

Registration for Vesting of Hibah Properties at PTG Johor

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Abstract

The success for the land proprietor is when his vesting order for his land property which is done by way hibah is successfully accepted and registered in the Johor Land Office (PTG). Therefore, the objective of this research study is to discover the administration, conditions and guidelines for the registration of declaration of the vesting order by way of hibah in PTG Johor pursuant to the PTG Johor circular Bill 12/2019 Enforcement of Hibah Orders and The Levying of Transfer of Ownership Registration Fees based on Hibah Orders (“Pelaksanaan Perintah Hibah Dan Pengenaan Fee Pendaftaran Pindahmilik Berdasarkan Perintah Hibah”). The research data was obtained by using the library method by referring to law statutes, circulars related to the land administration, grounds of judgment and related case decisions. Primarily, the case which involved land law (NLC 1965). Whereas, structured and unstructured interview methods are also applicable in this research in view of gathering materials, informations and opinion relating to the research objective. The findings of this research implies that the application of the aforesaid PTG Johor Circular bill 12/2019 in navigating ways for the registration of the declaration of vesting order of land property by way of hibah in PTG Johor, is indeed perfect and dynamic. Regardless of such findings, the instrument endorsed in the PTG Johor Circular bill 12/2019 is the gist of the NLC 1965 per se. The step taken by PTG Johor in endorsing the application of the PTG Johor Circular bill 12/2019 is a great effort and a successful one.

Keyword: Hibah, Vesting Order, Circular, Registration Guide

Introduction

The application of circulars in government administration dealing is a normal practice, let alone the usage of circulars in the PTG Johor department itself (Ismail, 2022; Mohamadon, 2022; Tawil, 2022 & Abu, 2022(b)). The approach of using circular is not an isolated approach among administrators and land law practitioners. Conversely, it has assisted a lot in ensuring land administration dealings in Johor to run efficiently and smoothly. Besides that, it is easy to be implemented. PTG Johor has also practised the aforesaid order and standardized the

work dealings based on such circular order practice in their administration dealings as early as in the year 1855 Abdullah (2012) in the suitable form at those times.

Therefore, in all dealings relating to land registration in PTG Johor, there are various statutory instruments. Whether the registration of the transaction is dealing in nature or non dealing in nature, all can be applicable based on the type of land and type of transaction meant to. For the meaning of giving diversity in land registration dealing, the PTG Johor has implemented the PTG Johor Circular bill 12/2019 starting from 8th of November 2019. The circular known as ***"Enforcement of Hibah Orders and The Levying of Transfer of Ownership Registration Fees based on Hibah Orders"*** has been implemented with the purpose of providing guidelines to all land administrator in District Land Office (PTD) and PTG Johor besides standardizing the administration registration. Paragraph 1 of the circular explains the purpose of the circular application. "This circular provides as a guideline to all Land Administrators for the implementation of hibah orders and the levying of transfer of ownership registration fees based on hibah orders".

The application of the aforesaid PTG Johor Circular bill 12/2019 provides an alternative to the dealings of registration presentation vesting hibah (inter vivos atau altruism) land in all PTD offices or PTG Johor. Apart from that, there are also other type of registrations which provide the way for land transfer through application of section 215 NLC 1965 which is based on love and affection.

This research is conducted as effort to broaden knowledge of related to the registration of real estate grants in the state of Johor. This research aims to focus on the use of special circulars in PTG Johor Circular bill 12/2019. Lastly, this research is important due to the legal practitioners and property owners who want to implement grant registration.

Choosing The Instrument for Registration of Estate Land Ownership

In choosing the type of instrument for registration of vesting order or transfer of land property, it need to be done through proper and detailed planning. This is to ensure that the chosen instrument can give direct ownership to the land property, in accordance with the intention of the giver. Thus, it will give the best outcome according to the land proprietor's expectation. (Daud, 2015; Wan Hassin, 2015; Daud et al., 2017; Abd Wahab et al., 2017). Therefore, there are researchers which among them are Abdul Rashid & Ahmad (2013); Hasbullah & Daud (2015); Muhamad & Hussain (2014) whom proposed suggestion that hibah instrument to be an option in planning land property while alive (Kamarudin & Muhamad, 2017; Hasan, t.t) as there are various advantages and situations that will benefited both parties from chosing aforesaid instrument.

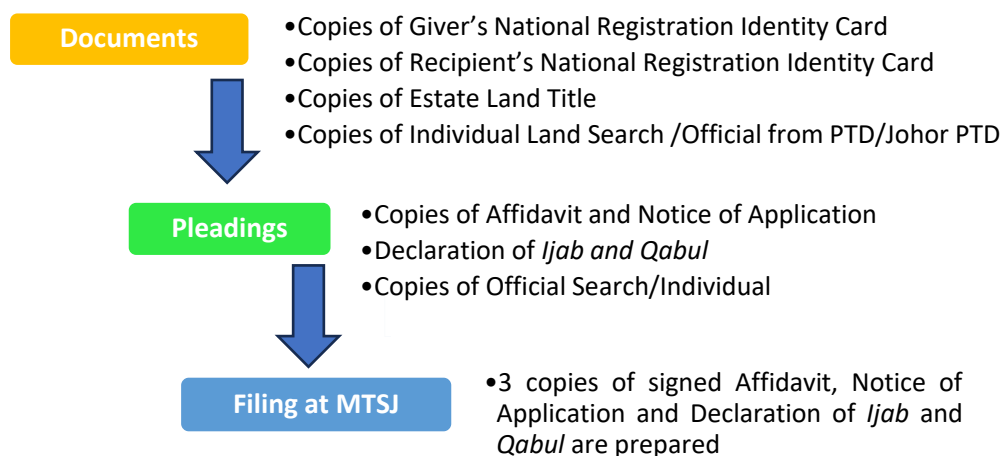
Meanwhile on the other hand, in the event where the ownership of the property is indefeasible, the said registered proprietor may use the instrument of transfer by enforcing through Form 14A (Kamarudin et al., 2018) and subject to section 214 NLC 1965 (Ismail, 2019). Section 215(1) NLC 1965 prescribes that in choosing the instrument for transfer of ownership, the proprietor of the land property can manage the transfer by himself at the land office without the involvement of lawyer or runner (JKPTG, 2021; Kamarudin et al., 2019; Yusof, 2019). The land proprietor can manage them directly at the land office as long as the ownership status is indefeasible and the ownership is undisputable. This act of transfer of

ownership does not required any order for presentation of vesting order estate land hibah from Mahkamah Tinggi Syariah Johor (MTSJ) or the order from Mahkamah Tinggi Awam. However, this registration depends on the condition set in the restrictions in interest or express condition prescribed in the land title (Kamarudin et al., 2019), other elements and matters need to be resolved first before it can be registered.

Other than that, the land proprietor also has the rights to give his land property to whomever without any limitation (Azhar et al., 2014) and unconditionally or without any grounds. Even if the land property was given with consideration from the recipient or otherwise. However, such act depends on the permission prescribed in the express condition of the gifted land property.

Other than the transfer of ownership instrument (section 215 NLC 1965), the instrument for hibah vesting order (section 420 NLC 1965) also has become the choice for land proprietors to re-vesting his land to whomever he wanted. Even though the vesting order by way of hibah and transfer of ownership may appear the same or similar, but instead vesting order by way of hibah have administration, methods, conditions and certain pillars that need to be complied with (Muhamad, 2011; Sulong, 2011; Said, 2014; Azalan, 2018; Shapiee & Serji, 2018; Azhar, 2018; Azhar et al., 2014). There is possibility that the declaration of the vesting order of land property by way of hibah becomes valid and can be affirmed and otherwise. Whereas, instrument for transfer of ownership does not depending on any pillars. Only some conditions were prescribed PTG Johor (2022) that need to complied with. Therefore, only the giver knew the reason and justification of his chosen type of instrument. Even though if the proprietor chose the hibah vesting order instrument that appears more complicated and vaguer compared to the transfer of ownership instrument, he needs to deal with many places and different individuals, albeit this is the main choice of most giver (Ibrahim, 2011; El-Muhammady, 2013; Kamarudin et al., 2017; Daud et al., 2017; Azhar, 2018; Adnan, 2019) because of the privileges and the benefits.

If the proprietor and the giver chose the declaration of vesting order of land property by way of hibah instrument, they need to prepare the hibah declaration documents in writing that fulfilled the pillars and conditions of hibah. The preparation of such documents is not subjected to any particular times, but it can even be prepared during the time that the giver still alive with indefeasibility of title, without considering when and where to do the registration either in PTD or Johor PTG. The aforesaid documents can be prepared by the proprietor himself or prepared through any party who provides such services with charges (as per agreed) (Abdul Hamid, 2023). There are many examples of hibah pleading documents that can serve as a guideline if the giver chose to prepare them by himself, including requesting such sample copies from the counter in Mahkamah Syariah (free of charge). After the pleading documents perfected and completed, the proprietor or the giver can register them in MTSJ, apply to go for trial and afterwards obtain the declaration of vesting order of land property by way of hibah.

Schedule 1: Documents To Obtain the Hibah Vesting Order for The Estate Land

Therefore, if the applicant chose to obtain the declaration of vesting order for the land property by way of hibah from MTSJ, hence the said vesting order itself will affirm the intention and wish of the proprietor to vest his land property to the chosen individual. After the declaration of vesting order for the land property by way of hibah has been obtained, the said order can be registered at PTD Office or PTG Johor for completion of the said vesting order, through payments of three types of registration cost (tax and fee).

However, the landscape of registration practice for the vesting order of land property by way of hibah in Johor is more directed and perfected when PTG Johor started to introduce and implemented the circular bill. 12/2019. This circular was implemented in 18th November 2019 in all PTD Offices and PTG Johor without exception. These circular aims to navigate and provides guidelines in managing and addressing the registration of the declaration of vesting order for the land property by way of hibah in the Johor State and this circular only applicable in Johor State. Therefore, it is certain that the registration dealing for such order by MTSJ is changeable in accordance with the application of this circular.

Since this declaration of vesting order for the land property by way of hibah has become the main option and at the same time the number of cases are increasing, including the application to register the declaration of vesting order for the land property by way of hibah which are registered in PTD or PTG Johor, hence such increment has certainly become an eye opener for the PTG Johor administrator regarding the necessity to have methods and special arrangement in managing the application of the registration of the declaration of vesting order for the land property by way of hibah in the Johor State in PTD or PTG Johor, besides of refining other issues arising from the application of the said circular (Mohamadon, 2022; Tawil, 2022).

Among other matters that are taken into consideration by PTG Johor in developing the said circular is the issue as regards to jurisdiction in determining hibah cases. This is as result of the position of hibah as a problematic issue throughout Syariah law as well as Civil Law and also involving some other government bodies. PTG Johor admitted that all dealings relating to hibah are under the jurisdiction (Ismail, 2017; Johari, 2019) of MTSJ (Mohamadon, 2022;

Abdullah, 2023 & Abu, 2022(a), 2022(b), 2023(a) & 2023(b)). However, due to the command action by MTSJ which has given the command to register the said declaration of vesting order for the land property by way of hibah, this registration is subjected under jurisdiction and discretion of PTG Johor definitively. However, at the same time, PTD Johor admitted that MTSJ has the jurisdiction to determine and for the declaration of vesting order for the land property by way of hibah, as provided under Seksyen 61 EPAIJ 2003. The said provision is read together with the provision 421A NLC 1965 which also empowers MTSJ in the issue of declaration of vesting order of land property by way of hibah.

61. (3) The Syariah High Court shall -
- (b) in its civil jurisdiction, hear and determine all actions and proceedings if all the parties to the actions or proceedings are Muslims and the actions or proceedings relate to -
- (v) wills or gifts made while in a state of *marad-al maut*;
 - (vi) gifts *inter vivos*, or settlements made without adequate consideration in money or money's worth by a Muslim;
 - (viii) division and inheritance of testate or intestate property;

The assertion of such provisions is referring to the court decided cases, which among others are as decided in the case of *Latifah bt Mat Zin v Rosmawati bte Sharibun and anor [2007]5 MLJ 101* and the case of *Kamsiah Yusof v Latifah Yusof and Ors [2009] LNS 3*. The decisions and judgement from these cases clearly explained the scope of jurisdiction of Syariah High Court (all over Malaysia) which have the jurisdiction to decide material cases related to hibah among muslims. Therefore, the PTG Johor Circular bill 12/2019 was built and developed in accordance with all the legal provisions which applicable in Johor State without leaving out, touching or denying the jurisdiction of MTSJ.

The Application of Circulars As The Source of Command on Johor Ptg

Circular letters are a form of commands from government departments for certain matters. Circulars can be defined as formal letters which are used to circulate anything related to certain matter for public knowledge. (or for further actions by certain parties). (Kamus Dewan, 2010) and the application of departmental circular which has no implication or legal effect (Johari, 2019). This means that, the application of the departmental circular served merely as guidelines towards the said department and not as legal sources which are invincible or undisputed. Hence, it can be seen from the assertion of these circulars application which emphasized on the uniformity of certain actions, navigating the implementations and etc.

This stance can be referred to two contradicting cases which among others were due to the existence of differing opinions in the applications of departmental circular. In the case of *Teh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional [2017]4 MLJ 521*, the appeal was allowed, as quoted and stated..."In allowing the appeal against the refusal of the High Court to grant leave, the earlier panel of this court decided among others that **the 2003 circular had a force of law as it was made pursuant to the PTPTN Act**; that the 2003 circular is thereby regarded as a subsidiary legislation binding on the parties and as such the decision made pursuant to the 2003 circular was amenable to judicial review." From the above decision, the court's stance is clear as the court indeed acknowledged the said circular with force of law as it contains the gist and contents from existing and applicable written law. But

on the contrary, there is also court's decision related to the status of certain departmental circular which is null and void on the grounds and for the reasons stated. This is referring to a Federal Court decided case, *Maria Chin Abdullah v Ketua Pengarah Imigresen* and *Anor [2021]1 MLJ 750* which has decided and determined that the said departmental circular (Imigresen) had no force of law. If certain circular is not in accordance with legal application, against the legal provision then it cannot be maintained and has no force of law. Quoting the decision of this case which clearly stated: -

“(23) (per Abdul Rahman Sebli FCJ, Majority) Section 3(2) of the Immigration Act clearly conferred on the first respondent a broad power over ‘all matters relating to immigration’. The fact that the respondents gave a wrong and invalid reason for imposing the travel ban on the appellant did not in any way alter the fact that in law they had no duty to provide reasons. Thus, even if the first respondent was wrong in relying on a **departmental circular which did not have any force of law** to impose the travel ban, that did not turn his decision into a wrongful act if otherwise the decision was permitted by law...”

The practice of application of such circular is widely used by most government departments. Even PTG Johor also practices delivery of directions, work management or uniformity of procedures at department level. Given the scope of the land matters are too broad and obscure, thus the usage of circular can assist and facilitate the work and navigating towards the implementation at all levels in the department. Starting from the year 1947, PTG Johor has been practicing the use of this circular letter as a medium of conveying instructions and explanations to the departmental policy including explaining the contents of the NLC 1965 provision (Tawil, 2022). Before the discussion of this subtitle goes further, it is befittingly to address the reason for the power of PTG Johor in the application of circular as a form of command. Section 12 NLC 1965 stated

State Director and other State Officers

- (3) The State Director shall—
- (a) be responsible to the State Authority for the due administration within the State of the provisions of this Act;
 - (b) act in accordance with any direction given to him by the State Authority;
 - (c) have all the powers conferred upon the Registrar and a Land Administrator by or under this Act;
 - (d) subject to the direction of the State Authority, exercise general control and supervision over the Registrar, and over all officers (other than Deputy Directors of Survey and Mapping and other Survey Officers) referred to in paragraph (1)(b).

Quoting the explanation by Mohamadon (2022) that “every circular developed by PTG Johor is in accordance with the requirements and usage of the provisions of section 12 NLC 1965. The said section states that the Director of PTG Johor can controls the land registrars whom were appointed under the same section. Therefore, the circulars that were made were of administrative in nature to navigate or to control the actions taken by the land registrars”. This explanation is in accordance with the reference to the decision of *Commerce International Merchant Bankers Bhd v Metroplex Holdings Sdn Bhd [2010]6 MLJ 385* which

touches on the necessity of a circular. The explanation referred to further explained that "(1) The registrar's circular serves to promote uniformity in the procedure...." Therefore, all of the land registrars shall not act arbitrarily of any work affair by dismissing any command or circular that has come into force.

Whereas in the case of *Unilever (M) Holdings Sdn Bhd v So Lai @ Soo Boon Lai and Anor [2015]4 MLJ 326* which affirms that: "4) Practice Note No. 1 of 1987 of the Industrial Court is an internal administrative circular intended as a guideline It has no force of law and cannot be construed as a statement with legal principle. The Practice Note cannot be regarded as a concept which establishes that it is carte blanche (absolute freedom of action)' The decision is also supported the action of PTG Johor for the use of circulars as a primary medium of its department. Furthermore, apart from the purpose of uniformity and management guidelines, the enforcement of the said circular developed by PTG Johor need to comply with the existing provisions and the content of NLC 1965 *per se*. The determination and affirmation in this regard can be referred to the *Commerce International Merchant Bankers Bhd v Metroplex Holdings Sdn Bhd [Supra]*, the same case as above [*supra*]. The presiding judge explained "[28]...More particularly should there be any requirements in the registrar's circular that contravene the National Land Code then of course the National Land Code would prevail".

Similarly, a regulation or circular should be rational and reasonable to practice according to the applicable law. This is referring to the decision in the case of *Laguna De Bay Sdn Bhd v Subang Jaya Municipal Council [2014]7 MLJ 545*. Whereas in the case of *Noorliyana Yasira be Mohd Noor v Minister of Education Malaysia and others [2007]5 MLJ 65* which the Court held: "[13] This Court held that the issue of delegation or circular are not admissible by the court" This proves that the Court has jurisdiction to review the transparency and admissibility of a circular enforced at any stage upon the application of any party who feels deprived. Other than that, the application of circular in an absolute sense is not yet perfect as long as it is not been challenged in court.

The existing records collection of PTG Johor circulars reflects the efforts to facilitate all parties. It also proves that the application of circulars at the level of the PTG Johor departments started since the year 1947. It has been a practice for almost 76 years. Although Abdullah (2012) stated that the use of circulars at the departmental level of PTG Johor started from the year 1855, this statement is merely a fact of repetition and assertion that reflects such practice of application of circular in PTG Johor is not an isolated practice. Therefore, the action of PTG Johor in implementing the approach and rules by introducing several types of land related documents including circulars and administrative directives Abdullah (2012) is an appropriate action.

The basis of application of circular relating to land is to illuminate and uniformity of work procedures. Whereas the existing statutory provisions in the NLC 1965 are general in nature. Besides that, PTG Johor also adopted those circulars issued by the office of the Director General of Lands and Mines Malaysia (LMM) as the main office that controls all real estate matters in Malaysia.

On the other hand, the PTG Johor Circular is specific for the uniformity of land management in the Johor State only. Hence, most circulars are in guided form, the implementation procedures or implementation of uniformity directions for the purpose of real estate related actions as specified in the circular (Johor PTG, 2022). The resulting circular is also intended to facilitate the land administrators to carry out their duties accurately and in accordance with the aspiration of the government and the intention of NLC 1965 (Tawil, 2022).

On 18 November 2019, the PTG Johor through the decision of the *Majlis Mesyuarat Kerajaan Negeri Johor* which held a meeting on 11 September 2019 has thereby agreed to enforce a specific circular regarding the registration of vesting order by way of hibah for land property at Johor State level. The application of the said circular involves all forms of transfer of ownership of land properties or vesting order by way of hibah for land property at Johor State issued by the MTSJ. The said circular only applies to the implementation of land property within the Johor State. The aforesaid circular namely Circular by the Office of the Director General of Lands and Mines Johor bill 12/2019 **"The execution of hibah orders and the charging of registration fee for transfer of ownership based on hibah orders (Perlaksanaan Perintah Hibah Dan Pengenaan Fee Pendaftaran Pindahmilik Berdasarkan Perintah Hibah)".** The execution of application of the said circular shall commence from the date of its issuance and shall be effective until further notice.

The PTG Johor is more interested in creating a specific circular for the vesting order or transfer of land property ownership through hibah, as opposed to other cases such as jointly acquired property in the form of land property. The PTG Johor has its own reasoning for enforcing the said circular, considering that PTG Johor is responsible for the registration of all land properties transactions in the Johor State (Mohamadon, 2022) and there is an increase in the number of registered cases in PTG or PTD Johor.

The Decision of Johor Government Meeting Council Strengthens The Ptg Johor Circular

Apart from the application of circulars as a form of direction and administrative uniformity, there is strength in the content of the said circular nil 12/2019 that was introduced. It is an initiative and the best approach gathered by the PTG Johor. This approach has made the decision of Johor Government Meeting Council relating to the circular as its main content. This further affects the validity of the circular and its legality.

In observation, the author finds that this circular bill 12/2019 was only made as a mean of delivering summaries of decisions (MMK). This is parallel to the views expressed by Hashim (2023) whom admitted that the circular containing the Johor MMK decision was more of legal in nature and valid. This is in accordance with suggestion made by (Mohamad, 2017):

"... The issue of jurisdiction has not been resolved. It cannot be resolved by the court either the Civil Court or the Shariah Court. This is because the Courts are not the Parliament. The Courts cannot enact law. That is the function of Parliament or the State Legislative Assembly".

In this writing, there are some conditions and criteria for the MMK decision that are provided in the circular which are refined further in order to reflect that it is a firm decision

made in establishing a policy or condition. Among others, the position of the said decision of MMK which delivered through a circular can be seen as affirmed by Judge Abdul Malik Ishak sitting in the Johor Bahru High Court. The judge in the case of ***MBF Property Services Sdn Bhd ["No: 2"] V Madihill Development Sdn Bhd [1997] MLJU 309***, affirmed that the decision of MMK is authoritative and has the final decision relating to natural resources and everything depends on the decision of MMK. This reflects that a decision by MMK is irrefutable and legal in nature. On the contrary, it is indeed a source of dependence for a government policy. Whereas, the grounds and decision issued by the Court of Appeal in the case of ***Pentadbiran Tanah Daerah Pontian and others v Ossons Ventures Sdn Bhd [2009] MLJU 565/ [2009]6 MLJ 182*** further explained that

“..... that the MMK decision 22.7.1998 is an agreement on the policy. The nature of the decision which is the agreement on the policy is very important to be emphasized.”

Besides that, reference is also made to the position expressed by the Court of Appeal in the case of ***Lembaga Kemajuan Johor Tenggara (Kejora) v Fajar Kenari Sdn Bhd and Anor [2017] MLJU 1113/ [2017]6 MLJ 454*** which stated that the State Authorities (MMK) jurisdictions in state land management includes of setting the conditions relating to land which in accordance with legal requirements. Thus, it is the jurisdiction of the State Authorities through MMK to set any kind of policy. In the case of ***Piagamam Maju Sdn Bhd v Pengarah Tanah Dan Galian Negeri Selangor and Anor dan permohonan yang lain [2012] MLJU 1126*** which has been an issue and brought the attention of the Court are:

"[5] The issue in all of these three applications is whether **the Selangor State Government has the power** to revoke the grant of ownership the lands..”

Besides that, every decision of the MMK is non-public and it is government classified secret. It is not surprising when there is an effort made by certain aggrieved parties to challenge the decision of MMK with various assumptions and presumptions. This situation can be referred to the case of ***Bukit Aneka Sdn Bhd v Wong Seng dan lain-lain [2023] MLJU 1569***. The Court, in making the decision, has touched upon the following, as quoted:

[24] Defendants have also challenged the Bill's Meeting Paper. 484/95 containing the PT Report and signed by PTG as biased and submitted to the MM in the interest of the Plaintiff

[38] Based on the Laws of the Constitution of the State of Perak Darul Ridzuan, MMK appointed under Article XVI which reads:

"XVI (1) His Majesty shall appoint one State Executive Council”

[39] Defendants' assertion that PTG is deemed or believed has deceived the MMK to make a decision on behalf of the plaintiff is absurd. MMK which is headed by the Chief Minister and 10 members of the State Council does not act on PTG's instructions. MMK has their own discretion to make any decisions for any Meeting Papers presented before them. The reality is PTG and PTD are indeed complying

with and implementing the decisions made in the MMK meetings. Therefore, the said statement that PTG has deceived MMK to make the decision on behalf of plaintiff has no basis and a frivolous assertion.

In *Ismail bin Abdullah v Cayman Development (Kedah) Sdn Bhd and Others (Enclosure 81) [2008] MLJU 747* also reveals the efforts of certain parties in challenging the MMK decision issued by the Kedah government. Quoting:

(5) The defendant also disputing and alleging that the decision made by the State Government Council is void ab initio and not binding upon Defendant as the decision made is not reasonable, it violates the principles of natural justice and contrary to the public interest.

5.3 There are probabilities of elements of likelihood of bias and/or suspicion of biasness in the MMK's decision because it also involves the interests of a member of the MMK.

5.4 MMK's decision was extraordinary, illegal and irrational in which the said decision is beyond the jurisdiction (*ultra vires*).

5.5 MMK's decision has failed to take into consideration the public interest in making their decisions and the implications."

The conclusion gathered from the above case findings shows that whatever decision made by MMK is final and does not require any justification or grounds for the finalization of MMK policy. Further in the case *Ismail Bin Abdullah v Tenaga Nasional Berhad [2010] MLJU 1616 [Supra]*, the presiding judge also emphasized "[57] We wish to add that the decisions of the MMK are State secrets and no reasons need be given... We categorically hold that because of the binding consensus of secrecy, **the MMK does not have to give reasons for its decisions.**"

It can be seen from references and court decisions on the efficacy of the decision of the MMK as a legal source conveyed through circulars. This can be summed up as indeed a very clear and suitable approach. At the Court level, the use of circulars which contained the decisions of MMK Meetings is valid and constitutional. Therefore, it should be adhered by all parties as per its provisions and effective date. In the matter discussed herewith, in reference to the specific circular no 12/2019, the most important content of this circular bill 12/2019 is the outcome of the meeting of MMK Johor Bill 1461/2019 stated in it. Therefore, the circular no 12/2019 act as a conveying tool for the outcome of the Johor MMK meeting only. The relationship between the two becomes stronger, when both of them have a role to play and can give a better effect when paired together.

The Application of Ptg Johor Circular 12/2019

For understanding the application and enforcement of the PTG Johor circular bill 12/2019 specifically which provides for the implementation of registration of vesting order of land property by way of hibah should be looked at specifically and more closely. The question arises, whether with the declaration vesting order by way of hibah obtained from MTSJ can

straightly be registered in PTG or PTD Johor? Are there any other conditions that still need to be met and passed in order for the vesting order by way of hibah to be enforced? Both of these questions are of the utmost importance to any party seeking to register vesting order by way of hibah for land property which they have acquired. Such hardly acquired order can be considered as worthless if it cannot be executed and registered. This matter became a highly polemical to every concerned party (Abdullah, 2023). In answering the above question, the main reference is definitely to the application of PTG Johor circular bill. 12/2019. This circular provides a clear and comprehensive answer to that question. This circular outline and establishes the conditions, procedures, administrations and guidelines that need to be followed for the purpose of enforcing the registration of the vesting order by way of hibah for land property in an orderly manner.

The circular bill 12/2019 was developed based on the command and agreement of Johor MMK meeting held on 11 September 2019. At that time, MMK Johor has taken into consideration of the summary of the previous Meeting, Bill 1461/2019 and agreed that a specific circular regarding the implementation of the vesting order by way of hibah MTSJ at the land office should be applicable (Osman, 2018).

Therefore, the bill 12/2019 PTG Johor was signed by the Director of PTG Johor, Dato' Haji Mohammed Ridha Bin Dato' Haji Abd Kadir on 8 November 2019 (Rujukan Fail PTG(D)15/8/1). This circular is considered different and special compared to the other circulars (Abu, 2022(a)) because it is specifically related to the execution of vesting order of land property by way of hibah. The circular specifically touches on the issues related to the jurisdiction of the MTSJ, namely the procedures and administrations of the registration of the vesting order of land property by way of hibah. This circular becomes the guidelines and explaining the procedures and administration to all land administrators related to the vesting order of land property by way of hibah and the procedures for charging the registration fee.

The act of enforcement of the Johor PTG circular bill 12/2019 has preceded the Johor Islamic Religious Council. This agency is literally the one responsible for ensuring that a specific hibah written law was developed (Moideen, 2023). The aforesaid law has not yet developed by the responsible authorities which is Johor Islamic Religious Council (JIRC) and it is still at planning stage. Therefore, PTG Johor as the land administrator, do not have any clear guidelines on how to manage the registration and this has given an effect to the vesting order of land property by way of hibah. This is the circumstances before the application of the Johor PTG circular Bill 12/2019, regarding of what they have to do when they acquired the vesting order of land property by way of hibah. Whether they have to straightly proceed with the registration as required by section 420 NLC 1965 which directed the exercise of jurisdiction under section 417 NLC 1965. Conversely to let the application sit without registering it or to reject the application. Subsequently, if it is rejected, there is probability that the applicant may file an appeal under Section 418 of NLC 1965 in the Civil High Court. This action will further be adding the work burden and they could be charged of a surplus if found to have erred and ignored the vesting order of land property by way of hibah (Abu, 2023(a)).

The act of PTG Johor of specifically introducing and enforcing circular for vesting order of land property by way of hibah in the Johor State (Johor PTG bil 12/2019) is a timely and appropriate action (Ismail, 2022). At a time when most of the PTD and PTG Johor themselves

received many applications for registration of the vesting order of land property by way of hibah, PTG Johor took a step forward by developing these written rules in administration form through the of PTG Johor circular bill 12/2019. The content of circular PTG Johor bill 12/2019 is more directed towards the procedures and administration after the vesting order of land property by way of hibah was issued by the MTSJ. Decently said that the PTG Johor circular bill 12/2019 is only a guideline and gives guidance on the process of registration of the order of declaration for the grant of property to be registered and does not touch the question before that. Accordingly, this PTG Johor circular bill 12/2019 serves only as a guideline and gives guidance on the process of registration of the registration of the vesting order of land property by way of hibah and does not touch on the question previously.

The author finds that the application of PTG Johor circular bill 12/2019 is not referred to during trial and in deciding of hibah case in MTSJ. (Abdul Rahman, 2023; Salikin, 2023, Bunaim, 2023) Among the factors is that the said circular is not applicable to the judges in MTSJ. Mohamadon (2022) on the other hand the priority and focus of trial at MTSJ was to refine the requirements relating to the pillars and conditions of hibah as prescribed by syarak (Abdul Rahman, 2023), as compared to the conditions stated in the PTG Johor circular bill 12/2019.

Based on eSyariah data statistic, it is recorded that hibah cases are decided by the MTSJ started from the year 2005 to July 2020. The total accumulated to 2,193 cases (eSyariah, 2021). Most of the orders were specifically related to the declaration of vesting order of land property by way of hibah and directed PTG Johor to implement and affect the registration under sections 420 and 417 of NLC 1965. As per practice of MTSJ until now, the provision of section 420 KTN 1965 clearly stated in the said order. Among the contents of the order as viewed in the *case bill. 01200-044-0371-2018* between **Baidah Binti Abdul Ghani V Azman Bin Mohd Arof. Nurul Salwani Azman and Zulhelmi Azman**, who named PTG as the party that should have implemented it, it was then decided that:

"Land and Mining Office and/or the District Land Administrator and/or the Land State Administrator and/or Small Estate Distribution District Office and/ or Amanah Raya Berhad and/ or all the relevant authorities with jurisdiction which are directed for the **vesting order of the whole properties** mentioned in the above paragraph."

Besides that, the application of this PTG Johor Circular bill 12/2019 reflects that PTG Johor has indeed been open about this matter compared to other state PTGs that have no specific rules yet. PTG Johor is ready to give way against the applications for registration of vesting order of land property by way of hibah in a more organized and systematic way. However, these registration efforts are mandatory in line with the existence and application of other relevant provisions in the NLC 1965 with the status of ownership of a property. This justifies that not all applications of vesting order of land property by way of hibah is eligible to be administered and can be affected under sections 420 and 417 of the NLC 1965.

The PTG Johor is of the view that the MTSJ has the authority to issue the declaration of vesting order of land property by way of hibah based on Item 1, List I of the Schedule The Ninth of the Federal Constitution, section 61 (3) (b) (ix) of the Islamic Religious Administration

(State of Johor) Act 2003 (Act 16 of 2003) and section 420 of The NLC 1965. However, on the contrary, the PTG Johor is of the view that the MTSJ only has the jurisdiction to make a declaration for vesting order of land property by way of hibah. On the contrary, the authority to do the declaration does not bind the Johor PTG to implement and give effect under section 420 of NLC 1965. The Johor PTG also takes the stand that the implementation and effect of the registration of the vesting order of land property by way of hibah is carried out under section 215 NLC 1965 by using form 14A. The registration of the vesting order of land property by way of hibah is not enforceable under section 420 NLC 1965 as per stated. PTG Johor has classified the vesting order of land property by way of hibah as one of the types of transactions under the NLC 1965, as stated in paragraph 2.3 of the circular 12/2019.

Hence, the vesting order of land property by way of hibah is ineligible to be registered under section 420 of NLC 1965. Therefore, with the application of the circular bill 12/2019, the problem of increasing number of the vesting order of land property by way of hibah as mentioned can be overcome and treated according to the right channels and uniformity of actions in accordance with the practices and regulations of the Johor PTG office, as the authority responsible for safeguarding the interests of land property in the State of Johor.

1. The contents of the Johor PTG Circular bill. 12/2019

The existence of PTG Johor circular bill 12/2019 is the same as other circulars introduced by PTG Johor. However, PTG Johor circular bill 12/2019 is described as unique and interesting. As it touches clearly on the issue of registration and the imposition of fees on the vesting order of land property by way of hibah from MTSJ. In addition, there are several other things that are clearly mentioned in the circular decision of PTG Johor bill 12/2019. This has directly changed the landscape of the practice of registration of the vesting order of land property by way of hibah that has been practiced in PTG Johor. Even so, there is no denying that no practice can guide the direction of registration of the vesting order of land property by way of hibah before the aforesaid PTG Johor Circular bill 12/2019 been enforced.

Referring to the circular title of PTG Johor bill. 12/2019 used, i.e. "**Enforcement of Hibah Orders and The Levying of Transfer of Ownership Registration Fees based on Hibah Orders**" reveals the existence of some major elements that are taken into account in it. It also reflects the existence of the application for registration of the vesting order of land property by way of hibah has affected the practice of land administration particularly in the State of Johor. Moreover, the number of applications for registration the vesting order of land property by way of hibah is increasing every year and it attracts the attention of all parties. In conclusion, there are two things which are the essence of the existence of the Johor PTG circular bill.12/2019 as referred to:

1. Charging of Registration Fee for Transfer of Ownership Based on Hibah Order
2. Procedures and requirements for the implementation of registration of Hibah Order from MTSJ.

In general, upon viewing the title used by PTG Johor of the PTG Johor circular bill 12/2019, it can be seen that both elements are important for the stands of PTG Johor. The first element is the criterion set out in NLC 1965 must be followed by each application for registration of the vesting order of land property by way of hibah. In addition, PTG Johor also

explained the importance of the proceeds to be paid to PTG Johor even though it is a gift based on love and affection with the status of hibah.

It was also discovered that the title of PTG Johor circular bill 12/2019 also touched directly on the scope of registration fee as revenue for Johor State. Even though the previous committee report did not touch on the issue of revenue or registration fee for the application for registration of vesting order of land property by way of hibah, nevertheless this circular has clearly provided for it. Paragraph 2.5 of the circular of bill no. 12/2019 states that:

"In the context of receiving government revenues, the implementation of the Hibah Order through vesting order of Section 420 NLC will affect the government's revenue as it does not involve the payment of stamp duty and registration of Transfer of Ownership are excluded by which the registration fee for registration of vesting order is as low as RM60.00 only compared to using 14A instrument which subjected to the payment of stamp duty at the Board of Inland Revenue and the registration fee at the Land Administration. The application for registration of a Hibah Order currently accepted as a Vesting Order by the Court with the current imposition of fee for one vesting order as follows:

ITEM	REGISTRATION FEE
The registration of vesting order by the Court	RM 60.00

Source: PTG Johor Circular bill. 12/2019

Paragraph 2.5 of the Circular further explained the main reason of this legislation. The government's stand is that the government revenues may be supplemented by the imposition of registration fee for the declaration of registration of the vesting order of land property by way of hibah through section 420 NLC 1965. Therefore, this matter became the main basis in the aforesaid PTG Johor circular bill No. 12/2019. On 11 November 2019, the MMK meeting came out with a decision, as stated in paragraph 3.9 of the circular which set out two types of fee payments to be paid during the registration of the declaration of registration of the vesting order of land property by way of hibah, as follows

"The imposition of the transfer of ownership registration fee based on the hibah order is calculated on the basis of the current land values as set out in the Johor Land Rules (Amendment) (No. 1) 2004 in the "Schedule 6 Table V of Office Fees" and the hibah order filing fee is set at the rate of RM60.00 only."

Pursuant to the above rules, each application for registration of a declaration of registration of the vesting order of land property by way of hibah, the applicants are required to pay three (3) types of fees to enable the application to be processed:

1. **Tax assessment duty stamped Ad Velorem** at the office of the Board of Internal Revenue (LHDN);
2. **Registration fees for transfers** of ownership based on grant orders are calculated based on current land values as set out in the Johor Land Rules (Amendment) (No. 1) 2004 in the "Schedule 6 Table V of the Office Fees", and
3. **Registration fee** for Hibah Order is set at the rate RM60.00 only

The three types of fees mentioned above must be paid by each applicant for the registration of the declaration of registration of the vesting order of land property by way of hibah. **Firstly**, the applicant has to pay the Ad Valorem assessment tax under the **First Schedule of Stamp Act 1949** at the office of the Board of Inland Revenue (LHDN). Duti Setem Ad Valorem is charged on the registration of the declaration of the vesting order of land property by way of hibah and not a transaction that took place at PTG Johor. Ad Valorem means 'depends on value' and a deed is defined as any written document and generally the stamp duty is levied on the legal deed, commercial and financial affairs (<https://www.hasil.gov.my/duti-setem/>). The parties subjected to the duty are the groups listed under Schedule 3 of the Stamp Act 1949. Whereas the tax rate charged is based on the rate set by the LHDN under the Stamp Act 1949 above.

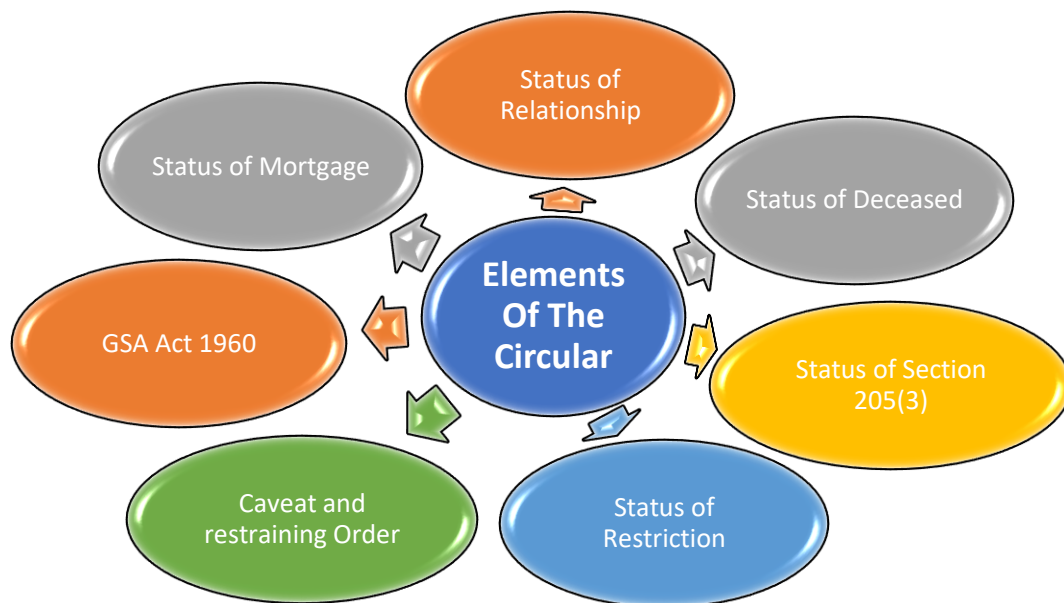
Secondly, the applicant in the act of registration of the declaration of the vesting order of land property by way of hibah is required to pay the transfer of ownership registration fee based on the hibah order calculated on the basis of the current land valuation as prescribed in the Johor Land Rules (Amendment) (No. 1) 2004 in the "Schedule 6 Table V Office Fees" which came into force on 1 January 2005. **Thirdly**, the applicant will also have to pay the RM60.00 which is the filing fee for the hibah as stipulated.

2 The Assertion Elements Of PTG Johor Circular Bill No. 12/2019

Even though the declaration of registration of the vesting order of land property by way of hibah issued by the MTSJ and the provisions of section 420 has been incorporated as a claim by naming PTD or PTG Johor for the purpose of its implementation, it is not yet eligible to be registered, executed or effected. On the other hand, PTD or PTG Johor will check and ensure that the conditions and elements stated in the PTG Johor circular bill 12/2019 are complied with, in accordance with the purpose and requirements of the application of the NLC 1965 provision.

In understanding the true intention of the Johor PTG Circular bill 12/2019, there are some of the things that need to be asserted. The issues and matters touched upon were a matter of growing concern and has become a priority for consideration in the existence of the Johor PTG Circular bill. 12/2019. These conditions and elements can be formulated as the intention of NLC 1965 KTN *per se*.

Chart 1- The Assertion Elements of the Circular



Source: Johor PTG Circular bil. 12/2019

There are seven elements that are clearly stated in the said Johor PTG Circular bill 12/2019. These elements are relation to PTG Johor's stance on the relationship between giver and recipient of hibah, the status of hibah gift involving deceased giver, PTG Johor's stance on the prohibition on the use of section 420 of NLC 1965 the declaration of vesting order of land property by way of hibah, issues related to the need to comply with the provisions of section 205 (3) NLC 1965, issues on the existence of a restriction of interest or a legal restriction on the ownership of the land property, the existence of a caveat or a prohibition order in the ownership of the land property gifted through hibah and the issues related to the existence of a mortgage linking to the impediment and interest to the land property gifted through hibah.

Chart 2 – Inter-relation Of Elements And Pillars of Hibah

GIVER	RECIPIENT	ASSET	SIGHAH
<ul style="list-style-type: none"> •1. Status of relationship •2. Status of deceased 	<ol style="list-style-type: none"> 1. Status of relationship 2. Status of Section 205(3) 	<ol style="list-style-type: none"> 1. Status of restriction 2. Caveat and restraining order 3. Akta GSA 1960 4. Status of mortgage 	<ul style="list-style-type: none"> • -

Source : Johor PTG Circular bil. 12/2019

Based on the chart 2 above, it shows that the seven elements are inter-related with the three pillars of hibah namely the giver, the recipient and the asset being given. Whereas no element can be associated with the pillar related to sighah. Thus, these seven elements are essential and if any of the stated elements are not complied with, then the application for registration of the declaration order for vesting order of land property by way of hibah cannot be registered. Therefore, it is necessary to understand and refine the use and application of each of the elements mentioned. Even though the provisions of section 420 of NLC 1965 were expressed by naming PTD or PTG Johor for the implementation of the vesting order of land property by way of hibah issued by MTSJ, it is not eligible yet to be registered or implemented. In contrary, PTD or PTG Johor will check and ensure that the conditions and elements stated in the circular of PTG Johor circular bill. 12/2019 are complied with and in accordance with the requirements of NLC 1965.

The status of these seven elements listed need to be verified first before the declaration of the vesting order of land property by way of hibah implemented. This also means that the application for declaration of the vesting order of land property by way of hibah is subject to the perfection of all the required elements, whereby the application for declaration of the vesting order of land property by way of hibah cannot proceed if any of the elements are not perfected.

Conclusion

Overall, the practice of application of PTG Johor Circular bill 12/2019 is a clear and comprehensive set of practices. It is indeed proactive in ensuring the application of declaration of the vesting order by way of hibah issued by the MTSJ can be registered as per wishes of the applicant. The PTG Johor Circular bill 12/2019 is also seen as not standing alone, instead it supports the decision of the Johor MMK meeting which makes it a legal circular which is difficult to be challenge. In fact, this construction structure is the intention of the Johor government through PTG Johor so that the PTG Johor circular bill 12/2019 is enforced and applied throughout PTD and PTG Johor. Even though this standardization directive is in the form of circular, its content can cover all the necessary requirements, as stipulated in the

NLC 1965. Therefore, the contents of the said PTG Johor circular bill 12/2019 are formulated from the parts of NLC 1965 contents *per se*, along with other requirements.

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