

## Hibah tanpa wajib inbreng yang melanggar legitieme portie ahli waris legitimaris lainnya: Analisis kasus putusan peninjauan kembali Nomor: 797 PK/PDT/2001)

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### Abstrak

#### <b>ABSTRAK</b><br>

Hibah adalah pemberian sebagian atau seluruh dari harta kekayaan seseorang kepada orang lain sewaktu masih hidup dengan cuma-cuma, dimana tidak dapat ditarik kembali. Seorang pemberi hibah/pewaris sebagai individu, mempunyai kebebasan untuk berbuat apa saja atas harta kekayaannya, tetapi pembentuk undang-undang membatasi kebebasan tersebut karena kebebasan tersebut dapat menimbulkan kerugian pada ahli warisnya. Pembatasan tersebut ialah legitieme portie. Pokok permasalahan yang akan dibahas dalam tesis ini adalah bagaimana pelaksanaan hibah yang membebaskan si penerima hibah atas kewajiban inbreng dalam hal melanggar bagian mutlak (legitieme portie) ahli waris legitimaris lainnya berdasarkan ketentuan Kitab Undang-Undang Hukum Perdata?; Apakah pembagian waris dalam putusan Peninjauan Kembali No: 797 PK/Pdt/2001 sudah sesuai dengan ketentuan Kitab Undang-Tindang Hukum Perdata? Metode penelitian yang digunakan adalah metode penelitian kepustakaan yang bersifat yuridis-normatif dan alat pengumpulan data dalam penelitian ini adalah studi dokumen. Dalam tesis ini., hibah dilakukan terhadap seluruh harta kekayaan Pewaris dan di dalam akta hibah ditegaskan penerima hibah dibebaskan dari kewajiban inbreng ke dalam harta peninggalan Pewaris. Akta hibah tersebut dibatalkan oleh Majelis Hakim Mahkamah Agung karena hibah tersebut melanggar legitieme portie ahli waris. Berdasarkan Pasal 1087 KUHPerdata, sekalipun di dalam akta hibah secara tegas menentukan bahwa yang menerima hibah tersebut dibebaskan dari kewajiban inbreng, tetapi jika sampai legitieme portie terlanggar maka penerima hibah wajib inbreng apa yang pernah dihibahkan kepadanya. Seharusnya hakim dalam memutuskan perkara ini, akta hibah tersebut tidak dibatalkan, melainkan para penggugat hanya berhak menuntut legitieme portie (Pasal 920 KUHPerdata). Dalam hal hibah tersebut melanggar legitieme portie, sebaiknya untuk memenuhi kekurangan tersebut dilakukan pemotongan/inkorting dari hibah semasa hidup pewaris. Hibah terhadap seluruh harta pasti melanggar legitieme portie apalagi hibah seluruh harta tanpa inbreng.

#### <hr><i><b>ABSTRAK</b></i><br>

A grant is defined as a handing over of someone's part or whole assets to other person when he/she was still alive, which cannot be returned. As an individual, the inheritor has freedom to do whatever he/she pleases with the wealth. However, the lawmaker has made some limitation on the freedom to avoid it brings harm to the heir. This limitation called as legitieme portie. The main problem to be addressed in this thesis is concerning on how the execution of the grant that free the grant receiver from inbreng (defined as the process the return first the amount of assets that was given to the receiver before the inheritor passed away to the total amount of the inherited assets to be then redistributed fairly among all the heirs) obligation, since it violates the legitieme portie of other legitimate heirs, based on the regulation mentioned in the Book of Civil Law. Furthermore, has the mechanism of inheritance as determined on the Decision to Review No. 797 PK/Pdt/2001 been in accordance with the regulation consisted within the BOOK of Civil Law? The method applied in this research is the juridical-normative literature study, while the data collecting method used is

document study. In this thesis, a grant was conducted on the whole assets of the inheritor, and within the grand certificate it was asserted that the receiver of the grand is freed from any inbreng obligation adressed to the asset. The grant certificate was cancelled by the Supreme Court's Board of Judges since the grant considered as violating the legitieme portie of other heirs. According to the Article 1087 Book of Civil Law, despite the grant certificate has clearly stated that the receiver of the grand is freed from any inbreng obligation, but in case it violates the legitieme portie the receiver however should still pay the inbreng of the amount of assets received. In this case, the judge was supposed not to immediately cancel the certificate, but in stead he supposed to give heirs right to sue for the legitieme portie (Article 920 Book of Civil Law). In case the grant violates the legitieme portie, it is suggested that to fulfill the lack, a cut/inkorting of the grant should be applied, during the life time of the heirs. The grant taking the whole amount of assets is definetely considered as violating the legitieme portie, and it is even further within the situation it doesn't conform to the inbreng obligation on the implementation.</i>