

Transfer of Land Rights through a Grant Encumbered with a Mortgage Right from the Perspective of the Compilation of Islamic Law and Land Law

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ABSTRACT

This community service programme aims to enhance public legal awareness regarding the transfer of land rights through grants involving land encumbered with mortgage rights, viewed from the perspectives of the Compilation of Islamic Law and national land law. The activity was conducted at Al-Irsyadiyah Private Islamic Senior High School, Ciseeng, Bogor, West Java, responding to low land law literacy that often leads to disputes arising from grants executed without clear information on existing security rights. The methods employed included a preliminary survey, legal lectures, interactive discussions, and participant evaluation. The materials covered legal procedures for land grants under Indonesian law, the legal consequences of mortgage rights, and grant regulations under the Compilation of Islamic Law. The results demonstrate improved participant understanding of legal certainty, transparency, and prudence in land grant transactions. This programme is expected to strengthen legal awareness, prevent land disputes, and support sustainable social harmony grounded in legal and religious values within the local community.

Keywords:

Compilation of Islamic Law; land grant; land law; mortgage right; legal awareness

1. INTRODUCTION

The community surrounding Al-Irsyadiyah Private Islamic Senior High School (MAS Al-Irsyadiyah) in Ciseeng, Bogor, West Java, is characterised by strong socio-religious values, where kinship, trust, and social solidarity form the primary foundations of social relations, including in the management and transfer of land rights. Land is not merely perceived as an economic asset, but also as a symbol of family continuity and a means of social benevolence through grants. However, these strong social relations are often not accompanied by adequate understanding of land law, particularly concerning land grants involving land encumbered with mortgage rights, which may give rise to legal and social conflicts (Harsono, 2008).

The practice of granting land without verifying its legal status is still commonly found in the community. In many cases, land granted to another party remains subject to mortgage rights securing outstanding debts. When creditors demand repayment or execute the collateral, the grant recipient often feels disadvantaged, assuming that ownership has been transferred free of encumbrances. This situation reflects a gap between public perception and applicable legal norms, while also indicating the low level of agrarian law literacy at the grassroots level (Sutedi, 2019).

From the perspective of national land law, Law Number 4 of 1996 on Mortgage Rights stipulates that mortgage rights constitute a proprietary security right characterised by the principle of *droit de suite*, meaning that the encumbrance follows the land regardless of changes in ownership (Indonesia, 1996). Article 16 paragraph (1) of the Mortgage Rights Law provides that if the secured receivable is transferred for any reason, the mortgage right shall automatically transfer by operation of law. Accordingly, while grants over land encumbered with mortgage rights are legally permissible, the recipient must bear the legal consequences attached to the land (Satrio, 2017).

Furthermore, Government Regulation Number 24 of 1997 on Land Registration requires that every transfer of land rights, including grants, be evidenced by a deed drawn up by a Land Deed Official and registered at the land office in order to ensure legal certainty and protection (Indonesia, 1997). Failure to comply with proper registration procedures frequently constitutes a primary source of land disputes, due to uncertainty regarding ownership status and attached legal encumbrances (Santoso, 2020).

From the perspective of Islamic law, grants are regarded as *tabarru'* transactions that carry social and religious value. The Compilation of Islamic Law regulates grants in Articles 210 to 214, emphasising legal capacity, mutual consent of the grantor and grantee, and clarity of the object granted (Departemen Agama RI, 1999). Nevertheless, both the Compilation of Islamic Law and Islamic jurisprudence affirm the principle that a valid grant may only be made over property that is fully owned and free from third-party rights (*la hibah illa fima yamlik*). Consequently, a grant over land still encumbered with mortgage rights is normatively considered imperfect unless the attached debt is resolved or transparently disclosed (Dayo, 2019).

To date, efforts to address land grant disputes at the community level have generally been partial and reactive, such as individual consultations with religious leaders or village officials, without structured and sustainable legal education programmes. Numerous studies indicate that preventive approaches through legal literacy and community empowerment are more effective in preventing agrarian disputes than repressive litigation-based mechanisms (Nurjaya, 2021).

Based on these conditions, this community service activity aims to enhance public understanding and legal awareness regarding the transfer of land rights through grants involving land encumbered with mortgage rights, by integrating the perspectives of national land law and the Compilation of Islamic Law. The target beneficiaries include the academic community and residents surrounding MAS Al-Irsyadiyah, who are expected to act as agents of legal literacy within their social environment. Community participation is realised through active involvement in preliminary surveys, lectures, interactive discussions, and programme evaluation, fostering two-way, contextual, and practical engagement (Santoso, 2020). This approach is expected to prevent disputes, strengthen legal certainty, and preserve social harmony within the community.

2. METHOD

The initial stage of the Community Service Programme (PKM) was conducted through a field survey at MAS Al-Irsyadiyah Educational Institution, Ciseeng, Bogor, West Java. The survey aimed to identify the level of legal understanding among the academic community and students regarding land law issues, particularly land grants encumbered by mortgage rights. The findings revealed that most participants were unable to distinguish between land with a clear legal status and land still burdened by security rights. This lack of understanding potentially creates legal vulnerability, especially in the transfer of land rights through grants, sale, or inheritance (Harsono, 2018; Sutedi, 2020). Therefore, the PKM activities focused on strengthening legal awareness concerning land grants subject to mortgage rights.

The next stage involved lectures and legal counselling sessions. The PKM team delivered materials on the legal basis of land rights transfer, the concept and function of mortgage rights, and the mechanism of land grants under both Indonesian positive law and Islamic law. The materials included an explanation of mortgage rights within the agrarian law system, procedures for land grants under statutory law, Islamic legal perspectives as regulated in the Compilation of Islamic Law (KHI), legal risks arising from granting land still encumbered by mortgage rights, and alternative non-litigation dispute resolution mechanisms (Satrio, 2019; Ramulyo, 2017). The lecture method was chosen for its effectiveness in providing comprehensive theoretical and normative understanding.

To enhance participants' comprehension, the programme continued with interactive discussion and question-and-answer sessions. Participants were encouraged to raise questions, share experiences, and discuss real cases related to land grants still subject to mortgage rights. The PKM team provided explanations based on statutory regulations, including the Mortgage Law, the Civil

Code, and the Compilation of Islamic Law. This interactive approach enabled two-way communication and promoted critical legal understanding among participants (Soekanto, 2019).

Partner participation, namely from the academic community and students of MAS Al-Irsyadiyah, constituted a vital component of the PKM implementation. Participation was reflected in active attendance, engagement during discussions, and responses to the materials presented. Through such involvement, the programme functioned not merely as a one-way dissemination of information but as an interactive legal education forum. This approach is expected to increase legal awareness and caution in conducting land grants, particularly when the land remains encumbered by mortgage rights (Rahardjo, 2018).

The implementation of the PKM programme involved a clear division of roles among the team members. The team leader was responsible for planning and supervising the activities, team members assisted in delivering technical materials and facilitating discussions, while a resource person with expertise in Islamic law strengthened the syariah perspective, particularly concerning the legal position of grants under the KHI and their distinction from positive law. This division of responsibilities ensured that the programme was conducted systematically and effectively (Ali, 2020).

As the final stage, programme evaluation was carried out to assess the effectiveness of the PKM activities. Evaluation was conducted through verbal feedback and short questionnaires distributed to participants to measure their level of understanding after the programme. The evaluation results serve as a basis for improving and developing future PKM programmes to ensure greater relevance and sustainability (Arikunto, 2018).

3. RESULT AND DISCUSSION

3.1 Results

This section presents the factual outcomes of the community engagement programme conducted at MAS Al-Irsyadiyah, Ciseeng, Bogor, West Java. The results are derived from structured field surveys, direct observations, and participant evaluations administered before and after the programme. The presentation of results is descriptive and empirical, without theoretical interpretation, in accordance with standard community engagement reporting practices (Creswell, 2018).

3.1.1 Participants' level of understanding before and after the programme

The initial survey revealed that participants possessed limited legal knowledge concerning land grants (*hibah*), particularly when the land object was still encumbered by mortgage rights (*hak tanggungan*). Most participants were unable to distinguish between land that was legally "clean" and land that

remained subject to collateral obligations. This lack of understanding was evident in participants' responses, which often conflated moral legitimacy, religious permissibility, and legal validity.

Following the implementation of the programme, a substantial improvement in participants' legal comprehension was observed. Participants demonstrated a clearer understanding of land grants under Indonesian positive law, the position of *hibah* under the Compilation of Islamic Law (KHI), and the legal risks associated with granting mortgaged land. These improvements indicate that structured legal education delivered through community engagement activities can significantly enhance legal literacy among community members (Bringle & Hatcher, 2011).

Table 1. Participants' level of understanding before and after the programme

ASPECT OF UNDERSTANDING	BEFORE PKM (%)	AFTER PKM (%)
Understanding of land grants (<i>hibah</i>)	35	88
Understanding of grant procedures under positive law	30	85
Understanding of grants under the Compilation of Islamic Law (KHI)	40	90
Awareness of risks of mortgaged land grants	25	82
Awareness of the importance of land registration	38	92

The data in Table 1 show a consistent increase across all indicators, confirming that participants not only acquired new legal knowledge but were also able to differentiate between legal concepts that were previously misunderstood.

3.1.2 Changes in participants' legal attitudes

Beyond cognitive improvement, observable changes in participants' legal attitudes were identified after the programme. Prior to the intervention, participants tended to rely on informal practices and familial trust when conducting land grants. Legal verification and consultation with competent authorities were generally perceived as unnecessary.

After the programme, participants showed greater willingness to verify land certificates, seek creditor consent, consult Land Deed Officials (PPAT) and the National Land Agency (BPN), and ensure transparency in land grant transactions. These changes indicate a shift from informal legal culture towards a more preventive and compliance-oriented legal attitude, which is a key indicator of successful community empowerment programmes (UNDP, 2016).

Table 2. Changes in participants' legal attitudes after the programme

LEGAL ATTITUDE INDICATORS	BEFORE PKM	AFTER PKM
Willingness to verify land certificates	Low	High
Awareness of creditor consent	Very low	High
Readiness to consult PPAT/BPN	Low	High
Commitment to transparency in land grants	Moderate	Very high

3.2. Discussion

This section analyses and interprets the results by linking them to legal frameworks, community empowerment objectives, and broader social impacts.

3.2.1 Understanding land grants under positive law and Islamic law

The results indicate that the programme successfully repositioned land grants as formal legal acts rather than merely social, familial, or religious practices. Under Indonesian positive law, the transfer of land rights through grants must be executed by a deed before a Land Deed Official (PPAT) and registered at the Land Office to ensure legal certainty and third-party protection (Harsono, 2018; Sutedi, 2020). The significant post-programme increase in understanding reflects participants' growing awareness of these formal legal requirements.

From the perspective of Islamic law, the improved comprehension of *hibah* under the Compilation of Islamic Law (KHI) is equally significant. Articles 210–214 of the KHI require that the grantor possesses full ownership, legal capacity, and that the object of the grant is clearly identified and effectively delivered (Ramulyo, 2017). Participants' enhanced understanding demonstrates that integrating Islamic legal norms with positive law strengthens the legitimacy and acceptability of legal education within religious communities (Ali, 2020).

3.2.2 Legal risks of granting mortgaged land

The increased awareness regarding the risks of granting land encumbered by mortgage rights highlights the effectiveness of the programme's legal substance. Mortgage rights possess a *droit de suite* characteristic, meaning the security right remains attached to the land regardless of changes in ownership (Satrio, 2019). Consequently, a grant does not eliminate the creditor's preferential right to execute the land if the underlying obligation remains unpaid.

By correcting the misconception that grants automatically transfer “clean” ownership, the programme directly addresses a common source of land disputes. This understanding is essential for protecting grant recipients and maintaining legal certainty in land transactions (Harsono, 2018; Sutedi, 2020).

3.2.3 Community participation and empowerment impact

High levels of participation during discussions and question-and-answer sessions indicate strong community engagement. Participants actively shared personal experiences involving family land grants, enabling contextual learning and collective problem-solving. Such participatory interaction is a core principle of effective community empowerment, as it transforms passive recipients into active legal subjects (Ali, 2020).

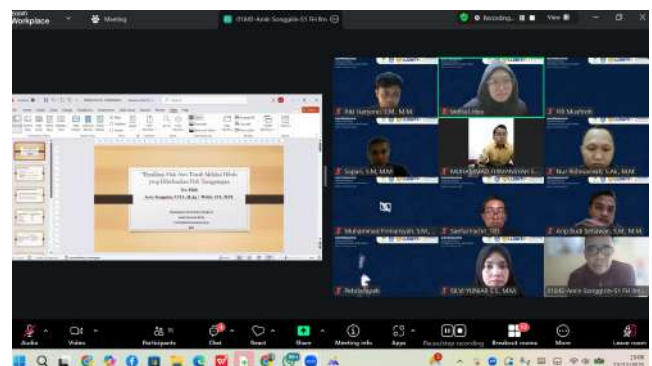
The adoption of preventive legal behaviour—such as verifying land status and consulting legal institutions—constitutes a form of social innovation within the community. Increased legal awareness fosters a legally conscious society capable of anticipating and preventing land disputes, which aligns with the broader objectives of legal empowerment and social justice (Soekanto, 2019; Rahardjo, 2018).

3.2.4 Significance of the programme

Overall, the programme demonstrates that integrating positive law and Islamic law perspectives is an effective strategy for enhancing legal literacy in communities characterised by strong religious and social bonds. The combined approach not only improves legal knowledge but also reshapes legal attitudes and practices.

The findings confirm that community-based legal education can contribute to legal certainty, dispute prevention, and social harmony in land-related matters. As such, this programme provides a replicable model for similar community engagement initiatives in other regions facing comparable legal literacy challenges.

3.2.5 Photos and figures



4. CONCLUSION

The community engagement programme conducted at MAS Al-Irsyadiyah, Ciseeng, Bogor, West Java, demonstrates that low levels of land law literacy—particularly regarding land grants involving mortgaged property—constitute a major source of potential agrarian disputes at the community level. Prior to the programme, land grants were largely perceived as social or religious practices, with limited awareness of their legal implications.

The systematic implementation of the programme through preliminary surveys, legal education sessions, participatory discussions, and evaluations proved effective in enhancing participants' understanding of land grants as formal legal acts. Participants gained clearer knowledge of grant procedures under Indonesian positive law, including the requirement for PPAT deeds and land registration, as well as the substantive requirements of *hibah* under the Compilation of Islamic Law (KHI), particularly full ownership and legal clarity of the granted object. The integration of these two legal perspectives strengthened both the credibility and acceptance of the programme within a religious community context.

Beyond cognitive improvement, the programme also produced significant changes in legal attitudes. Community members became more proactive in verifying land certificates, recognising the importance of creditor consent, and consulting competent legal authorities prior to granting land. These behavioural changes indicate the development of preventive legal awareness oriented towards legal certainty and dispute avoidance.

Overall, this programme confirms that community-based legal education integrating positive law and Islamic law perspectives is an effective approach to enhancing legal literacy, empowering communities, and maintaining social harmony. The model developed through this programme is replicable and may serve as a preventive strategy for managing land rights transfers in communities with similar social and religious characteristics.

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CONFLICT OF INTERESTS

The authors declare that there are no financial, commercial, legal, or professional relationships that could be construed as a potential conflict of interest in relation to this study. This study did not receive specific grants from funding agencies in the public sector, commercial, or non-profit sectors.

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