

# Akibat Hukum Atas Ketidakabsahan Hibah Tanah Menurut Hukum Islam (Kajian Keabsahan Akad dan Sengketa Kepemilikan Tanah Berdasarkan Putusan Nomor 653/k/AG/2019 = Legal Consequences for the Invalidity of Land Grants According to Islamic Law (Study on the Validity of Grant Contracts and Land Ownership Disputes Based on Decision Number 653 K/AG/2019

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## Abstrak

Sengketa keabsahan hibah atas tanah harus memperhatikan hukum yang berlaku bagi para pihak maupun hukum atas obyek perkara dan pembuktian. Hal demikian namun tidak dipertimbangkan dengan cermat oleh Majelis Hakim pada tiap-tiap tahap peradilan agama dan pada tingkat kasasi gugatan atas sengketa hibah tanah dibatalkan dan perkara dinyatakan tidak dapat diterima namun tidak mempertimbangkan aspek materiil pada perkara *a quo*. Oleh karena itu permasalahan yang dikaji dalam penelitian ini adalah mengenai pertimbangan Majelis Hakim mengenai keabsahan hibah tanah yang melebihi satu pertiga harta pemberi hibah dan status kepemilikan harta hibah pada putusan *a quo*. Untuk menjawab permasalahan digunakan bentuk penelitian yuridis-normatif dengan pendekatan peraturan perundang-undangan dan putusan yang dianalisis secara kualitatif. Hasil penelitian menemukan bahwa pertimbangan Majelis Hakim adalah kurang tepat karena tidak cermat dalam melihat pembuktian Para Penggugat dan status harta hibah adalah tetap berada pada penerima hibah. Berdasarkan hal tersebut, PPAT hendaknya memastikan identitas lengkap penghadap terkait kewenangan dan keberlakuan hukum, serta memastikan bahwa hibah adalah tidak lebih dari 1/3 harta pemberi hibah yang mana para pihak dalam hibah juga dapat mengajukan perhitungan nilai harta pemberi hibah melalui bantuan profesional.

.....Disputes over the validity of grants on land must take into account the law that applies to the parties as well as the law on the object of the case and evidence. However, this matter was not carefully considered by the Panel of Judges at each stage of the religious court and at the cassation level the lawsuit over the land grant dispute was canceled and the case was declared unacceptable but did not consider the material aspects of the *a quo* case. Therefore, the problem studied in this research is regarding the consideration of the Panel of Judges regarding the validity of the land grant which exceeds one third of the grantor's property and the status of ownership of the grant property in the *a quo* decision. To answer the problems used a form of juridical-normative research with an approach to legislation and decisions that were analyzed qualitatively. The results of the study found that the consideration of the Panel of Judges was inaccurate because they were not careful in looking at the evidence of the Plaintiffs and the status of the grant assets remained with the recipient of the grant. Based on this, the PPAT should ensure the complete identity of the appearers regarding the authority and enforceability of the law, and ensure that the grant is no more than 1/3 of the assets of the grantor in which the parties to the grant can also apply for the calculation of the value of the grantor's assets through professional assistance.