

Legal Implications To The Deviation of Grants Fund From Regional Government To Private In Justice Perspetive

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Abstract

Grants are gifts in the form of money, goods or services, from one party to another for free. These parties can be local governments, central government, regional companies, communities, and community organizations. By developing activities financed from regional government grants to the community, development, growth and regional economic development will be advanced and people's welfare will be better. Grant spending is budgeted in the APBD in accordance with the regional financial capacity after prioritizing the fulfillment of Mandatory Government Affairs and Optional Government Affairs spending. Grants in the regional financial concept are gifts that are not mandatory and are not carried out continuously. In practice, there are many questions about the legal implications of funds from the Regional Government to the private sector, namely whether grants received by the private sector are still local government money (public money) so that they are subject to state/regional financial management regulations and can become objects of audit by the Supreme Audit Agency, or it has been released from regional finance because it has become privately owned (private) money. This study aims to: 1) examine the position of grants in Islamic Law, Civil Code and Regional Finance Law (APBD); 2) analyze the legal implications of the deviation of grant funds from the Regional Government to the private sector; 3) identify the form of deviation and the appropriate model of legal settlement mechanism for the deviation of grant funds from the Regional Government to the private sector. The method used is a normative juridical approach, researching library materials or secondary data which includes primary, secondary and tertiary legal materials. Primary legal materials consist of statutory regulations and Court Decisions. Secondary legal materials in the form of literature, textbooks, legal journals, scientific essays that are directly related to the theme of this research. Tertiary legal materials in the form of legal dictionaries. The results of the study describe: 1) the position of a grant in Islamic law is defined as the giving of an object voluntarily and without compensation from someone to another living person to be owned, a grant in civil law is an agreement with which the donor in his lifetime, free of charge, simply and irrevocably, surrendering an object for the purposes of the recipient of the grant, while grants in regional finance are the provision of money/goods or services from the regional government to the government or other regional governments, regional companies, communities and community organizations, specifically the allocation has been determined, is not mandatory and is not binding, and is not continuously aimed at supporting the implementation of regional government affairs. The Grant process must be made into a Regional Grant Agreement signed by both parties; 2) legal implications for the deviation of grant funds originating from the APBD that have been given to private parties according to some legal experts that grants from local governments to other parties are budgeted from the APBD and their management is based on recording and accountability of state finances, so grant funds are public money because the funds are issued from the APBD, but after the grant funds issued from the APBD are received by the private party based on the agreement (NPHD), some legal experts argue that the position of the grant fund which is public money has been transformed into private money and the legal settlement is using private law; 3) the model mechanism for resolving cases of grants originating from the APBD to the private sector: a) the first model: settlement of deviations made in the budgeting process, then the settlement through the Corruption Court; b) the

second model: settlement of irregularities committed in the use of grant funds, namely through general criminal charges, civil lawsuits and or through administrative settlements. Recommendation: if the Government or Regional Government wants to deliver a grant to its people, then the mechanism is by going directly to the community and seeing firsthand the needs of the community and then directly delivering the gift in the form of the grant. It is better if the grant is in the form of goods and not money, in order to avoid irregularities.

Keywords: Grants, Regional Finance, Legal Implications.

I. INTRODUCTION

In realizing the goals of the state, the government as a state administrator must be supported by state finances as a source of financing, thus state finances are the heart of the implementation of development because state finances determine the fate of the nation in the present and in the future. State Finance is a very important institution because in addition to being closely related to state objectives, it is also related to the state treasury which must be managed properly for the administration of government and development. State finances are not managed properly, resulting in not achieving state goals, because the management of state finances is one of the keys to the success of development and government administration. In Article 23 Paragraph (5) of the 1945 Constitution, it has been stipulated that for the examination of responsibilities related to state finances, a Supreme Audit Agency is held where the regulations are stipulated by law. Law Number 15 of 2006 concerning the State Audit Board, regulates the duties and authorities of the State Audit Board, namely to conduct audits of the financial management and responsibility of the Central Government, Regional Governments, other State Institutions, Bank Indonesia, State-Owned Enterprises, Public Service Agencies, Business Entities Owned by the Region and other institutions or bodies that manage state finances.

The emergence of regional autonomy in the financial sector, local governments have the freedom to manage their own regional finances. Local governments can plan, implement and account for their own finances. Regional financial accountability requires two types of accountability, namely financial accountability and performance accountability. Financial accountability is regulated in the financial regulation package, performance accountability is regulated in the Government Agency Performance Accountability System (SAKIP).¹

Regional development cannot be carried out alone by regional apparatus, for this reason, community participation is needed in implementing regional development. Community empowerment in economic development is very much needed and is a form of private sector concern in participating in developing the Central and Regional economies. In realizing an increase in regional economic development, the regional government through grants empowers the community (community group-based, namely bodies, institutions, community organizations that are legal entities) to participate in developing the regional economy. The implementation of grants is intended to achieve state goals in realizing justice and people's welfare.

¹ Rosmery Elsy et al, *Fundamentals of Local Government Accrual Accounting*, (Bogor: Ghalia Indonesia, 2016) p.9-10

Grants are the most suitable form to be implemented in the development of programs managed by the private sector using funds from the APBN/APBD.² By developing activities financed from regional government grants to the community, the development, growth and development of the regional economy will be advanced and people's welfare will be better.

Grants are something that is already familiar in government. For a government, grants are one of the sources of the State Revenue and Expenditure Budget used to finance programs in their area. A grant is a gift in the form of money, goods or services, from one party to another for free. These parties can be local governments, central government, regional companies, communities, and community organizations.

The provision of grants by the Regional Government is regulated in Article 298 paragraph (4) and paragraph (5) of Law Number 23 of 2014 concerning Regional Government which has been recently amended by Law Number 9 of 2015. Grant expenditure is budgeted in the APBD in accordance with the regional financial capacity after prioritizing the fulfillment of expenditure on Mandatory Government Affairs and Preferred Government Affairs, unless otherwise stipulated in the provisions of the laws and regulations. Thus, the grant in the concept of regional finance is a gift that is not mandatory and is not carried out continuously. Giving grants in the form of money, problems that often arise include the distribution of grant funds that are not on target, activities financed from grant funds turn out to be fictitious, grantees do not make accountability reports and accountability is not accompanied by evidence.

With the implementation of the deviation of grant funds from the regional government to the private sector through legal settlement of corruption, it raises questions from some legal experts, whether the grant after being applied to state/regional finance has changed its legal formulation or has there been a deviation from the meaning and philosophy of the actual grant, namely as "a free gift without any reward and without getting a replacement".

The problem of the legal implications of the irregularities of the grant funds is still a debate that has not yet reached a common point, both among legal experts and law enforcers, namely the judges who decide cases, therefore it is very important to research related to the legal status, legal implications that arise and appropriate form of legal settlement.

From the results of observations in the community, there are two groups of legal experts who have different opinions regarding the status of grant funds and the legal implications for the deviation of grant funds from the Regional Government to the private sector, namely:

- The first group is of the opinion that the grant funds budgeted from the APBD are public money, and even though they have been received by the recipient of the grant (private party), their status remains as public money, and the legal settlement is through the Corruption Court on the grounds that irregularities in grant funds are qualified as having harmed country.
- The second group argues that the grant funds budgeted from the APBD which were originally public money but after being received by the recipient of the grant (private party) are transformed (a change occurs) into private money, the legal settlement is through private (civil) law.

² Quoted from the article "*Reconstruction of Grant Funding Arrangements*", State Finance Magazine Oct-Dec 2015 Edition, Jakarta, p.57

The existence of differences of opinion from these legal experts must certainly be a concern of the judges who examine and decide on cases regarding irregularities in grants from local governments to private parties, which are increasingly being rolled out in corruption courts based on charges based on Articles 2 and 3. Corruption Eradication Act. In this case, law enforcers must pay attention to the element of loss to the state.

The completion of the deposit of grant funds through the corruption court has caused unrest among the public. The community has become careful in receiving grants from the government/local government because they are afraid that they will be involved in criminal acts of corruption, and what is even more worrying, many people are starting to refuse grants because they do not want to be involved in corruption cases. This situation, if left unchecked, will seriously disrupt the economic development of the regional government, and therefore will also interfere with the implementation of the state's goal, namely the welfare of the people through grants from the government/regional government.

Some irregularities in grant funds from local governments to the private sector that have been examined and decided by the Corruption Court, including:

1. Deviation of grant funds from the Pohuwato Regency Government to the Regency General Election Commission. Pohuwato, Case Number: 2513 K/PID.SUS/2013, on behalf of the Defendant Salmon Hontong, Etc.;
2. Deviation of grant funds from the South Bangka Regional Government to the South Bangka KONI, Case Number: 22/Pid.Sus-TPK/2014/PN.Pgp Pangkal Pinang District Court, on behalf of the Defendant H. Selamat Bin Sahani;
3. Deviation of grant funds from the Bantul Regency Government to KONI Bantul, Case Number: 04/Pid.Sus-TPK/2015/PN.Yyk. Bantul District Court, Defendant Maryani (Director of PT. Aulia Mandiri);
4. Deviation of grant funds from the Bantul Regency Government to KONI Bantul, Case Number: 05/Pid.Sus-TPK/2015/PN.Yyk. Bantul District Court, on behalf of the Defendant Dahono (Bantul KONI Treasurer);
5. Deviation of grant funds from the Surabaya City Government for the 2016 Community Aspiration Network (Jasmas) program at the Surabaya District Court, on behalf of the defendants: Syaiful Aidy, Dini Rijanti and Ratih Retnowati (members of the Surabaya City Government DPRD);
6. Deviations from grants from the Tasikmalaya Regency Government for the 2017 fiscal year for 21 Religious Foundations/Institutions, at the Bandung District Court, on behalf of the defendants: Abdul Kodir (non-active Regional Secretary of Tasikmalaya Regency), Maman Jamaludin (Head of Welfare Unit of Regional Secretariat of Tasikmalaya Regency), Ade Ruswandi (DPKAD Secretary), Endin (Inspectorate of Tasikmalaya Regency), Alam Rahadin Muharam (PNS in the Welfare division of Tasikmalaya Regency), Eka Ariansyah (PNS of Welfare of Tasikmalaya Regency), Lia Sri Mulyani and Mulyana (civilians), and Setiawan (a farmer);
7. Deviation of grant funds from the City Government of Samarinda to the Resota Jaya Farmers Group, Case Number: 523 K/Pos.Sus/2020, on behalf of Defendant Bakkara as Chair of the Resota Jaya Farmers Group;
8. Deviation of grant funds from the Pacitan Regency Government to Multi-business Regional Companies, Case Number 64/Pid.Sus-TPK/2020/PN Sby on behalf of the defendant Agung Hariyadi, ST. as Director.

Of these decisions, most stated that the defendant was proven guilty, but there were also decisions which declared the defendant acquitted and even stated that the defendant was acquitted of the lawsuits presented in a dissenting opinion.

According to Arnold Ferry, in court practice there are inconsistencies and differences in interpretation in the legal considerations of judges (*juris*), the formulation of criminal acts (*materiele feit*), between the evidence that there has actually been a "crime" or a criminal act (*Strafbare Handlung*) committed. The defendant/maker (*feiten*) resulted in a loss to state finances, with a sentence of imprisonment and/or a light fine or a decision to waive all lawsuits (*Ontslog van alle rechtsvervolging*) because they were deemed not proven.³

From the cases of irregularities in grant funds that have been decided by the Corruption Court, the author has identified the forms of deviation, namely deviations in the budget process in the APBD and deviations in the use of grant funds after being received by the private sector. The author analyzes the form of deviation, so that it can find the right solution model for each type of deviation that exists. The analysis of the appropriate settlement model links legal settlement through aspects of criminal law, civil law or administrative settlement.

In this study, the author makes a comparison with Malaysia, where the majority of the population is Muslim (Muslim), to see how the grant is applied to the country. Malaysia is a federal state consisting of thirteen states (*states*). The system of government in Malaysia is modeled after the Westminster parliamentary system, a legacy of the British Colonial Rulers. In practice, however, power is more concentrated in the executive than in the legislature, and judicial power is shared between the federal and state governments.

To facilitate the study and analysis of the problem, the authors have identified the problem in the form of the formulation of the problem as follows:

1. What is the position of grants in Islamic Law, Civil Code and Regional Financial Law (APBD)?
2. What are the legal implications for the deviation of grant funds originating from the APBD that have been given to private parties (agencies, institutions, and community organizations)?
3. What is the correct form or model of the legal settlement mechanism for the deviation of grant funds from the APBD to private parties (agencies, institutions, and community organizations)?

II. LITERATURE REVIEW

To answering the problems in this study, the theoretical framework used as an analytical knife is the theory of public finance as the grand theory (basic theory), the theory of legal certainty as the middle theory and the legal theory of justice as the applied theory. Grand theory summarizes the main theory that connects all the variables in the study. Middle theory explains the theory that underlies one or several variables in research that are within the scope of grand theory – the relationship of propositions. The applied theory is to explain the relationship between concepts.⁴

³ Hernold Ferry Makawimbang, *State Financial Losses in Corruption Crimes, A Progressive Legal Approach*, (Yogyakarta: Thafa Media, 2014), p. 3

⁴ Shidarta, (February 2016), *Positioning Theoretical Basis in Legal Research*, accessed from <https://business-law.binus.ac.id/2016/02/13/pemosisian-landasan-teoretis-dalam-penelitian-Hukum/> on July 14, 2020 at 13.5

1. Public Finance Theory

Public finance is a science that studies the use or activities of funds by the government to fulfill payments for government expenditure activities. Public finance also describes the techniques used by the government to finance these expenditures and analyze public spending, therefore the term public finance is synonymous with the term state finance.

Sadu Wasistiono is of the opinion that public finance is finance that comes from the public, which is obtained based on the authority granted by the public and is used directly or indirectly for the public interest. Broadly speaking, public finance can be viewed from 2 sides, namely: 1) receipts or income; 2) use or shopping.⁵

Public finance essentially refers to two things, namely the financial sector which is used for the benefit of stakeholders within their power environment. Or finance aimed at the function of administering general administration and public services and public services. For developing countries, the existence of public finance is the same as public administration, is a necessity as stated by Irving Swerdlow, "the importance of adequate public administration for economic growth was quickly recognized and emphasized."⁶

In today's legal developments, public finance is not only meant for the function of the state to carry out and implement the wills and decisions of the government in real terms and carry out the laws set by the government in the financial sector, but also extends to regular and continuous activities serving the needs of and the public interest that creates and earns revenue. It is this definition of public finance that causes public finance to be interpreted as an architectural building consisting of state finances, regional finances, legal entity finances, and private legal subject finances, each of which has a different legal character (*rechtskartu*) and legal status (*rechtsstatues*), namely the more public it is, the wider the authority (*authority*, *gezag*) of the state, while the more private it will be, the smaller the authority of the state.⁷

According to Muhammad Djafar Saidi, state financial law is in the public legal order because its substance is focused on the interests of the state. Even though state financial law is in the public law order, it does not mean that it has no offense with laws that are grouped under private law.⁸

Utrecht's classification of public law and private law is related to legal actions, namely: a) acts according to private (civil) law and acts according to public law. The division is not absolute (absolute), state administration often enters into legal relations (*rechtshandeling*) with other legal subjects based on private law, for example leasing (Article 1548 of the Civil Code), buying and selling (Article 1547 of the Civil Code), or entering into work agreements. In carrying out these actions, the state administration can use private law in carrying out its duties, namely carrying out actions according to private law.⁹

⁵ Sadu Wasistiono, *Public Finance and Human Resources*, Journal of Public Administration, Year 1, Number 1, August 2002, ISSN 1412-7040 p. 106, accessed from <http://journal.unpar.ac.id/index.php/JAP/article/view/1509/1449> on September 6, 2020, at 20.45.

⁶ Dian Puji N. Simatupang, *The Paradox of Rationality of Expanding the Scope of State Finance and Its Implications for Government Financial Performance*. (Jakarta: FHUI Publishing agency, 2011, p. 214), Accessed from Hukumdunia.blogspot.co.id.2012/05/teori-Hukum-keuangan-public.html

⁷ Dian Puji N. Simatupang, *Op.Cit.*, p. 215.

⁸ Muhammad Djafar Saidi, *State Finance Law*, (Jakarta: Raja Grafindo Persada, 2014), p. 7

⁹ E Utrecht, *Introduction to Indonesian State Administrative Law, Print Ninth*, (Jakarta: Ichtiar Baru, 1990), p. 67

The difference between private law and public law, in traditional legal science, is used as the basis for legal systematization. According to Holland, who is followed by Willoughby, in its own field of law, namely in national law, the state as the subject of obligations and rights is always confronted by individuals. If there are individual actions that are the content of rights related to these obligations, the state will not be accused. This is a consequence of the fact that in a national legal system there is only one person who must be seen as the state. Therefore, if one subject in a legal relationship is the state, then the other legal subject cannot be the same state, the other subject must be an individual.¹⁰

2. Legal Certainty Theory

Law as a norm/rule has the main functions: guaranteeing legal certainty, guaranteeing social justice, and functioning as a protector. The function of legal certainty according to Bachsan is that in a statutory regulation it can be known the legal subject and object it regulates.¹¹

According to Van Apeldoorn, as quoted by Bachsan, legal certainty has two meanings, namely, first, the matter of being able to determine the law in concrete matters, parties seeking justice want to know what is the law in specific matters, before starting with case. Second, legal certainty means legal security, meaning protection for the parties against the arbitrariness of judges. It is obvious that between the two views there is an era relationship.¹²

Some groups argue that the grant arrangements in Law Number 23 of 2014 concerning Regional Government in Article 298, especially Paragraph 5, creates legal uncertainty so that local governments experience fear in applying it. This regulation is considered to impede and impede the rights of disadvantaged groups of people and small business actors to receive government assistance in the form of grants. The absence of technical implementation instructions from the law is considered to have created legal uncertainty.

In addition, the emergence of different interpretations by legal experts regarding public finance and private finance and the existence of state losses in the deviation of grant funds from the Regional Government to the private sector also indicate legal uncertainty. According to Shidarta, the lack of uniformity, confusion and misunderstanding regarding state finances and state losses have created legal uncertainty and ultimately hampered economic development.¹³ The scarcity of literature on state financial law results in an in-depth understanding of state financial law as a substance of public law.

There is an offense between state finances and private law, Muhammad Djafar Saidi assessed that this can occur when the legal object of state finance is in the form of state finances whose management is in state-owned enterprises or regionally-owned enterprises. In fact, it is undeniable that in the management of state finances it shows that state finances have an unequal position with the law which is subject to private law. However, state financial law always follows state financial arrangements that are under the management of a state-owned company or a regional business entity.¹⁴

¹⁰ *Ibid*, p. 202

¹¹ Bachsan Mustafa, *The Integrated Indonesian Legal System 2003 Edition*, (Bandung: Citra Aditya Bakti, 2013), p. 20

¹² *Ibid*, p. 21

¹³ *Ibid*

¹⁴ Muhammad Djafar Saidi, *Op.Cit.*, p. 8

There is ambiguity in the regulation regarding the scope of state finances and results in the emergence of conflicting interpretations between jurists regarding the status of state money managed by private institutions (private legal entities), which also creates uncertainty in legal settlements.

The occurrence of deviations in the settlement of grant funds through the Corruption Court, and the emergence of differences of opinion from the legal experts, of course, must be of concern to the judges who examine and decide cases regarding the irregularities of grant funds from the Regional Government to private parties, based on the charges on Article 2 and Article 3 Law on the Eradication of Criminal Acts of Corruption, in order to uphold the law so as to create legal certainty, justice and benefits for society.

As stipulated in Permendagri Number 32 of 2011, the provision of grants from the local government to the private sector is stated in an agreement known as the NPHD (Regional Grant Granting Manuscript). Peter Mahmud argued, in contract law there is a principle that agreements made in good faith are binding on the makers as is the law (Article 1338 of the Civil Code). If this is deviated by the court, it means that the court has deviated from something agreed upon by the parties, thus threatening legal certainty. Likewise, deviations from rules made by those authorized to make rules lead to legal uncertainty.¹⁵

3. Justice Theory

In passing decisions on cases of irregularities in grants from the regional government to the private sector, the function and role of the judge plays a very important role. The function and role of the judge in principle is to provide justice, therefore the law gives independence to judges when deciding cases.

The theory of justice according to Plato which states law as a means of justice, will be seen in the legal considerations of the Judge's Decision, whether the legal considerations are in accordance with the justice that society craves. As Plato taught that the human factor (apparatus) is very central in law besides other factors, legal rules (even quality ones) cannot run alone without humans running them. From the intellectual and integrity of the Judge through the considerations and the Judge's Decision, good rules will really benefit the community. Even according to Plato's teachings, in the hands of the wise executor, rules that are not of good quality and bad are not an obstacle to bringing about justice and benefit.

According to Holmes and Jerome Frank, a judge can make other decisions outside the rule scenario, which in terms of virtue is far more commendable than what is in the Judge's rules. Judges can make legal discoveries if the rules do not yet exist for a case or the rules already exist but are not clear. Courts or judges are quite an important element not only in discovering law but also in developing law.

Plato reminded us that the human factor (apparatus) is a very central issue in law in addition to other factors, such as adequate facilities, adequate funds, agency policies and so on. Rule of law (even quality ones) cannot run alone without humans running it. Good rules will really benefit if the human implementing it is also intellectually qualified and has integrity. Even in the hands of the wise executor, rules that are not of good quality and bad are not an obstacle to bringing about justice and benefit, and vice versa.¹⁶

John Rawls, viewing the principle of justice as fairness, begins with one of the most general choices that people can make together with the choice of the first principles of the concept of justice which governs further critique and reform of institutions. So after choosing a conception of justice, one can assume that they have chosen a constitution and laws to uphold the law and so on, all of which are in accordance with the previously agreed principles of justice. A social situation will be just if through a series of hypotheticals

¹⁵ Peter Mahmud Marzuki, *Op.Cit*, p.136

¹⁶ *Ibid*, p. 40

it is included in the system of general rules that define it.¹⁷ One form of justice as fairness is viewing the various parties in the initial situation as rational and equally neutral.

As the teachings of justice according to John Rawls, that social facts and dynamic changes in the times cause people's legal feelings to always change. Social phenomena are dynamic and always changing, but laws that are static will not be able to solve all the cases they face, so an appropriate interpretation is needed to be able to solve the legal problems they face and on the other hand can provide legal certainty as is the will of the law.

Judges in dealing with violations of the management of grants from the Regional Government to private parties are expected to be able to provide a decision based on essential justice, namely justice that is actually based on law or facts revealed in the trial.

Aristotle is of the view, because law becomes a human influence on rational moral values, it must be fair. Legal justice is synonymous with general justice. Justice is marked by a good relationship between one and another, not prioritizing oneself, but also not prioritizing other parties, as well as equality. According to Aristotle, without a good social-ethical inclination for citizens, there is no hope of achieving the highest justice in the country even though those who rule are wise people with quality laws.¹⁸

Parties directing the resolution of the problem of grant funds originating from the APBD to the private sector through the corruption article must first examine the legal status of grant funds from the APBD to the private sector, according to social ethics, whether they are still regional money and whether there are state losses, so that the settlement is through criminal acts. Is corruption the right and fair way?

As a rule of law, the independence of the judiciary is one of the essences of the principles of a rule of law, which principle is guaranteed in Article 24 of the 1945 Constitution paragraph (1). The importance of guaranteeing the independence of the judiciary is intended so that the judiciary in deciding a case submitted to it is impartial, not under pressure, and cannot be influenced, except for truth and justice. If the judiciary can be influenced and become not independent, it will become a serious threat to the State and the upholding of a rule of law.¹⁹

III. METHODOLOGY

In this study, the author uses a normative juridical approach. In this approach, the research aims to identify the nature, values, teachings, and legal meaning of the data, facts, or documents on the problem under study. This normative legal research is a procedure and way of scientific research to find the truth based on the scientific logic of law from a normative perspective.

IV. RESULTS AND DISCUSSION

1. Position of Grants in Islamic Law, Civil Code and Financial Law Country/Regional.
 - a. Grants in Islamic Law

¹⁷ John Rawls, *A Theory of Justice – Teori Keadilan*, Pustaka Pelajar, 2006, p. 14

¹⁸ *Ibid*, p. 42

¹⁹ Hamdan Zoelva, *The Threat of the Judicial Mafia Against the Existence of a Rule of Law*, Varitas e-Journal of the Postgraduate Program in Law, Islam University As Syafiiyah, Vol. 3 No. 2 of 2017, p. 17-18

Hibah is an Arabic word which means 'gift' (al-Atiyyah). From the point of view of language, a grant is a gift that is not preceded by a demand for rights, and in it (the thing that is given) there is a use for the person who is given it. Sayid Sabiq, as quoted by Siah Khosyi'ah, defines grants according to language as charity or giving something, whether in the form of wealth or otherwise, to other people.²⁰ Grant in terms of syarak is a contract that contains voluntary giving of property by someone to their property to someone else during their lifetime without recompense ('iwad). From a legal point of view, grants are a practice that is circumscribed and encouraged in Islam, especially to the closest relatives. This practice is based on the Al-Quran, Sunnah and Ijmak. The basis of grants according to Islam is the word of Allah SWT which encourages Muslims to do good to one another, love one another and so on. Islam recommends that its people love to give because giving is better than receiving. However, the gift must be sincere, there are no strings attached except to seek the pleasure of Allah SWT and to strengthen brotherhood, as in the word of Allah SWT Q.S Al-Maidah: 2 which means:

"Please help all of you for goodness and piety and don't help you for something sinful and enmity." (Q.S Al-Maidah: 2).

Furthermore, in the Word of Allah SWT in surah Al Baqarah: 117, which means:

"And give possessions that are loved by relatives, children of the poor, wayfarers (who need help), and people who ask."

And in the words of Rasulullah SAW:

"From Abi Hurairah from the Prophet Muhammad SAW said: give gifts to each other, surely you will love". (Narrated by Al-Bukhari)

From the verses from the Hadith above, it can be understood that Allah SWT and His Messenger encourage Muslims to like helping others, making infaq, alms and giving other gifts including grants. In the Islamic legal system, grants are regulated in the Compilation of Islamic Law (KHI) Article 171 g and Articles 210 to 214.

The definition of a grant is regulated in Article 171 letter g of the KHI, namely:

"Grant is the giving of an object voluntarily and without compensation from one person to another who is still alive to be owned".

And in the Sharia Economic Law Compilation (KHES) it is regulated in Article 675 number 4 and Article 692 to Article 374.

The definition of a grant is regulated in Article 675 number 4 of the KHES which reads as follows:

"Grant is the transfer of ownership of an item to another person without any reward."

b. Grants in the Civil Code (KUH Perdata)

Grants in the Civil Code are regulated in Article 1666 to Article 1693. In Article 1666 it has been emphasized that a grant is an agreement between the grantor and the recipient of the grant which contains surrendering something for the needs of the grantee for free and irrevocably. From the contents of this article, it requires that grants must be made in a (written) agreement. No grant is binding or

²⁰ Siah Khosyi'ah, *Endowments & Grants from the Perspective of Fiqh Scholars and Its Development in Indonesia*, (Bandung: Setia Pustaka, 2010), p. 239

results in anything before the grant is received with firm words by the grantee, this means that the grant will be valid if the grantee has received the grant.

In Black's Law Dictionary, "grant" (grants) is defined as "to give or confer (something), with or without compensation", so it is very clear that the philosophy of grants is giving, either with or without compensation.²¹ In the Indonesian Dictionary, grants are defined as "giving sincerely and transferring their rights to the recipient of the grant".²²

According to Rismahayani, a grant is a civil law act. Civil law itself contains legal rules that regulate the behavior of each person towards other people related to rights and obligations that arise in the association of society and family. Grants include unilateral agreements, where only one party has an obligation to this agreement, namely the grantor, while the party receiving the grant has absolutely no obligations. Grants include agreements "for free" (om niet) where the words "for free" are intended only for achievements from one party, while the other party does not have to provide counter-achievements in return. Such agreements are also called "unilateral" (unilateral) as opposed to "reciprocal" (bilateral) agreements. Everyone may give and receive grants, except those who are declared unable to do so by law.²³

c. Grants in State/Local Finance Law

The legal basis for grants used in government financial practices basically refers to existing regulations in Islamic law and the Indonesian Civil Code (KUH Perdata). On the basis of the contents of the provisions in the Civil Code, the Government and/or Regional Government adopts into regulations relating to State/Regional Finance and Management of State/Regional Finances. Furthermore, regulations in the form of guidelines for managing grant funds were also issued by the Minister of Home Affairs.

These regulations have regulated the definition of grants and grant arrangements, namely:

- 1) Government Regulation (Number 6 of 2006 concerning Management of State/Regional Property as amended by Government Regulation Number 38 of 2008 concerning Amendment to Government Regulation Number 6 of 2006 concerning Management of State/Regional Property and has been replaced by Government Regulation Number 27 of 2014 concerning Management of State/Regional Property as amended by Government Regulation of the Republic of Indonesia Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property:

"Grants are transfers of ownership of goods from the central government to regional governments, from regional governments to central governments, between regional governments, or from central government/regional governments to other parties, without receiving reimbursement."

- 2) Regulation of the Minister of Finance No. 168/PMK.07/2008 concerning Regional Grants in Article 1 point 10:

"Grants are voluntary gifts with the transfer of rights to something"

²¹ Bryan A. Garner, *Black's Law Dictionary, Eighth Edition*,

²² Indrawan WS, *Kamus Lengkap Bahasa Indonesia*, (Jombang, Lintas Media)

²³ Rismahayani, *Legal Analysis of Giving Grants from the Government of Kuantan Singingi Regency for the Development of Private Universities*, Journal of Law Respublica, Vol. 16, No. 1 of 2016 : 135 – 149

- 3) Regulation of the Minister of Home Affairs Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the Regional Revenue and Expenditure Budget as last amended by Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 99 of 2019 concerning the Fifth Amendment to the Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the Regional Revenue and Expenditure Budget:

"Grants are the provision of money/goods or services from the regional government to the central government or other regional governments, State-Owned Enterprises/Regional-Owned Enterprises, Agencies, Institutions and community organizations with Indonesian legal entities, which have specifically been assigned an allocation, are non-mandatory and non-binding, and not continuously aimed at supporting the implementation of regional government affairs."

One of the purposes of granting grants as stipulated in Article 4 Paragraph (4) of Permendagri 32 of 2011 as amended several times recently by Permendagri Number 99 of 2019 is to provide value for benefits to local governments in supporting the implementation of government, development and community functions.

- The mechanism for granting grants sourced from the APBD includes:
 - a) Budgeting
 - b) Submission of Proposals
 - c) Grant Implementation and Administration
 - d) Reporting
 - e) Accountability

Local Government responsibilities for grants include:

- 1) proposals from prospective grant recipients to regional heads;
- 2) the decision of the regional head regarding the determination of the list of grant recipients;
- 3) NPHD;
- 4) the integrity pact of the grantee stating that the grant received will be used in accordance with the NPHD; and
- 5) proof of money transfer for grants in the form of money or proof of handover of goods/services for the provision of grants in the form of goods/services

The grantee's responsibilities include:

- 1) report on the use of grants;
- 2) a statement of responsibility stating that the grant received has been used as per NPHD; and
- 3) complete and valid proof of expenditure in accordance with the laws and regulations for recipient of the grant in the form of money or a copy of the proof of handover of goods/services for the recipient of the grant in the form of goods/services. The responsibility is conveyed to the regional head no later than the 10th of January of the following fiscal year.

2. Application of Grants in Malaysia

As a country whose population is Muslim, Malaysia applies grants given to regions or private communities. Giving in the form of a grant is a form of the Government's love for its people. Settlement of misappropriation of Employment/Grants in the State of Malaysia, is resolved in the criminal realm. A criminal act under the Malaysia Anti Corruption Act/Tipikor, and will be filed by the Attorney General. The solution is also seen from the way in which the fraud was carried out. It

can be under criminal breach of trust or under criminal acts of corruption, misuse of funds, depending on the modus operandi of the misappropriation.

3. Legal implications for irregularities in grants originating from the APBD that have been given to private parties according to some legal experts that grants from the Regional Government to other parties are budgeted from the APBD and their management is based on recording and accountability of State finances which constitutes public money, therefore the deviation resolved through the Corruption Court. Meanwhile, other legal experts are of the opinion that grants from the APBD were originally public money, but after the grants issued from the APBD were received by the private party based on the agreement (NPHD), several legal experts argued that the position of the grants which were public money had changed. transformed (turned) into private money and legal settlement using private law. From the opinions of the 2 (two) groups of legal experts, researchers have found a settlement model that is appropriate and fair, especially for the grant recipients (private sector).
4. The mechanism for solving cases of grant funds sourced from the APBD to the private sector is as follows:
 - a) First models:

Settlement of irregularities carried out in the budgeting process, then the settlement is through the Corruption Court. The subjects are Regional Heads, Regional Work Units (SKPD), Regional Government Budget Teams (TAPD) and Regional Government parties involved in the process of awarding grants;
 - b) Second model:

Settlement of deviations made in the use of grant funds (private parties), namely through general criminal charges, civil lawsuits and or through administrative settlements. The subjects are the private recipients of grants (Social Organizations, Cooperatives etc).

Of the 2 (two) models, the solution to the deviation of grant funds from the APBD to the private sector is as follows:

 - 1) Criminal settlement can be filed through two legal remedies:
 - Claims based on criminal acts of corruption for regional government officials or private parties who have had malicious intentions (*mens rea*) since submitting a grant proposal – fictitious activities;
 - Claims based on general criminal acts for grant recipients, grant funds are used not in accordance with NPHD. For example: existence of forgery of documents/letters.
 - 2) Settlement through civil law can be attempted by canceling the grant, suing the refund of the grant money or the remaining grant money through the District Court.
 - 3) Administrative settlement is carried out by completing evidence of accountability for the use of grant funds.

V. CONCLUSION

1. Position of Grants in Islamic Law, Civil Code and Financial Law Country/Regional
 - a. The position of grants in Islamic law

Grant in Islamic law is defined as giving an object voluntarily and without compensation from someone to another person who is still alive to own it.

- b. The position of grants in the Civil Code
A grant in civil law is an agreement by which the donor during his lifetime, freely and irrevocably, surrenders an object for the purposes of the recipient of the grant,
 - c. Position of grants in State/regional Finance
Grants in regional finance are the provision of money/goods or services from the regional government to the government or other regional governments, regional companies, communities and social organizations, which have specifically been designated, are non-mandatory and non-binding in nature, and are not continuously aimed at to support the implementation of local government affairs. Grants are recorded as a “regional expenditure” budget item and are classified as “operational expenditure”. In the grant process, a regional grant agreement document must be prepared signed by both parties.
2. Legal implications for irregularities in grant funds originating from the APBD that have been given to private parties according to some legal experts that grant funds from the Regional Government to other parties are budgeted from the APBD and their management is based on recording and accountability of State finances, so grant funds are public money because these funds issued from the APBD, but after the grant funds issued from the APBD were received by the private party based on the agreement (NPHD), some legal experts argue that the position of grant funds which are public money has been transformed (changed) into private money and the legal settlement uses law private.
 3. Mechanism for the settlement model for cases of grant funds sourced from the APBD to the private sector:
 - a. First models:
Settlement of irregularities carried out in the budgeting process, then the settlement is through the Corruption Court.
 - b. Second model:
Settlement of deviations made in the use of grant funds, namely through general criminal charges, civil lawsuits and or through administrative settlements (restorative justice).
The legal subjects who use grant funds are all private parties who receive grant funds from the local government.

ACKNOWLEDGEMENT

The authors would like to give sincere thanks for Universitas Islam As-Syafi'iyah for the opportunity and support for authors to finish this paper well.

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