Inheritances are things that are not intertwined with each other, where the grant is made by the grantor while still alive and the inheritance can only be made if the owner of the estate has passed away because the provisions of the new inheritance law can apply if the heir or owner of the estate dies. So that basically new heirs can be regulated and take into account the rights and obligations if the owner of the property or heir dies or the grantor dies.

Grants in their implementation are known to be of several types, one of which is a Will Grant. A Will Grant is a special designation, in which the testator gives to one or several persons certain goods, or all certain goods and kinds; for example, all movable goods or fixed goods, or the right of use of the proceeds on some or all of their goods. Because of the definition of this grant, it began to be known that it was possible to hold a Grant after the heir died so that the link between the Grant and the Heir began to be felt. He explained that grants can be made but must not reduce the portion of inherited property that will be received by heirs under the *Legitieme Portie* as in Article 929 of the Indonesian Civil Code which states that for the benefit of inheritance, the objects that have been granted can be "recalculated" in value into the total heritage property as if they had not been given. Under Article 920 of the Indonesian Civil Code, the heirs may make a claim for deduction of the grant in the event that the absolute share that the heirs should have received is not met. The heir, interest referred to above is the absolute part of the division of the estate known as *the Legitieme Portie.*

The mutlak or *Legitieme Portie* section is the part governed by Article 913 of the Indonesian Civil Code is the part of the estate that must be given to the heirs in a straight line according to the law, and for the heirs, it is not allowed to set the amount for the heirs or through wills. So based on this, the amount of *Legitieme Portie* has been determined by the Indonesian Civil Code, then in Article 916 letter a of the Indonesian Civil Code explains that if the grants that have been made by the heir cause the heirs to lose their rights, the grants are cut so that the amount of inheritance to be

divided into equal to the amount is what is allowed, while the claim must be launched for the benefit of the absolute heirs.

This provision is strengthened by the provisions of Article 920 of the Indonesia Civil Code which explains that if during his life the testator has made a gift both during his life and by a will that results in a reduction in the absolute share of an inheritance, then a reduction can be made based on the demands of the absolute heir. Such an arrangement in practice gives rise to multiple interpretations, some have interpreted that the above articles clearly distinguish grants and heirs without any linking but on the other hand, not a few state that grants can be canceled if the grant deducts the value of the estate. This problem is also felt by notaries and PPAT as officials who based on the Law have the authority to organize grants and distribution of inheritance either in the form of intangible objects or tangible objects such as Shares, Land Rights, and Rights to Flats.

4.1.2. Conditions of Practice relating to Grantors with the Consent of the Heirs

Based on the aforementioned conditions, the author argues that it can cause uncertainty in the application of legal arrangements because the arrangements are not harmonious. Based on the condition, it is necessary to map the implementation in practice from the party directly affected by the enactment of the arrangement, namely the Notary or PPAT. Basically, a grant deed in the form of an object or property is made by a notary. However, if it is in the form of land, it must be made by PPAT in accordance with Government Regulation Number 24 of 1997. In addition, the making of the deed must also be attended by the relevant parties and there are witnesses of at least two qualified persons. So based on this, the researcher collected data by interviewing 48 Notaries and PPATs in the Jakarta-Bogor-Depok-Tangerang-Bekasi area to find out about the implementation of grant provisions and the consent of the heirs. Based on the distribution of the source's answers through the order of questions, the author classifies the answers based on the majority and minor answers of the bag that are confirmed by a Notary or PPAT in organizing the terms of the grant and the consent of the heirs, which are set out in the following presentation:

First, regarding the prerequisites of the grantor when making a grant deed either for his heirs and/or non-heirs. In practice, the grant is carried out with the general conditions required to be ID cards, family cards, marriage certificates, and also property certificates to be donated. For now, BPJS and Tax Deeds can also be needed to complete the data. If a grant is given from parent to child, it will not be subject to grant taxation, as the grant is given to a non-child, then a tax on the property granted will be imposed on both. For heirs, what must be completed is the heir's Death Certificate, heir statement, ID card, and Family Card, there is an heir fatwa process that can be done before the grant or after the grant process (Herawati & Witasari, 2021; Mahasin, 2022). Furthermore, for the exercise of minority known practice of grantmaking, the general condition is that the beneficiary must possess upon such object if he is not the heir must have the consent of the heirs concerned, grant the land and buildings then must meet the *Legitieme Portie*. Then the next condition must have the consent of the beneficiary (Muhamad, 2021).

Second, the consent of the heirs is a prerequisite for the grantor when making the Deed of grant. The p. of the grant agreement, the consent of the heirs as a precondition of the grantor when making the Majority Grant Deed is the grant must be included with a letter of approval from the heirs, even if the grant itself is a grant of inheritance free of charge. This is done in order to avoid a lawsuit that can be done. The function of the heir's own consent letter is to avoid the occurrence of a lawsuit. For example, for land and building grants, a name reversal will be carried out before the PPAT. Granting this grant also must not violate the absolute rights of the heirs or the share of inheritance is supported by Article 913 Indonesian Civil Code. So the Majority of Notaries and PPAT argue that a grant without consent is a violation. This is because the grant must not be more than one-third of the absolute right or *Legitieme Portie* of the inheritance as evidenced by the letter of approval of the grant of inheritance in the absolute right already regulated the amount of inheritance to be received. On the other hand, Minority Practice does not require a letter of approval from the heirs because Grant is a free grant of inheritance. The making of grants is also done while the grantor of the inheritance is still alive so that the heirs will only receive the inheritance when the heir is already in a weakened state or dies. Thus, minority notaries and PPAT argue that a grant without approval is not an obligation or regulation that must make a letter of approval and also look at the nominal amount to be inherited or granted. In this case, if there is a violation, the heir cannot sue because in fact his rights are not granted. However, it is also known that although it does not require a letter of approval from the notarial heirs and PPAT in making a grant, it still pays attention to the condition of the grantor when the grantor grants were made.

Third, it is regarding the mechanism for enacting Article 881 paragraph (2) of the Indonesian Civil Code which regulates "with such an appointment of heirs or grants, the one who bequeaths (and gives) must not harm his heirs who are entitled to an absolute share". In the Section "*the grants that .... must not harm his heirs who are entitled to an absolute share*". The majority practice carried out by Notaries and PPAT is *Legitieme Portie* or the inheritance part according to the Indonesian Civil Code is the part of the property that must be given to the heirs in a straight line according to the Indonesian Civil Code, so that the grant of inheritance must not exceed one-third of the legitimate calculation any beneficiary, in doing so, will not harm some parties which may lead to the prosecution of the heirs. On the other hand, minority practices carried out by notaries and PPAT are carrying out grants by overriding the provisions of Article 881 paragraph 2 of the Indonesian Civil Code because the property of the beneficiary is still not an inherited property so the accounting of one-third of the estate cannot apply.

Fourth, regarding the mechanism for enforcing the provisions of Article 920 of the Indonesian Civil Code which regulates heirs can make demands for deductions to grants in the event that the absolute share that the heirs should have received is not met. The Practice of Majority Notaries and PPAT argue that cases related to claims for inheritance reduction are very frequent cases because most notaries do not want to take risks in granting by requiring a grant approval letter. This preserves the existence of a suit granted by an heir. However, if there is a lawsuit, this is not the authority of the notary but the court, especially the local District Court with the application for incorting. And Minority Notaries and PPAT argue that the practice of the Indonesian Civil Code Article 920 lawsuit is difficult to implement. Because usually there will be a letter of approval signed by other heirs.

A grant is not just a father owning a house and then wanting to give it to one of his children. Such conditions are definitely in violation *of Legitieme Portie*. If you want to give land and buildings, you must ask the PPAT. Later, the PPAT will ask if the house is the only property he has. If so, then the house cannot be given away because it definitely *Legitieme Portie*. Another possibility is if the heir has 3 immovable properties. Thus, the Land Tax will be visible and the property awarded should not exceed 1/3 of the value of land and buildings. The practice of relating to the Heirs' suit filed with the PPAT and or Notary against the granting of grants that reduce the absolute share of the heirs is very rare or can be said to be a rare case in court. however, to avoid problems with notaries or PPAT always look at the approval letter of the heirs in issuing deeds related to the granting of grants.

The conclusion of the practice encountered in the Notary Office and PPAT regarding the granting of Grants using the Approval of heir inheritance is that in practice the questions that arise are related to cases related to grants, but for grant problems, it is very rare that even most notaries have never experienced it. This is because in the division made before the notary always uses a letter of consent to make a grant and the Minority In the grant there is no need to return the property granted this can happen, and in the grant deed usually by the notaries is included the provision that the property granted does not need to be returned into the estate and if there is no such word can be returned, This can happen because this is the right of the heir left by the heir.

4.2. Best Practice: Practices related to grantmaking and Inheritance Sharing in the Netherlands

Best Practice has the meaning of describing the experience of outsiders which in this paper is the implementation of arrangements in other countries in this implementation is a good example of solving the problems that are the object of discussion which in this case is related to the arrangements for the implementation of grants that require the approval of the heirs to protect the *Legitieme Portie* heirs.

The Netherlands is the country chosen by the author as Best Practice, this is considering that the Netherlands is a country that plays an important role in the formation of civil law in Indonesia, the hope is by comparing with developments in the country that has always been a Role Model in Indonesia, it will facilitate completion and adjustment in the preparation of regulatory models.

4.2.1. Implementation of Arrangements in the Netherlands

The following is the implementation of the grantor's requirements when making a grant deed for either his heirs and/or non-heirs. In the dutch country, the grant is called *Schenking*. Grants in the country have prerequisites if you want to make a grant deed. The grantor must meet prerequisites such as First, The grantor's data and the grantee's data that must be written on the grant agreement including the name, date of birth, address, zip code, and residence of the grantor. As well as the name, Burgerservicenummer, date of birth, address, zip code and residence of the grantee (Hemels, 2016).

Second, Proof of purchase from the grantor of the goods to be given, in addition to the Description of the goods to be donated such as a house, building, ship, or piece of land based on Article 7:182 Paragraph 1, Dutch Civil Code. Third, the Grantor makes an offer to the grantee regarding the goods to be given. This is done so that the goods received by the grantee do not conflict with it. Receipts from grantees must also be made in writing and displayed on the original grant document and signed by a notary under Article 6:217, Dutch Civil Code (Wessels, 1999).

The practice of a grantor when going to make a Deed of a grant on his property must include a letter of approval of the heirs for his or her actions in the DoeHetZelfNotary provides that for unusual or excessive grants, the grantor requires the consent of the heirs. And making the consent of the heirs requires a requirement, the requirement does not apply to grants that are fairly ordinary or not excessive (DeBoer & Hoang, 2017; Crowley, 1975).

Belanda regulates the mechanism for the enactment of Article 881 paragraph (2) of the Indonesia Civil Code which regulates "with such an appointment of heirs or grants, the one who bequeaths (and gives-ed) must not harm his heirs who are entitled to an absolute share". In the Section "*the grants that .... must not harm his heirs who are entitled to an absolute share*". The mechanism for implementing Article 881 paragraph 2 of the Indonesian Civil Code applied in the Netherlands is contained in Article 4: 67 of the Dutch Civil Code which applies the "Right to absolute parts" and reads "The legal part is calculated as fairly as possible. With a note: The determination of the right calculation, and also comes from the right portion. And The determination of an appropriate or legal claim in concreto (Sumner & Warendorf, 2003; Brown, et al., 2010; Page, 2003), is done because the grant can affect the share of the inheritance and the statutory part as per *Legitieme Portie* (Moechthar, et al., 2022).

The Netherlands provides that the practice of implementing a Grant by a Grantor without the consent of the heirs is in violation of the absolute right or *Legitieme Portie* of his heirs and is contrary to good morals which can result in the grantee with the grantor null and void under the Dutch Civil Code, Article 4: 4 Paragraph 2. The Dutch state in the practice of implementing a Grant by a Grantor without the consent of the heirs is a violation if the circumstances of the grant item are unusual or excessive. The Netherlands adheres to the principle of protection of heirs, as long as the heirs become part of the family for legal marriage (Berlee, 2017; Rønning, et al., 2017). Therefore the execution of the grant without the consent of the heirs violates absolute rights.

The practice is related to the lawsuit filed by the Heirs filed with the PPAT and or Notaries against the granting of grants that reduce the absolute share of the Heirs, in the Netherlands, Notaries who have duties and responsibilities will act in relation to the lawsuit such as investigating the background of the lawsuit, with the aim of examining more deeply whether the lawsuit filed regarding the grant that reduces the absolute share of the heirs is true, because of this act of investigation one of the obligations of the Notary. If the Notary has found a bright spot for the investigation, the Notary can provide a solution to the lawsuit filed by the heirs (Gallagher, at al., 2017; Wessels, 1996).

4.2.2. Comparison of Dutch and Indonesian Practices regarding Heir Approval of Grants

Based on the elaboration of the arrangements and the application of the arrangements of the Heirs in the Grant in Indonesia and Belanda then we describe in a more comprehensive comparative form, as follows:

Table 1. Comparison of Dutch and Indonesian Practices regarding Heir Approval of Grants

Differentiating Variables	Other countries	Indonesian
Grant terms	Submit to a Notary such as grantor data and Burgerservicenummer completed grantee data, proof of purchase from the grantor for the goods to be donated, description of the goods to be donated, making a form of an offer from the grantor to the grantee, requirements from the grantor to the grantor, willingness to pay the grant deed	The general requirements needed are KTP, Family Card, Marriage Certificate, property certificate to be donated, BPJS, and Tax Deed If a grant is issued from parent to child, it will not be subject to grant taxation. Whereas if the grant is given to a non-child, then the tax on the property granted will be imposed on both. Ahli heir, what must be completed is the death certificate of the heir, certificate of inheritance, ID card, and family card. Then there is the heir fatwa process which can be done before the grant or after the grant process. The beneficiary must have over the object if he is not the heir and must have the consent of the heirs concerned, the grant of land and buildings then must meet the *Legitieme Portie*. must have the consent of the beneficiary.
The practice of grantors in making grant deeds	For unusual or excessive grants, the grantor requires the consent of the heirs. And making the consent of the heirs requires a requirement, the requirement does not apply to grants that are fairly ordinary or not excessive.	There is no such thing as a Rule that requires that in the execution of the grant a letter of approval from the heirs. Just explaining that the granting of this grant must also not violate the absolute rights of the heirs or part of the inheritance based on the provisions of the Indonesia Civil Code Article 913 so that notaries and PPAT carry out their own interpretation by requesting a letter of approval from Heirs
Mechanism for the enactment of Article 881 paragraph 2	Article 4: 67 of the Dutch Civil Code applies the "Right to absolute part" and reads "The legitimate part is calculated as fairly as possible. With a note: - Determination of the right calculation, and also comes from the right portion (or the right part) - Determination of appropriate claims (*legal in concreto*).	*Legitieme Portie* or part of inheritance according to the Indonesian Civil Code is the part of the property that must be given to the heirs in a straight line according to Law. In granting inheritance by grant shall not exceed one-third of the inheritance or count the *Legitieme Portie* of any beneficiary of the inheritance which shall not exceed one-third of the inheritance. Thus it will not harm some parties which can lead to the prosecution of heirs.

The practice of implementing grants without the consent of the heirs	The Dutch state in the practice of implementing a Grant by a Grantor without the consent of the heirs is a violation if the circumstances of the grant item are unusual or excessive.	Granting without consent is a violation. The grant shall not be more than one-third of the absolute right or *Legitieme Portie*
The practice of lawsuits filed by heirs	The practice of lawsuits in the Netherlands is based on the duties and responsibilities of the notary, if there is a lawsuit from the heirs, the notary immediately finds out the background of the matter, so that if it has found a bright spot, the notary will give advice to the heirs.	Until now, related to the reduction of absolute rights of heirs is very rare or can be said to be a rare case in court, even from some who conduct research, some notary places many say that related to the reduction of heir rights is very important because a notary or PPAT always sees a letter of approval in issuing deeds related to the granting of grants.

In the Netherlands, the principle is that a letter of approval from the heirs will come out if the goods to be donated are expensive, unusual, or excessive. Meanwhile, in Indonesia, applying the principle that however the goods to be donated, large or small, will not be included with a letter of approval from the heirs. These two differences are very crucial because there are various perceptions of superiority that can be seen in other countries. In our opinion, the advantage that can be seen in the Dutch state is the application of the consent of heirs which is carried out momentarily as a gift of great value, unusual or Overdoing it can reduce administrative records. This can be an example for the Indonesian state because reducing administrative records, can minimize the costs incurred. So that if formulated on the regulatory model, it will be a good input and basis in building harmonization of grant arrangements and guarantees of protection of *Legitieme Portie* for heirs.

4.3. Indonesia's Regulation Model as A Harmonization of Arrangements and Implementation of Heirs' Approval on Asset Grants

Based on the mapping of problems based on the study of arrangements and applications, it can be seen that the origin of the problem is the existence of arrangements that are not harmonious with each other, causing multi-interpretation on its implementation so that it does not create legal certainty and has the potential to cause injustice. So that what is needed in pursuing a regulatory model that is an effort to harmonize regulations and legal protection mechanisms in the implementation of grants and inheritances needs to be studied legal theory to know the legal mind to be fulfilled, namely the Duchy of Law and Justice.

Legal Certainty Theory, Legal certainty is an important value in law enforcement that is to be achieved in addition to justice and expediency. According to Radbruch, these three values are basic values in law but have a *spannungsverhaltnis /* tension with each other. As an illustration, by applying legal certainty, the value of expediency and justice will be set aside. For legal certainty, the most important element is the existence of the law itself, not the question of how the law can meet the sense of justice in society or how the law can be useful in society. Legal certainty itself is understood as certainty (1) the existence of a definite rule of law about a matter, and (2) certainty of always carrying out a rule when the regulated thing occurs (the implementation of the regulation) (Humaira & Latumeten, 2022). Thus, when there is a legal event that has been regulated but is not treated the same or according to the rules that govern it, then legal certainty in the second understanding above does not occur (Van Meerbeeck, 2016).

Legal certainty when interpreted as limited to the existence of a definite regulation, means targeting legal validity. This theory teaches how and what are the conditions for a legal rule to be *legitimate* and valid (*valid*) in force, so that it can be applied to the community, if necessary by force, namely a legal rule that meets the following requirements Shah, (2007): (a) the rule of law must be formulated into various forms of formal rules, such as in the form of articles of the Law Basic, laws and various other forms of regulation, or at least in the form of customary customs; (b) such formal rules shall be lawfully made, for example, if in the form of legislation to be made by parliament together with the government; (c) by law, such rule of law cannot be overturned; (d) against such formal rules there are no other juridical defects. For example, it does not conflict with higher regulations; (e) the rule of law shall be applied by the law enforcement bodies, courts, police, and prosecutors; (f) the rule of law must be accepted and adhered to by the community; (g) the rule of law shall be in accordance with the soul of the nation concerned.

According to the theory of legal validity, a rule of law cannot be measured by moral rules or political rules. This means that the validity of a rule of law does not waver simply because it does not correspond to moral rules, political rules, or economic rules. A rule of law may follow moral, political, or economic rules, as long as the rule of law does not sacrifice basic norms in law. For example, an economic rule cannot be enforced in law if the economic rule is contrary to the principles of justice, legal certainty, public order, protection of basic rights, the principle of benefits, and others. Legal rules must meet the element of legitimacy (legitimacy theory), meaning that legal rules as rules that are made legitimately (legitimate agencies) that are impersonal. In the sense of a law made by a legitimate agency that

is impersonal, then the measure is no longer believing in a person because of his charisma, but the measure is that the law must be rational (Dyzenhaus, 2005).

According to Max Weber, a law can be said to be rational if it meets the formal rational conditions and the substantive rational (Kennedy, 2003). What is meant by formal rational law is that the law must be intellectually consistent, that is, consistent between factors such as the rule of law legal *rules*, legal *principles*, legal *standards,* and *legal concepts* (Fallon, 1997). What is meant by substantively rational law is the rule of law that corresponds to the changing ideologies and values in society. Even if there is a discrepancy between these factors, the discrepancy or deviation must have a rational reason and basis.

The Theory of Justice comes from the word fair, according to the Dictionary Indonesian fair is not arbitrary, impartial, not one-sided. Fair primarily means that decisions and actions are based on objective norms. Justice is basically a relative concept, everyone is not equal, and fair according to one is not necessarily fair to the other, when a person affirms that he is doing justice, it must necessarily be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from place to place, each scale is defined and fully determined by society according to the public order of that society. The theory of justice according to Arsitoteles proposed by Theo Huijbers is as follows: (a) Justice in the division of office and public property. Here apply geometric similarities. For example, if a Regent's position is twice as important as that of the Sub-District, then the Regent must get twice as much honor as the Sub-District Head. The equally important is given the same, and the not equally important is given the unequal given. (b) Fairness in buying and selling.

According to him, the price of goods depends on the position of the parties. This is now impossible to accept. (c) Justice is an arithmetic commonality in the private as well as the public. If a person steals, then he must be punished, regardless of the position of the person concerned. Now, if an official is found to have lawfully committed corruption, then the officer should be punished no matter that he is an official. (d) Justice in the field of legal interpretation. Since the Act is general in nature, not covering all concrete issues, the judge must interpret it as if he himself was involved in the concrete event (Harlow & Rawlings, 2006; Dyzenhaus, 2005).

According to Halliwell, S., & Aristotle, (1998) the judge must have a sense of what is appropriate. Roscoe Pound sees justice in the concrete outcomes it can provide to society. *Aristotle's poetics*. University of Chicago Press. He saw that the result should be the gratification of human needs as much as possible with the slightest sacrifice. Pound himself says, that he himself is pleased to see the growing recognition and gratification of human needs, demands, or desires through social control; the more widespread and effective the guarantee of social interests; An attempt to eliminate constant and increasingly effective waste and avoid clashes between people in the enjoyment of resources, in short, Social Engineering is increasingly effective (Wieringa, 2022).

Based on the theory above, it is known that law is very closely related to justice, there is even an opinion that law must be combined with justice, in order to truly mean it as a law because indeed the purpose of the law is to achieve a sense of justice in society. Justice can be realized when the Law has legal certainty so that each party will provide the same behavior and position in society. So that based on the theory of justice and legal certainty as legal ideals to be achieved in the regulatory model that embodies the harmonization of grant implementation arrangements that protect *Legitieme Portie* for heirs, the content of the regulatory model needs to pay attention to the following Friedmann, (1961):

The first relates to the Grant Terms Arrangement. It is stipulated that If a grant is given from parent to child, it will not be subject to grant taxation. Whereas if the grant is given to a non-child, then the tax on the property granted will be imposed on both. -For heirs, what must be completed is the heir's Death Certificate, heir statement, ID card, and Family Card. Furthermore, there is a fatwa process for heirs which can be carried out before the occurrence of the grant or after the grant process. and when the Grantee is not an heir shall have the consent of the heirs and heirs concerned, and satisfy the *Portie Legitieme*. So the Formulation of the Regulatory Model offered is to formulate a grant law act like a transactional where it does not become a one-way but 2-way agreement so that there is a stage for the grantor to provide a description of the goods to be given and an offer from the grantor to the grantee. The offer contains an explanation of the position of the grantor and the object of the grant and the requirements of the grantor to the receiving person. Grant Offers must be made by the grantor in good health. The grantor's position describes the family tree as the party that allows having the *Portie Legitieme* later when the grantor dies. The prerequisite in question should not contain related returns because it would remove the immediate nature of the grant, but only contain related mechanisms and commitments to maintain and commit to paying maintenance costs from the object of the grant.

The second is related to the granting practice of making grant deeds. It was originally stipulated that There is no rule governing that in the implementation of the grant a letter of approval from the heirs. It only explains that this grant must also not violate the absolute rights of the heirs or the share of inheritance based on the provisions of Article 913 of the Indonesian Civil Code so that Notaries and PPAT make their own representations by requesting the inclusion of a letter of approval from the heirs. The formulation of the Regulatory Model offered is to classify the grant based on the type of object and the value of the granted object to be as follows (a) The grant to a movable object whose value is equal and not more than the cost of living of the grantee; (b) Grants to movable objects whose value is more than the grantee's cost of living; (c) Grants of immovable objects of equal value and not more than the grantee's living expenses; (d) Grants against immovable objects whose value is more than the grantee's cost of living. The cost

of living in question is based on the annual capital income of the grantee or for example non-income, it can be based on the average capital received by the age range of the grantee. Based on this classification will be used as a basis for the necessary or not consent of the heirs. The Consent of the Heirs is required when the Grant is made against the Object of the Grant is a Movable Object whose value is more than the grantee's cost of living. All objects are immovable because it is for the purpose that the Grant made is not made with the value of the object which may exceed and violate the *Legitieme Portie* of the heirs. Model this arrangement will be obtained by creating a mechanism for determining the proper share and right of claim to the right of inheritance which is guaranteed because it will avoid claiming an excess property of the grantor so as to violate the *Legitieme Portie.*

Thirdly, The settlement of grant cases in violation of the *Legitieme Portie*, which originally provided that In the grant shall not exceed one-third of the inheritance or count the *Legitieme Portie* of any beneficiary of the inheritance which shall not exceed one-third of the inheritance. In excess of a grant or grant, either between the living, or by a will, to the detriment of the *Legitieme Portie's* share, it may be reduced at the time of the opening of the inheritance, but only at the request of the legitimists and their heirs or successors. The formulation of the Regulatory Model offered is based on the duties and responsibilities of the notary, if there is a lawsuit from the heirs, the notary immediately finds out the background of the matter, so that if it has found a bright spot, the notary will give advice to the heir. The recommendation of the n otaris must be submitted in writing and given to the parties, if this stage still has not been resolved then a lawsuit can be made by attaching the argument that the notary's recommendation has been implemented but cannot resolve the problem.

Based on this Regulatory Model, it must be contained in the updated regulation of the Civil Code because we can conclude that the provisions in the regulation can no longer provide legal certainty and justice for the community so that the hope is that with this regulatory model, it will better harmonize the application of the Grant and Inheritance Division, which better guarantees the absolute rights of heirs and avoids grantees from receiving lawsuits in the future by Heirs

5. Conclusion

The Regulatory Model offered to give priority to the Practice of the grantor in making the grant deed, which originally stipulated that There is no rule governing that in the implementation of the grant a letter of approval from the heirs. Just explaining that this grant must also not violate the absolute rights of the heirs or part of the inheritance based on the provisions of the Indonesian Civil Code Article 913 so that notaries and PPAT make their own representations by requesting the inclusion of a letter of approval from the heirs.

The formulation of the Regulatory Model offered is to classify the grant based on the type of object and the value of the granted object to be as follows (a) The grant to a movable object whose value is equal and not more than the cost of living of the grantee; (b) Grants to movable objects whose value is more than the grantee's cost of living; (c) Grants of immovable objects of equal value and not more than the grantee's living expenses; (d) Grants against immovable objects whose value is more than the grantee's cost of living. The cost of living in question is based on the annual capital income of the grantee or for example non-income, it can be based on the average capital received by the age range of the grantee.

Based on this Classification will be made the basis for the necessary or not consent of the heirs. The Consent of the Heirs is required when the Grant is made against the Object of the Grant is a Movable Object whose value is more than the grantee's cost of living All objects are immovable because it is for the purpose that the Grant made is not made with the value of the object which may exceed and violate the *Legitieme Portie* of the heirs. With this regulatory model will be obtained creating a mechanism for determining the right share and right of claim to guaranteed inheritance rights because it will avoid claiming an excess property of the grantor so as to violate *Legitieme Portie*

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