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Research Article

Legal Protection of Waqf Land That Is Not Registered at the Land Office

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Abstract. Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles "To ensure legal certainty by the government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by government regulations". In fact, there are still many waqf lands that have not been registered with the National Land Agency (BPN), causing weak protection and legal certainty for waqf lands in Indonesia. This research uses normative juridical methods with regulatory and conceptual approaches. The results show that waqf land that is not registered with the national land agency has a weak position before the law, although religiously the waqf land that has been pledged is valid in sharia, but without official administration at the national land agency, the legal protection of waqf land is weak. The legal consequences of waqf land that is not registered with the national land office make the status of the waqf land still the previous property, because land registration is an administrative obligation that must be fulfilled to obtain legal certainty that is recognised in positive law by being registered with the National Land Agency. By not registering with the National Land Agency in accordance with the provisions of the law, the status of waqf land has not been registered as waqf asset land. It is recommended that the National Land Agency continue to socialise the importance of waqf land certificates and cooperate with the Indonesian Waqf Board and the Religious Affairs Office in its registration. It is also suggested that a regulation be made requiring nadhirs to report on waqf practices in the village every six months to record unregistered waqf land.

Keywords: Legal Protection, Legal Certainty, Waqf Land Registration, National Land Agency.

1. Introduction

Waqf is a religious institution that has worship and social functions. As an act of worship, waqf is a provision in the afterlife, while socially, waqf plays an important role in development. Although derived from Islamic law, the practice of waqf in Indonesia has been going on for a long time and is accepted as part of customary law due to the strong acceptance of the community, which is predominantly Muslim. The utilisation of waqf objects is often determined by the waqif, such as for mosques, schools, or hospitals. If the purpose has been pledged, the nadzir is obliged to realise it. Socially, waqf aims to encourage care and sharing, by channelling assets in a permanent, sustainable, and directed manner for a clear purpose.

The utilisation of waqf objects over time is often no longer in accordance with the original purpose of the donor, so in some cases, the utilisation is changed and even sold to be replaced with more beneficial assets. This inconsistency in utilisation also has the potential to cause disputes, especially if it is not in accordance with the waqf pledge that has been established. To address various issues related to waqf, the government issued Law No. 41/2004 on Waqf which specifically regulates waqf institutions. Although this law is already in force, in practice there are still many waqf disputes caused by the absence of a Waqf Pledge Deed. Many waqfs are done orally without witnesses, usually to religious figures, which then raises legal issues after the endowers or nadzirs pass away (Rachmadi Usman, 2009).

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In order for waqf to have binding legal force, the law requires that the waqf pledge be made officially before a Waqf Pledge Deed Official (PPAIW) and set out in a written deed. This pledge becomes the legal basis for the nadzir in managing the waqf in accordance with the purpose of the donor and prevents the misuse of waqf assets. In addition, the waqf pledge that has been stated in the deed must be registered with the land office as an effort to provide legal certainty. This provision is regulated in Article 3 paragraph (1) of Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, which states that waqf assets must be registered in the name of the nadzir for the benefit of the parties mentioned in the waqf pledge deed. Although registered under the name of the nadzir, it does not indicate ownership, but rather for the legal protection of waqf assets (Muhammad Jawad Mughniyah, 1996).

Unfortunately, there are still many waqf lands that have not been registered because waqifs and nadzirs assume that waqf lands will not be disputed. In fact, many disputes stem from the lack of legal certainty over the status of waqf land, making registration an important step to protect the existence and purpose of waqf in the future.

The following are some of the waqf land disputes that have occurred in the community, among others:

- 1) The Syar'iyah Court of Banda Aceh in 2016 based on Decision Number 194/Pdt.G/2016/MS.Bna had settled a waqf case in Gampong Lueng Bata, Lueng Bata District, Banda Aceh City, with the following boundaries:
 - a. North with the Office of DPD Democratic Party of Aceh Province / M. Arief's land and Burhan's shop (20.95 m + 6 m = 26.95 m).
 - b. South with City Park (39.2 m).
 - c. East with Tgk Imeum Lueng Bata road (42.65 m);
 - d. West with Tgk Rasyid/Office of DPD Democratic Party of Aceh Province (29.12 m + 7.20 m + 3.3 m).

Some people claim the land as waqf for Gampong Lueng Bata, but the village officials call it customary land sold under the name of the imum shik. This sale violated Article 40 of Law No. 41 of 2004, which prohibits waqf assets from being transferred. Although the proceeds went to the village treasury, the community still sued the Banda Aceh Sharia Court to confirm the land's status as waqf.

- 2) In the same year, the Banda Aceh Sharia Court also heard a waqf land dispute case with Number 147/Pdt.G/2016/MS located on Malikul Saleh Street, Kemuning Lorong, Lhong Raya Village, Banda Raya Sub-district, Banda Aceh City with the following boundaries:
 - a. The north side used to be Abdullah's land, now belongs to Awaludin;
 - b. South side with Lorong village/road plan;
 - c. East of formerly Ali Basyah's land, now belonging to Mudassir bin Yahya;
 - d. West with Zainun's land;

In her lawsuit, Basyariah binti Hasan requested that the waqf land measuring $\pm 400~\text{m}^2$ at Jalan Malikul Saleh, Lorong Kemuning, Lhong Raya Village, Banda Aceh, be returned to her as the plaintiff.

3) The waqf dispute took place in Klieng Meuria Village, Darussalam District, Aceh Besar, as recorded in Case No. 20/Pdt.G/1995/PN-Jantho. Seven heirs of Lem Gam Manokpho sued the waqf land on which the Klieng Mosque, Klieng Meuria State Elementary School, and cemetery road had been built. They demanded the return of the land and compensation of Rp31,375,000 because they felt they had not enjoyed the fruits of the land for 32 years (Suhaimi, 2018).

The above cases are only a small part of the problems that occur in the community, triggered by the increasing need for land, while its availability remains fixed. As a result, land values continue to rise, especially in urban areas. Land that was once considered less valuable is now a source of profit, encouraging certain individuals to exploit loopholes, especially on lands that do not have clear proof of ownership, such as waqf land.

Various problems that arise related to waqf land emphasise the importance of legal protection. This is in line with Article 49 paragraph (3) of Law Number 5 of 1960 (UUPA), which states that the perpetuation of land ownership is protected and regulated by government regulations. Without legal protection, waqf land is vulnerable to misuse, such as being sold by heirs or nadzirs who do not officially register it. Waqf land registration provides legal certainty regarding the status, ownership, and use of waqf land in accordance with the waqif's will. It also prevents disputes and misuse in the future. With legal certainty, the nadzir can carry out its duties with a clear legal basis and the waqif need not worry about the sustainability of the trust given (Soerjono Soekanto and Sri Mamuji, 2013).

The obligation to register waqf land is confirmed in Article 69 paragraph (2) of Law No. 41/2004 on Waqf, which states that waqf must be registered and announced no later than five years after the law is enacted. The registration procedure is regulated in the Regulation of the Minister of ATR/BPN Number 2 of 2017 concerning Procedures for Registration of Waqf Land at the Ministry of Agrarian Affairs and Spatial Planning/BPN. Registration of waqf land is very important to prevent disputes in the future. Certificates issued by the National Land Agency provide legal certainty over waqf land. Conversely, if it is not registered, the legal status of the land does not change even though the pledge process has been carried out in accordance with sharia. This causes some waqf lands to still be contested by heirs or the community due to the absence of administrative evidence (Abdulkadir Muhammad, 2004).

Therefore, nadzirs, whether individuals, organisations or legal entities, are obliged to register waqf land with the BPN in accordance with Article 11 letter (a) of Law No. 41/2004 on Waqf. This obligation is also stipulated in Article 6 paragraph (2) of Permen ATR/BPN No. 2 Year 2017, which requires documents such as application letter, measurement letter, certificate of ownership, Waqf Pledge Deed, and nadzir ratification letter. The nadzir also plays an important role in educating the waqif about the importance of registration to prevent future conflicts. Although oral waqf is sharia-compliant, without official administration, the legal status of the land becomes unclear and may hinder management by the nadzir. This practice contradicts Article 32 of Law No. 41 of 2004 and Article 24 paragraph (1) of PMA No. 73 of 2016, which requires the registration of waqf land with the land agency no later than seven days after the Waqf Pledge Deed is signed.

2. Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data (Soerjono Soekanto & Sri Pamudji, 2011). Based on the background above, the problem formulation in this research focuses on legal protection of waqf land that is not registered with the land office.

3. Results and Discussion

3.1. Legal Protection of Unregistered Waqf Land at the Land Office

The process of land waqf must follow the applicable provisions. If the legal mechanism is not fulfilled, the status of the waqf land and the clarity of the endowers' objectives may be jeopardised, leaving the pledged land at risk of having its designation changed. Although the main purpose of waqf is to provide benefits to society and the state, the unclear status of waqf land can lead to disputes due to the lack of legal protection of the land that has been endowed to the nadzir (Bambang Sunggono, 2014).

Legal protection is the state's obligation to safeguard and guarantee people's rights over their property, including land rights. The state has the responsibility to provide legal certainty through the establishment of rules that guarantee ownership, especially of immovable objects such as land. Unfortunately, there are still many people who do not realise the importance of the legal status of their land. Proof of ownership certificates issued by the National Land Agency are often considered trivial, even though these certificates are valid evidence according to positive law and are very important to avoid disputes in the future. Low public awareness of the importance of formal legality, not just customary or religious recognition, is one of the causes of frequent land disputes.

To date, the total number of waqf land assets in Indonesia reaches around 440,512 parcels, but only 252,937 are certified. This means that there are still 187,575 waqf land parcels that do not have certificates. In Aceh Province, out of a total of 18,520 waqf lands, only 8,833 have been certified, while the remaining 9,687 have not. This number shows that most waqf lands in Aceh still lack legal certainty. Therefore, accurate data collection and accelerated certificate issuance are needed to provide legal protection for waqf land, so that the purpose of waqf can be optimally realised and avoid potential disputes.

Waqf is a charity that aims to gain rewards from Allah SWT, because this action is directly related to Him. However, in practice, there are still many parties who dispute waqf land, especially due to the lack of formal evidence in the waqf pledge process. This problem often arises because the endowers and witnesses have passed away, or the heirs do not know that the land has been endowed. Therefore, there is a need for legal protection of waqf land whose status is unclear, to prevent reclaims from heirs or other irresponsible parties due to the uncertainty of the land rights (Abdul Rahman Ghazali, 2012).

Although waqf is not explicitly mentioned in the 1945 Constitution, Article 29 paragraph (2) guarantees freedom of religion and worship, which is the constitutional basis for the implementation of waqf. The first juridical regulation of waqf appears in Article 49 of Law No. 5/1960 on Basic Agrarian Principles (UUPA), which states that land ownership rights for religious and social bodies are recognised and protected as long as they are used for religious and social purposes. Paragraph (3) of the article specifically confirms that the perpetuation of land ownership is protected and regulated by Government Regulation. Article 49 of the UUPA is thus an important legal basis for the protection and recognition of waqf land.

Article 49 paragraph (3) of the UUPA shows that land waqf receives special attention from the government, which is then further elaborated in Government Regulation No. 28 of 1977 concerning the Perwakafan of Owned Land. The regulation regulates the mechanisms and procedures for the implementation of waqf of owned land, and was strengthened through the Joint Instruction of the Minister of Religious Affairs and the Minister of Home Affairs Number 1 of 1978. Land used for religious purposes-such as mosques, mushollas, Islamic boarding schools, or Islamic cemeteries-can be granted to religious bodies or foundations in the form of property rights or other rights recognised by the UUPA. This provision confirms that land used for socio-religious purposes receives legal protection and legitimacy (Jaih Mubarok, 2012).

The legal protection of waqf land in Indonesia has been comprehensively regulated through various laws and regulations, particularly Law No. 41/2004 on Waqf and its implementing regulations. This law aims to: (1) ensure legal certainty in the field of waqf; (2) protect and provide a sense of security for Muslims as waqif parties; (3) encourage the responsibility of parties who manage waqf assets; and (4) provide a legal basis for advocacy and settlement of waqf disputes in the community. Thus, waqf law functions as an instrument of protection and supervision over the use of waqf land so that it remains in accordance with its designation.

Legal protection of waqf land can be done through registration with the National Land Agency (BPN) by the Waqf Pledge Deed Official (PPAIW), as stipulated in Article 32 of Law No. 41/2004 on Waqf. The PPAIW on behalf of the Nazir must register the waqf property no later than seven working days after the waqf pledge deed is signed. This registration is important as a form of legal protection as well as a valid means of proof of the physical and juridical data of waqf land, as long as it does not conflict with the contents of the certificate. In addition, waqf management requires professional nazirs because they are responsible for maintaining, developing, and distributing the benefits of waqf in accordance with its purpose.

Article 40 of Law No. 41/2004 expressly prohibits waqf land from being pledged as collateral, confiscated, donated, sold, inherited, exchanged, or transferred in the form of other rights. This provision reflects the basic principle of waqf in Islamic law, which is the permanent transfer of assets (ta'biid) for worship or social purposes. Therefore, once land is endowed, its ownership no longer rests with the waqif or his heirs, but becomes the property of the waqf whose use must be in accordance with the waqf pledge (Ahmad Mujahidin, 2021). This prohibition of transfer aims to protect waqf land from misuse by the nazir, heirs, or other parties, and to ensure that the benefits of waqf are preserved for the benefit of the community (Abdul Manan, 2017).

Article 40 of the Waqf Law does prohibit the transfer of waqf assets, but under certain conditions, the transfer can be carried out through an exchange mechanism (istibdal) if it aims for greater benefits. For example, waqf land affected by a road construction project in accordance with the General Spatial Plan (RUTR) can be exchanged for other land of at least equal value, as long as it is not contrary to Islamic law. This process is regulated in Article 41 paragraph (2) of Law No. 41/2004 and Article 49 paragraph (1) of Government Regulation No. 42/2006, which requires written permission from the Minister of Religious Affairs with the approval of the Indonesian Waqf Board. Prior to the arrival of the Waqf Law, the principles of waqf were regulated in Book III of the Compilation of Islamic Law (Articles 215-229), which affirmed the prohibition of the transfer or sale of waqf assets and provided shar'i legitimacy for the existence of waqf, although it did not regulate the technicalities of registration like positive legislation.

In the perspective of Islamic law as reflected in the Compilation of Islamic Law (KHI), the validity of waqf does not depend on the land registration process, but rather on the fulfilment of the pillars and conditions of waqf. In fact, some fuqaha do not consider the existence of a nazir as a pillar of waqf because waqf is seen as a tabarru' worship that is sunnah. Therefore, unregistered waqf land is still considered valid according to KHI, as long as the shari'i elements have been fulfilled. However, in the context of positive law, the registration of waqf land at the National Land Agency is essential to provide legal certainty and protection from disputes. In the event of a dispute over unregistered waqf land, evidence such as the waqf pledge, community testimony, and evidence of the use of land for waqf purposes (e.g. mosques, madrasas, or cemeteries) can be used in the Religious Courts as a basis of proof.

The legal protection of waqf land is not only regulated in the Waqf Law and the Compilation of Islamic Law, but also strengthened through other technical regulations. Minister of Religious Affairs Regulation No. 73/2013 regulates the procedures for the endowment of immovable objects and movable objects other than money, such as land, buildings, precious metals, vehicles, securities, and intellectual property rights. This regulation emphasises that waqf is not sufficient with just a religious pledge, but must also be accompanied by administrative and formal legal procedures. In addition, the government issued Minister of Agrarian and Spatial Planning/Head of BPN Regulation No. 2/2017 on Procedures for Registering Waqf Land, which technically regulates the process of registering waqf land at BPN. This regulation aims to provide legal certainty over the status of waqf land and is a follow-up to Law No. 41/2004 and Government Regulation No. 42/2006 on its implementation.

The Ministerial Regulation stipulates that land that has been pledged as waqf must be registered with the Land Office in order to obtain a waqf certificate in the name of the nazir as manager. The certificate confirms the status of the land as waqf property that cannot be transferred except in accordance with legal provisions. Therefore, waqf land that is not registered with the National Land Agency is not recognised in positive law and does not receive formal legal protection. This provision is affirmed in various regulations, ranging from the Waqf Law to the Regulations of the Minister of Religious Affairs and the Minister of Agrarian Affairs. Waqf land that is only verbally pledged without going through administrative procedures will find it difficult to obtain legal protection, making it very vulnerable to disputes or unauthorised transfers.

3.2 Legal Certainty for Waqf Land that is Not Registered at the Land Office

Waqf land registration aims to ensure legal certainty over its status and rights, as well as to protect the nazir and beneficiaries. However, there are still many waqf lands that have not been registered with the BPN, causing juridical, sociological, and practical problems. Legal certainty as the main principle of the rule of law requires legal evidence, such as a certificate from the BPN, which becomes legal evidence of ownership and protection of waqf land.

Legal certainty is one of the basic values of law in addition to justice and expediency, which requires the law to be fixed and predictable. In waqf, legal certainty is important because it involves the transfer of property rights for the benefit of the people. Therefore, the waqf pledge must be accompanied by recording and registration according to the regulations. Law No. 41/2004 and Government Regulation No. 42/2006 require land waqf to be recorded through a Waqf Pledge Deed and registered at the BPN to obtain a certificate as legal evidence (Siregar, 2012).

Unregistered waqf land creates status dualism: valid under Islamic law if it has been pledged, but weak under positive law because it has no written evidence recognised by the state. Many old waqf lands are handed over orally without any official documents despite having been used for decades for social purposes. This condition triggers various legal problems, such as claims from heirs, control by third parties, and unauthorised transfer of rights. In disputes, the absence of documents makes it difficult for the management to prove the status of waqf legally.

The absence of waqf land records contradicts the provisions of Article 16 of Law No. 41/2004, which requires the creation of a Waqf Pledge Deed (AIW) for immovable objects. Government Regulation No. 42/2006 also confirms that recording must be done in the presence of a PPAIW. The production of AIW and the registration of waqf land are the responsibility of the PPAIW on behalf of the nazir. Non-compliance with these provisions weakens the legal protection of waqf land. Legally, unregistered land is not included in the national land system, so it has no strong evidentiary power if disputed, and risks being transferred or claimed by other parties, including heirs (Muzzakir, 2025).

From a social aspect, the non-registration of waqf land removes the guarantee of sustainable use and increases the potential for conflicts of interest over land in public use. In addition, it hinders the productive development of waqf, as the nazir cannot make the land an object of cooperation or investment without a legal basis. Unregistered land also cannot be supervised by the Indonesian Waqf Board (BWI), so the implementation of the waqif's mandate cannot be effectively monitored. Therefore, the registration of waqf land with the National Land Agency is an important step to guarantee legal certainty, enable supervision by the state, and ensure that waqf land is professionally managed according to the original purpose of the waqf. This legalisation process is not just a formality, but part of the legal mechanism to safeguard the waqf mandate and protect religious assets in a sustainable manner.

Supervision of waqf land can be carried out through the Ministry of Religious Affairs and the Indonesian Waqf Board to prevent misuse as well as assisting the donor and nazir in the registration process assisted by the PPAIW. The government also needs to provide legalisation solutions for waqf lands that do not yet have official documents. To realise the principle of legal certainty, collective awareness is needed so that all waqf lands are officially registered. This is important to maintain the sustainability of waqf functions, prevent conflicts, and strengthen the contribution of waqf in the development and benefit of the people. With legal certainty, waqf land can be managed productively and safely.

4. Conclusions

The legal protection of unregistered waqf land is still weak, even though it is sharia-compliant once it is pledged. Without official administration at the National Land Agency (BPN), the ownership status of waqf land is difficult to prove in positive law. In fact, administrative evidence such as certificates from the BPN is essential to ensure the validity of ownership and provide legal protection. Therefore, the registration of waqf land with the BPN is a crucial step in order for waqf land to gain legal power and avoid potential disputes.

Waqf land that is not registered with the National Land Agency remains as previously owned land, because registration is an administrative obligation to obtain positive legal certainty. Without registration in accordance with statutory provisions, the land has not been recorded as a waqf asset. As a result, the legal certainty of waqf land is unclear and the transfer of rights is not legally recognised.

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