

Implementation Certification of Waqf Land in Medan City

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Abstract: Government Regulation Number 28 of 1977 concerning Owned Land Representation, Law Number 41 of 2004 concerning Waqf, and Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning waqf, is a renewal in the field of property ownership which regulates, curb and direct in such a way that it really fulfills the goals in waqf in accordance with Islamic teachings. The problem raised in this research is how the implementation of the ownership of the land ownership becomes a waqf land in Medan City. This research uses a normative juridical approach and supported by empirical data. The results of the study explain the role of the official making the waqf pledge in the making of the waqf pledge deed in the city of Medan carried out through the procedure of ownership of land to become waqf land. The role of the Medan City National Land Agency starts from the Servant, land case complaints and information, Land case studies, Land case handling, and Land cases and legal actions for the execution of court decisions.

1 INTRODUCTION

The land is part of the earth. Therefore, the area is controlled by the state; the state controls the concept means the state regulates, in this case, the state has the authority to manage and regulate land for the greatest prosperity of the people (Setiawan, 2009).

The concept of controlling rights means that the state is not the owner of the land, but only as the holder of power over property in all parts of Indonesia (Soerodjo, 2014). The country is the manager and regulates land allotment and use as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which affirms the role of the state in managing and regulating land, that the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people (Parlindungan, 1998).

One of the roles of the State in managing and regulating land is in land registration or certification of waqf land that has not registered. Waqf is one form of Islamic legal institutions. Therefore the provisions regarding waqf are also derived from the requirements of the teachings of Islam.

The definition of waqf according to Law Number 41 of 2004 concerning Waqf, namely "Waqf is a wakif legal act to separate and/or surrender some of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and / or general welfare according sharia".

Wakaf may be in the form of fixed assets or movable properties such as shares, bond or money. Wakif, the person/organization/legal entity who donates the wakaf, donates the wakaf to the Nazhir. The Nazhir is responsible for the overall management of the wakaf. The Wakaf's pledge (*ikrar*) will become legal once embodied in the form of Deed, wrapped up by the officer in charge in drafting the deed and reporting it to the Minister of Religious Affairs, the "PPAIW". The Law also establishes the independent Indonesian Wakaf Board (the "Board"). The Board is to be responsible for developing the wakaf system and the overall management to ensure and maintain efficiency and the effectiveness of the endeavour.

For the people of Indonesia whose majority of people are Muslims, waqf is one of the services which has a social dimension in Islam.

Waqf practices that occur in people's lives have not been entirely run in an orderly and efficient manner so that in various cases the waqf property is not adequately maintained, neglected or turned into the hands of a third party by unlawful means. Such a situation, not only because of negligence or inability of the nazir in managing and developing endowments but also because of the attitude of people who do not care or do not understand the status of waqf property that should be protected for the general welfare by the purpose, function, and allotment of waqf.

Some of the problems that occur in the city of Medan are the maximum role of waqf in empowering people's economy with the following factors:

- In general, the community does not understand the law of waqf correctly and adequately, both regarding harmony and the conditions of waqf, and the purpose of the endowment of waqf.
- Currently, the management and management of waqf in Indonesia is still a concern. As a result, quite a lot of property of waqf is neglected in its management; even there are lost waqf assets. One of the causes is its nonprofessional management.
- In general, the land represented by Muslims in Indonesia is only enough to build mosques or musholah, so it is difficult to develop. In Indonesia, there are still few people who forgive property other than land (immovable property), whereas in fiqh the feature that may be represented is very diverse including valuable letters and money.
- In waqf, one of the most critical elements is Nadzir. Nadzir is a person entrusted with the task of managing, managing, and maintaining waqf property. Functioning or not waqf is very dependent on the ability of nazir. In various countries whose waqf can develop and function to empower the people's economy, waqf managed by a professional nazir.

Deviations often occur in the implementation of waqf in the community. The misappropriation of waqf property caused the difference by Nadzir or the descendants of Nadzir. Also, irregularities can also occur in the form of deviations in usability or waqf functions. Therefore, the government made a regulation on waqf that aims to secure waqf property and encourage Indonesian people to carry out waqf as an embodiment of carrying out worship because of Allah.

The main problems that will be elaborated on further in this paper are: How is the procedure for the registration of waqf land in Medan City?

2 RESEARCH METHODOLOGY

This research is uses legal methods. The nature of this research is a descriptive analysis of the purpose of this research is expected to obtain a detailed and systematic description of the problems to be examined. Data collection is done with literature and empirical. Literature data is collected through various laws and regulations relating to land and waqf land. Practical data collection was obtained from the Medan City National Detention Agency and used as a support in this study. The data is then analyzed qualitatively. The analysis is intended based on the description; the facts obtained will be carefully examined to answer the problem. Research done for this writing constitutes normative (Ibrahim, 2006) legal research (Soemitro, 1998) which analyzes legal materials (Soekanto & Mamudji, 2011) and then conducts library research that in return, all of these are connected to one-another in such a way to determine and solve the problem that have been formularized.

3 RESULT AND DISCUSSION

Government Regulation No. 28 of 1977 concerning Owned Land Representation contains provisions of Islamic law concerning the representation of land owned and functions as the legal basis for the ownership of property in Indonesia. The regulation of Waqf is further regulated in Law Number 41 of 2004 concerning Waqf. The law stipulated that waqf legal acts must be recorded and outlined in the deed of endowments and registered and announced, the implementation of which is carried out by the procedures stipulated in the legislation governing waqf and must be implemented. The implementing regulation of Law No. 41 of 2004 concerning Waqf is the Republic of Indonesia Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf.

Government Regulation No. 28 of 1977 requires waqf to be carried out verbally and in writing before the official making the waqf pledge need to be subsequently made an endowment deed. Based on the waqf pledge deed, the land ownership rights have been amended to the National Land Agency

after fulfilling the administrative requirements to be changed to a waqf certificate.

The development of waqf land registration issues is now getting more legal certainty after the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency recently issued a new regulation concerning the procedures for waqf land certification, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 2 of 2017 concerning Procedures for Registration of Waqf Land in the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency.

The Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency recently issued a new regulation concerning the procedures for the certification of waqf land. The law stipulated on February 13, 2017, is entitled Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 2 of 2017 concerning Procedures for Land Registration for Waqf in the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency.

In this regulation, the procedure for registration of waqf land originating from Customary Property and Land Ownership is not regulated; Right to Cultivate, Right to Build, and Right to Use on State Land; Right to Build or Right to Use on land of Management Right or Ownership Rights; Ownership Rights of Flats; and State Land.

In Article 2 the regulation states that the Right to Land that has been represented has been deleted since the date of the Waqf Pledge and its status becomes a Waqf object. Furthermore, PPAIW in the name of Nazhir conveyed AIW or APAIW and other documents needed to register Land of Endowments on behalf of Nazhir to the Land Office, within 30 (thirty) days after the signing of AIW or APAIW.

In carrying out certification of waqf land procedures carried out on waqf lands that have been certified are different from waqf lands that have not been confirmed. About waqf lands that have already been approved, the procedure carried out in

duplicate in making waqf certificates is enough to submit an application for waqf land registration to the Head of the National Land Agency. Whereas for lands that have not yet been issued with a procedure that must be carried out in the framework of making a waqf certificate, the application for the registration of waqf land is accompanied by an application for registration of the rights to the Head of the National Land Agency. So in the making of the waqf certificate that the land has not been certified, there are two applications at the same time which must be submitted, namely the application for waqf land registration and the demand for registration/conversion/affirmation of the right to the land being represented.

The period of registration of waqf land until the issuance of the waqf certificate for property that has been certified is faster than the area that has not been confirmed. For land that has already been approved, the period is 20 days, while for property that has not been certified, the period is 120 days. With the registration and the registration of the waqf in the Office of the National Land Agency in the certificate of ownership of the land that has been represented, the waqf land has substantial evidence of " waqf certificate."

Especially in the city of Medan, currently, the number of mosques is approximately 1,300 mosques scattered in 21 sub-districts, meaning that the figure shows that there are waqf lands on which the mosque is built. Management and Empowerment of waqf land is the responsibility of Nazhir waqf to oversee, protect, and develop waqf property by its .

Allotment, including also administering waqf property through certification of waqf land. Furthermore, Nazhir can report the implementation of his duties to the Indonesian Waqf Board (BWI).

Regulation of the Minister of Agrarian and Spatial Planning / Head of the Republic of Indonesia National Land Agency Number 2 of 2017 concerning Procedures for Land Registration for Waqf in the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency can be seen in the following figure:

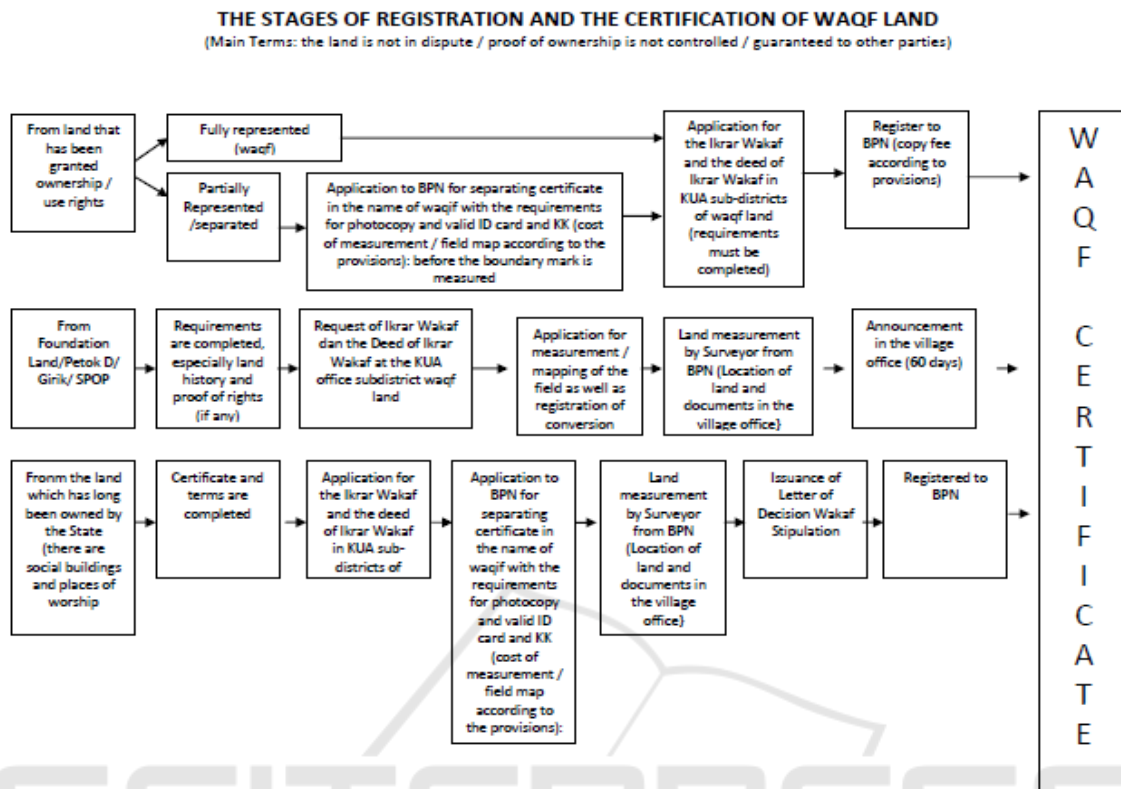


Figure 1. The Stage of Registration and Certification of Waqf Land

Information:

- a. PPAIW in the name of Nazhir registers the waqf property to the authorized agency at the latest 7 working days after the waqf pledge deed is signed by enclosing: the certificate concerned or if there is no one may use the existing land ownership proof documents, a copy of the Deed of Endowments made by PPAIW and a validation letter Nazhir.
- b. In registering the representation of ownership rights in the local Land Office, documents must be submitted as requirements, namely:
 - Application
 - Certificate of the original Property Rights of the land concerned.
 - Waqf Pledge Deed made by local PPAIW.
 - Approval letter from the KUA of the provincial sub-district regarding Nazhir in question.
 - A statement from the concerned that the land is not in dispute, bond, confiscation and is not guaranteed in a bank that is known by the Village Head or other officials of the

same level, which is reinforced by the head subdistrict.

- Power of attorney, if the application is authorized.
 - Waqif Identity (Photocopy of KTP legalized by authorized officials)
 - Nazhir Identity (Photocopy of KTP sanctioned by authorized officials)
- c. For land that has not been registered, the requirements are the same as above but because there is no Ownership Certificate, then it is replaced with other written evidence proving the existence of the relevant rights, namely:
 - Proof of Ownership Rights issued based on the applicable Swapraja Regulations, or
 - Ownership Certificate issued based on the Minister of Agrarian Regulation No. 9 of 1959, or
 - Decree of Granting Ownership Rights from authorized officials, both before and since the enactment of the BAL, with the obligation to register the rights

- granted, but has fulfilled the requirements mentioned therein, or
- Extracting a Land Tax / Landrente, girik, pipil, kekitir and Indonesian Verponding before the enactment of Government Regulation Number 10 of 1951, or
 - Deed of Transfer of Rights made under the hand that is marked by testimony by the Customary Head / Village / Village Head made before the enactment of this Government Regulation accompanied by the assignment of rights, or
 - Waqf Pledge Deed / Waqf Pledge Letter made before or since it began to be implemented by PP No. 28 of 1977 accompanied by the right to be represented, or
 - Minutes of Bid made by an authorized Auction Officer, whose land has not been recorded with accompanying rights transferred, or
 - Deed of Transfer of Rights to Land made by PPAT, whose property has not been registered with attending the assignment rights, or
 - Letter of Appointment or purchase of a parcel of land in place of an area taken by the Regional Government, or
 - A statement of land history that has been made by the Land and Building Tax Service Office, accompanied by the assignment of rights, or
 - Other forms of written proof of any name as referred to in Article II, VI and VII of the provisions of the BAL Conversion, or 12. Additional evidence of ownership issued and valid before the enactment of the BAL, or
 - Photocopy of the current UN SPPT.
- d. The Head of the Medan BPN Office, after receiving a letter of application from PPAIW and examining the message and attachment, noted the land ownership representative in the existing land book and recorded several documents in the land certificate by the applicable regulation regarding the ownership of the land. If the application is submitted in conjunction with the request for ratification of the rights/conversion, then the registration of the waqf is only done after the certificate is issued. If the person represented is part of

his land, then the parcel of land is separated first so that each has their license.

- e. After the land representative is recorded in the land book and the document, the Head of the local Land Office issues proof of registration of the waqf property and submits the report to PPAIW to be recorded in the List of Deed of Endowments in the District.
- f. In the case that the waqf property is exchanged or changed its designation, Nazhir through PPAIW re-registers with the Head of the local Land Office and the Indonesian Waqf Board the endowments that are transferred or altered for the purpose by the applicable provisions in the procedure for registration of the waqf property. The function of the record of the waqf land is primarily to obtain guarantees and legal certainty regarding the area being represented.

Based on the results of the agreement of waqf land in Medan City, starting from February 2017 to July 2018, generated 51 area.

Months	Large Area	Information
Februari until Desember 2017	40	Processing
Januari until Juli 2018	11	Processing

Table 1. The result of Land Certification for Waqf Land in Medan City

Constraints that arise in the registration of waqf land in Medan City are related or not yet met or have not fulfilled the conditions of waqf carried out for the record of land rights. For example, the waqf land that has not been made a Waqf Pledge Deed or Substitution Deed of Waqf Pledge by the Pledge Deed Making Official, because the granting of the waqf was carried out prior to the issuance of Government Regulation Number 28 of 1977 and was carried out based on a sense of sincerity and trust. Prior to the publication of Government Regulation Number 28 of 1977 in every legal act, a representative was not obliged to have written evidence, so that when the waqf ruling was made it was difficult, because the wakif and his heirs had died or even in some cases, the waqf was unknown because perwakafan was carried out twenty years ago and objects The waqf is still used according to its

intended purpose, and the residents also know that what used is an object that was represented by someone in the past, neglect of waqf land because Nazhir passed away and did not have children, the origin of the area is unclear.

Every implementation of waqf after the enactment of Law Number 41 of 2004 concerning the waqf which the procedure for registration of its rights is currently regulated by the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 2 of 2017 concerning Procedures for Land Registration for Waqf in the Ministry of Agrarian Affairs and Governance The National Land Agency / Agency, should be done before PPAIW witnessed by 2 (two) witnesses expressed verbally and / or in writing and set forth in the deed of endowment by PPAIW.

Soerodjo, I. (2014). *Hukum Pertanahan: Hak Pengelolaan Atas Tanah (HPL) Eksistensi, Pengaturan dan Praktik* LaksBang Mediatama, Yogyakarta

4 CONCLUSION

A house worship or waqf land could be applied for registration at the local Land office and even though it not have a base of rights enough by attaching physical mastery known to the sub district head or the village head and two witnesses by attaching a photocopy of witness ID card, no endowment deed can be made a surrogate act of endowment, if there is no management that is endorsed by the waqf body, temporary control can be made. The role of the Medan City National Land Agency starts from the Servant, complaints, and information on land cases, assessment of land cases, handling of land cases, and resolution of land cases and legal actions for the implementation of court decisions.

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