

## RINGKASAN

**SUNARTI**, Program Magister Kenotariatan, Fakultas Hukum, Universitas Jenderal Soedirman. Pembatalan Hibah Tanah Oleh Orang Tua Terhadap Anak Berdasarkan Hukum Positif Indonesia (Studi Putusan Mahkamah Agung Nomor 37/PK/Ag/2021. Komisi Pembimbing, Ketua : Prof. Tri Lisiani Prihatinah, S.H.,M.A.,Ph.D, Anggota : Dr.Sulistiyandari, S.H.,M.Hum.

Hibah adalah penyerahan langsung tanpa pemberian balasan. Kasus pembatalan hibah pada putusan PA Talu No.89/Pdt.G/2019 dan Putusan Kasasi No.115 K/Ag/2020 membatalkan hibah sebagian, pada putusan PTA No.46/Pdt.G/2019 dan Putusan PK No.37/Pk/Ag/2021 membatalkan hibah seluruhnya. Penelitian ini bertujuan untuk menganalisis pertimbangan hukum hakim dalam pembatalan hibah tanah oleh orang tua terhadap anak menurut hukum positif Indonesia dan menganalisis status bangunan di atas objek hibah dalam putusan pembatalan hibah nomor 37 Pk/Ag/2021.

Penelitian ini merupakan penelitian hukum normatif, dengan pendekatan perundang-undangan, konseptual, dan kasus. Sumber data yang digunakan ialah data sekunder. Pengumpulan data yang dilakukan melalui studi kepustakaan. Penyajian data dalam bentuk uraian-uraian yang tersusun secara sistematis. Metode analisis data normatif kualitatif.

Hasil penelitian menunjukkan bahwa: Pertama, pertimbangan hukum hakim pada Putusan PA Talu No.89/Pdt.G/2019 yang dikuatkan oleh Putusan Kasasi No.115 K/Ag/2020 yang mengabulkan sebagian, majelis hakim PA dan Kasasi mempunyai pertimbangan hukum Pasal 212 KHI dan Pasal 717 KHES. Pertimbangan hakim pada Putusan PTA No.49/Pdt.G/2019 yang dikuatkan oleh Putusan PK No.37 PK/Ag/2020 yang membatalkan hibah seluruhnya. Pertimbangan hukum majelis hakim PTA dan PK hanya berdasarkan Pasal 212 KHI. Majelis hakim PTA dan PK tidak mempertimbangkan bangunan di atas objek hibah. Kedua status bangunan dalam pembatalan hibah dalam putusan PK diatur dengan penerapan Asas Pemisahan Horisontal dan penerapan Asas Itikad Baik, dalam KUHPerdara dikenal perwalian secara sukarela, tergugat dalam perkara ini sebagai *Gestor* yang mewakili kepentingan Penggugat atas pengurusan tanah dan bangunan di atas tanah hibah, sehingga perwalian tersebut Penggugat yang diwakili kepentingannya wajib memberi ganti rugi terhadap biaya bangunan di atas tanah yang dibatalkan.

## *SUMMARY*

SUNARTI, Master of Kenotariatan Programme, Faculty of Law, Universitas Jenderal Soedirman. Cancellation of Land Grant by Parents to Children Based on Indonesian Positive Law (Study of Supreme Court Decision Number 37/PK/Ag/2021. Supervisory Commission, Chairperson: Prof. Tri Lisiani Prihatinah, S.H., M.A., Ph.D, Member: Dr Sulistyandari, S.H., M.Hum.

A grant is a direct handover without a reciprocal gift. The grant cancellation case in PA Talu Decision No.89/Pdt.G/2019 and Cassation Decision No.115 K/Ag/2020 cancelled the grant in part, in PTA Decision No.46/Pdt.G/2019 and PK Decision No.37/Pk/Ag/2021 cancelled the grant entirely. This research aims to analyse the legal considerations of judges in the cancellation of land grants by parents to children according to Indonesian positive law and analyse the status of buildings on grant objects in the decision to cancel grant number 37 Pk/Ag/2021. This research is a normative legal research, with statutory, conceptual, and case approaches. The data source used is secondary data. Data collection is done through literature study. Presentation of data in the form of descriptions arranged systematically. Qualitative normative data analysis method. PA Talu Decision No.89/Pdt.G/2019 which was upheld by Cassation Decision No.115 K/Ag/2020 which granted in part, the PA and Cassation judges had legal considerations of Article 212 KHI and Article 717 KHES. The consideration of judges in PTA Decision No.49/Pdt.G/2019 which was strengthened by PK Decision No.37 PK/Ag/2020 which cancelled the grant entirely. The legal considerations of the PTA and PK judges were only based on Article 212 KHI. The PTA and PK judges did not consider the building above the grant object. Second, the status of the building in the cancellation of the grant in the PK decision is regulated by the application of the Principle of Horizontal Separation and the application of the Principle of Good Faith, in the Civil Code known as voluntary guardianship, the defendant in this case as a Gestor who represents the interests of the Plaintiff for the management of land and buildings on the grant land, so that the guardianship of the Plaintiff whose interests are represented is obliged to compensate for the cost of the building on the cancelled land.