

Urgensi dan Keabsahan Akta Pengikatan Hibah Berdasarkan Perspektif Hukum Islam = The Urgency and Validity of the Deed of Gift Agreement from the Perspective of Islamic Law

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Abstrak

Tulisan ini menganalisis mengenai keabsahan Akta Pengikatan Hibah berdasarkan perpektif hukum Islam dan dampak yang mungkin terjadi sebelum dibuatkan Akta Hibah oleh PPAT. Tulisan ini disusun dengan menggunakan metode doktrinal. Akta Pengikatan Hibah dibuat dihadapan Notaris ditujukan sebagai alat bukti perjanjian para pihak dalam melaksanakan hibah dikemudian hari. Saat ini, belum ada pengaturan mengenai Akta Pengikatan Hibah yang membuat ambiguitas dikalangan masyarakat. Akta Pengikatan Hibah Nomor 7 yang dibuat dihadapan Notaris di Kota Bandung terdapat beberapa kejanggalan. Berdasarkan perspektif Hukum Islam, Akta Pengikatan Hibah dinilai melalui prinsip akad dan wa'ad. Akta Pengikatan Hibah berdasarkan prinsip akad dapat dipersamakan seperti Akta Hibah. Sedangkan, Akta Pengikatan Hibah berdasarkan prinsip wa'ad dipersamakan dengan Akta Pengikatan Hibah. Meskipun keabsahan penghibahan secara Hukum Islam belum dapat menjadi alat bukti pengalihan hak atas tanah berdasarkan yuridis di Indonesia. Dalam hal belum sempat dibuatkannya Akta Hibah, jika terdapat salah satu pihak meninggal dunia secara prinsip akad tidak membatalkan penghibahan. Namun, berdasarkan prinsip wa'ad, Akta Pengikatan Hibah dapat dijadikan bukti untuk melakukan mediasi kepada ahli waris penghibah. Apabila terjadi ingkar janji atau perizinan tidak bebas, pihak yang dirugikan dapat melakukan upaya penetapan pengadilan, meminta ganti rugi, atau pembayaran denda.

.....This writing analyzes the validity of the Deed of Gift Agreement from the perspective of Islamic law and the potential impacts that may arise before the creation of a Deed of Gift by a Land Deed Official (PPAT). The study employs a doctrinal method. The Deed of Gift Agreement, made before a Notary, serves as evidence of the agreement between the parties to carry out the gift in the future. Currently, there are no specific regulations regarding the Deed of Gift Agreement, which has created ambiguity among the public. Deed of Gift Agreement Number 7, drawn up before a Notary in Bandung, contains several irregularities. From the perspective of Islamic law, the Deed of Gift Agreement is assessed through the principles of akad (contract) and wa'ad (promise). Based on the akad principle, the Deed of Gift Agreement is comparable to a Deed of Gift. Meanwhile, based on the wa'ad principle, the Deed of Gift Agreement is considered equivalent to a promise of a gift. Although the validity of gifting under Islamic law does not yet serve as legal evidence for the transfer of land rights under Indonesian jurisdiction, it can still have implications. If a Deed of Gift has not yet been created and one of the parties passes away, the gifting process, under the akad principle, remains valid and is not annulled. However, under the wa'ad principle, the Deed of Gift Agreement can be used as evidence to mediate with the heirs of the donor. In cases of breach of promise or lack of free consent, the aggrieved party may pursue legal measures, such as a court ruling, compensation, or penalty payment.