



IMPLICATIONS OF WAQF PLEDGES AND LEGAL PROTECTION FOR NADZIR: STUDY NURUL ISLAM MOSQUE IN PUDAKPAYUNG, BANYUMANIK, SEMARANG

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Abstract: *This study examines the legal status and issues surrounding waqf management in Indonesia, focusing on the case of the Nurul Islam Mosque dispute in Pudukpayung, Banyumanik, Semarang. The purpose of this study is to provide insight to stakeholders who have rights and obligations in waqf, particularly in relation to waqf certificate statements. The research method used is legal empiricism, with a qualitative approach to analyze complex phenomena that encompass normative legal aspects and their implementation in practice. The results from study prove that (1) there are still several fundamental violations in the management of waqf, even though the waqf declaration has been carried accordance with applicable legal procedures, such as: violations purpose of wakaf asset use, failure of nazhir to carry their duties and authorities, and weak supervision from the Indonesian Wakaf Board, and (2) legal protection efforts for nazhir in wakaf management by replacing nazhir who do not carry out their duties, regulating buildings that are not in accordance with their intended use, regulating activities in mosques, and under the supervision of the Indonesian Waqf Board and the Ministry of Religious Affairs.*

Keywords: *Legal protection, Mosque, Nazhir, Waqf pledges*

INTRODUCTION

Land holds a central position within the framework of agrarian law in Indonesia. As a limited and strategically valuable natural resource, land not only acts as land for housing and economic activities, but also as an asset that affects the welfare of society. Within the framework of agrarian law, land is considered a legal object that requires special regulation to ensure legal certainty, justice, and benefits for all Indonesian citizens (Windari,

2017). The existence of land rights also provides a real function in the form of legality for the use, control, and ownership of land. All of these aspects can ensure legal certainty and legal protection.

Problems in Indonesian agrarian law cover a very broad spectrum, ranging from land ownership disputes, overlapping regulations, horizontal and vertical conflicts in land utilization, to legal uncertainty with implications for investment and economic development. Agrarian

conflicts often involve various parties with different interests, such as indigenous peoples, farmers, government, and businesses, each of which has different claims and legal interpretations of land status and functions.

Rejekiingsih (2016) in its development, agrarian issues cannot be separated from the political, economic and social dynamics that occur in Indonesia. Development policies oriented towards economic growth often clash with people's rights to land, while the weak land administration system and law enforcement exacerbate the situation of legal uncertainty. This shows that the study of land in agrarian law cannot be done partially, but must be understood as an integral part of the national legal system that is interrelated with other aspects of people's lives.

Various issues can be found, one of which is about waqf, there is a study of waqf land. Waqf refers to the lawful donation by a person or legal body, in which a portion of their property is set aside or transferred, either indefinitely or for a defined period, to support religious activities or public benefit, in accordance with Islamic law.

The value of land for Indonesian society is very valuable, so ownership and all forms of transfer must be legal and in accordance with existing legal provisions. This serves as an effort to reduce the possibility of conflict or to facilitate proof when a land dispute occurs (Luthfi & Fajrin, 2021). The most fundamental step in efforts to legalize land objects is through land certification or land registration, to

strengthen the legal status of land ownership with a land certificate, it will increase the legal strength of a person's land ownership (Novianti & Maulida, 2020). Therefore, the land certification process is very crucial to be implemented. The land certification process covers various aspects, one of which is the waqf land registration/certification process. This certification process is intended for land whose rights are obtained through the legal act of waqf.

Hendrawati (2018), the practice of waqf in Indonesia has experienced many obstacles due to the certificate of waqf regulation in the Basic Agrarian Law in article 49, paragraph (3) which states that "Endowment of property land is protected and regulated by government regulation". This provision serves as the legal foundation for safeguarding waqf land in Indonesia and calls for additional regulation through government-issued policies.

Harsono (2005) states that in Indonesia, the regulation of waqf land has undergone significant evolution throughout the history of national law. Prior to independence, waqf practices were traditionally implemented based on Islamic law without formal administration. After independence, waqf regulation began to be formally regulated through the Basic Agrarian Law Number 5 of 1960, later enhanced by Government Regulation Number 28 of 1977 concerning the Endowment of Owned Land. The culmination of the development of waqf regulation was the issuance of Law Number 41/2004 on Waqf and Government Regulation Number 42/2006 as its implementing

regulations, which served as an all-encompassing legal framework for managing and developing waqf in Indonesia.

The main characteristic of waqf land from a legal perspective is that it is permanent and non-transferable. Based on the principle of permanence adopted in waqf law, objects that have been waqf cannot be sold, donated, inherited, exchanged, or transferred in other forms of rights transfer. However, the development of contemporary waqf law has accommodated the concept of temporary waqf to adapt to the needs and conditions of modern society. This is reflected in the Law on Waqf Number 41 of 2004, which provides room for waqf with a certain period of time, which is a legal breakthrough in the national waqf system.

The main characteristic of waqf land from a legal perspective is that it is permanent and non-transferable. According to the principle of permanence upheld in waqf law, assets that have been designated as waqf may not be sold, gifted, inherited, exchanged, or otherwise transferred. However, the development of contemporary waqf law has accommodated the concept of temporary waqf to adapt to the needs and conditions of modern society. This is reflected in the Law on Waqf Number 41 of 2004, which provides room for waqf with a certain period of time, which is a legal breakthrough in the national waqf system.

A crucial aspect that is often underestimated by some people who implement waqf is the waqf pledge, which is regulated in Article 17

paragraphs (1) and (2) of the Waqf Law Number 41 of 2004 concerning waqf. The article explains that the waqif (individual who pledges waqf) must make a waqf pledge in front of a Waqf Pledge Deed Official witnessed by two qualified male witnesses. The waqf pledge may be declared verbally or in writing and is then recorded in an official waqf pledge deed by the authorized Waqf Pledge Deed Official. Another important aspect of waqf land from a legal perspective is that there is legal certainty through registration and certification (Amelia et al., 2016). Uncertified waqf land is in a weak legal position and vulnerable to disputes or illegal transfer of functions. Therefore, the Waqf Law requires the formation of the Indonesian Waqf Board as an autonomous body responsible for promoting and developing waqf at the national level, as well as supervising the registration and certification of waqf land (Musyafah et al., 2023). The Indonesian Waqf Board (BWI), based on Law No. 41 of 2004 and Government Regulation No. 42 of 2006, has a legal function to supervise and foster waqf management. However, weak oversight in regional areas, such as in Semarang, is attributed to the absence of regional BWI offices, limited legal human resources, and the lack of clear sanctions mechanisms against trustees who violate regulations.

As a solution, institutional reform is needed through the establishment of a Regional BWI Office and the implementation of mandatory annual waqf audits as stipulated in the implementing regulations. This aims

to strengthen legal oversight, prevent violations, and ensure that waqf management complies with applicable laws.

Waqf land certification not only provides legal certainty for waqf land management, but also supports the optimization of the economic potential of waqf land through productive development in accordance with sharia principles.

As in this study, based on the data obtained, there are buildings that were not built for religious purposes, such as bird and cat cages placed in mosque buildings. The gazebo, which was used for hanging out until late at night and also for holding religious lectures with people from outside the area, has been successfully demolished. After the event, it was used for gatherings, which disturbed the surrounding community. It can be seen that the use of the mosque still does not comply with regulations. Under Article 40 of Law Number 41 of 2004 on Waqf, waqf property is prohibited from being transferred from its original purpose except under certain circumstances and with written permission from the Minister of Religion after consideration by the Indonesian Waqf Board (BWI).

In the context of waqf land dispute resolution, Indonesian law regulates a tiered settlement mechanism (Junaidi & Kamasarudin, 2019). Dispute resolution can be pursued through deliberation to reach consensus, mediation, arbitration, and litigation in court. Specifically for waqf cases, dispute resolution can be submitted to the religious court in accordance with its absolute competence in handling waqf cases as stipulated in Law

Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Waqf land disputes frequently arise due to ambiguous legal status of the waqf property, lack of documented proof of the waqf pledge, or conflicts among parties asserting their right to manage the waqf as the rightful nazhir.

Taibu & Novrianti (2023), their research indicated that the creation of a Waqf Pledge Deed can be completed after the waqif has made the waqf property pledge. Even if the waqf pledge has been documented in writing, a Waqf Pledge Deed must still be prepared, as it serves as the legal proof of the waqf transaction that has taken place.

The number of people who want to give their land with the designation of waqf but are still unfamiliar with the legality and procedures, in the future there are potential problems (Amelia, 2016). This can be found in cases related to the status of mosque land that disturb the community and cause controversy, even causing conflicts of interest and social conflicts between community groups, such as the case of the Nurul Islam Mosque waqf land in Pudakpayung, Banyumanik, Semarang.

MAIN PROBLEM

In the Regulation, Nadzir must carry out his duties in accordance with Article 11, which states that Nadzir is the party who receives waqf property from the waqif to be managed and developed in accordance with the purpose of the waqf. The Nadzir's duties in detail include:

1. Recording and Administering the Waqf

The Nadzir is required to record all information related to the waqf, including the waqf declaration, the type and location of the waqf property, and its intended use (e.g., for a mosque, education, social purposes, etc.).

2. Managing and Developing the Waqf Property

Management must align with the purpose of the endowment. If the endowment is designated for a mosque, the endowed land may not be used for commercial or personal activities without official permission from the Minister of Religion and the BWI.

3. Ensuring Use in Accordance with the Purpose

The nazhir must ensure that the use of waqf assets (e.g., buildings, land) is only for mosque worship activities, such as prayer, religious study, religious education, and social services.

4. Coordinating with the Community and Related Institutions

The nazhir is responsible for coordinating with community leaders, mosque administrators, KUA, and BWI to ensure that waqf management is transparent and subject to social oversight.

5. Preparing and Submitting Management Reports

Every year, the nazhir is required to prepare a written report on the management of waqf assets

to the relevant authorities (usually the KUA and BWI).

On December 14, 1995, a 610 m² land pledge was made for a mosque with a building area of 105 m² named Nurul Islam Mosque located at Jalan Kalipepe Citizens Association 1, Pudakpayung Village. The waqf was made by the waqif on behalf of Mrs. Ranti to the appointed nazhir. Currently, the waqif has passed away and left heirs namely Mrs. Turmiyati and Mrs. Supadmiyati.

The problem began when a habib who rented a house (which he later bought) was close to the mosque and used the mosque facilities for religious activities with his congregation, the majority of whom came from outside the local area. The activities often lasted until late at night, causing objections from the surrounding community.

The problem became more complex when the habib built a building on waqf land whose use was not in accordance with the provisions of Law Number 41/2004 on Waqf. The construction was considered to deviate from the original designation of the waqf land and was carried out without the legal authority of the habib concerned.

In response to the problem, the wakif heirs demanded accountability from the nazhir. The Citizens Association head facilitated a mediation forum to find a solution to the dispute. The mediation resulted in an agreement that the wakif heirs would take care of the nazhir renewal, and the nazhir agreed to this. During the nazhir renewal process, the heirs of the waqif asked to borrow the waqf

land certificate from the nazhir. Here, the community and government have carried out their supervisory duties properly by holding consultations between the relevant parties; however, the Nadzir and mosque managers have not implemented the agreements reached through the consultations. However, the heirs of the waqif did not immediately return the waqf certificate as agreed, causing objections from the nazhir. On the basis of the non-return of the waqf certificate, the nazhir reported the heirs of the waqif to the Banyumanik Sector Police on charges of seizure of the waqf certificate.

The police delegated the case to the village to conduct mediation first in accordance with the principle of deliberative dispute resolution. Pudakpayung urban village requested the assistance of a legal expert from Forum Ukhuwah Islamiyah Pudakpayung to facilitate the mediation. However, the legal expert also acted as the legal representative of the wakif heirs who were reported to the police by the nazhir.

When the habib concerned came to participate in the mediation, he refused to enter the mediation room because he objected to the presence of lawyers, on the grounds that he wanted to resolve the problem in a family manner. As a result of this refusal, the mediation process failed. To prevent a fight over the waqf certificate between the heirs of the waqif and the nazhir, the Head of Pudakpayung Village temporarily held the original certificate of the waqf land. The criminal report at Banyumanik Sector Police has not

been revoked and is still being handled.

Based on the summarized position cases (interview results), the researcher formulated the following problems.

1. What are the legal implications of the waqf pledge on the position and responsibilities of the nazhir?
2. How are legal protection efforts for nazhir in waqf management?

METHOD OF RESEARCH

The research method used is the empirical juridical method. Soekanto (2010) defines empirical juridical research as legal research that uses primary data from the community as the main source. This method sees law not only as a set of normative rules or *das Z*, but also sees the implementation and operation of law in society (*das sein*).

To examine the legal status and constraints regarding waqf land, a qualitative approach was used. This method was selected because it offers a comprehensive insight into the socio-legal issues surrounding waqf land, particularly regarding Waqf Land Certificates and the practical challenges encountered on the ground.

This study concentrates on the conflict over waqf land between the waqif's heirs and the nazhir, necessitating a thorough approach to grasp the legal complexities and social contexts underlying the dispute.

RESEARCH RESULT AND DISCUSSION

Based on data obtained from interviews with the heirs of the wakif, the nazhir (trustee) who is also the mosque administrator, and the village officials, the results of the research related to the main issues can be presented as follows.

1. Legal Implications of Waqf Pledges on the Position and Responsibilities of Nazhir

1.1. Waqf Pledge

To avoid conflicts in the future, several procedures must be carried out. One of the procedures that must be carried out is the declaration of waqf. The Waqf Declaration Deed serves as evidence of the wakif's intention to donate their property for management by the nazhir, in line with the purposes of the waqf as outlined in the deed. There are several regulations concerning this matter.

Matters related to waqf are stipulated in Law Number 41 of 2004.

- a) Article 3: "Waqf property that has been donated cannot be used as an object of gift, inheritance, will, sale, donation, seizure, or transfer in the form of other rights transfers."
- b) Article 40 letter (a): Wakaf is invalid if "Wakaf property is transferred in a manner that contradicts the purpose, function, and intended use of wakaf."
- c) Article 17 of Law Number 41/2004 stipulates that the wakaf declaration is made by the wakif to the nazhir in the presence of the Wakaf Declaration Officer.
- d) Article 18: The PPAIW prepares four copies of the Waqf Declaration

Deed for the wakif, nazhir, Office Religious Affairs, and National Land Agency.

- e) Article 32: Waqf land must be registered in the name of the nazhir as the trustee.

According to Tjung et al. (2019) since the wakaf process has been carried out in accordance with the applicable legal procedures in Indonesia, wakaf is permanent and the ownership rights cannot be revoked, including by the wakif or his heirs, unless there are other specific provisions therein. Therefore, the nazhir is the rightful owner of the original wakaf land certificate.

1.2. Authority of the Nazhir

From a legal standpoint, the Nazhir holds full rights to the waqf land certificate since the waqf land is required to be registered under the name of the Nazhir as the custodian. The actions of the wakif's heirs in withholding the certificate have no strong legal basis. Due to this issue, the wakif's heirs wish to replace the Nazhir because the Nazhir has not performed his duties properly. However, the procedure for replacing the nazhir must be carried out in accordance with applicable regulations. Based on Article 3 of the Indonesian Waqf Board Regulation Number 3 of 2008, the nazhir can be replaced for violating one of the clauses in that article, namely the nazhir not performing his duties as a nazhir and/or violating the prohibitions in the management and development of waqf assets in accordance with the provisions of laws and regulations.

1.3. Change of Nazhir

The mechanism for replacing a nazhir is regulated in Article 4 of the

Indonesian Waqf Board Regulation Number 3 of 2008, which states that the general requirements for replacing a nazhir are namely (a) a letter of recommendation for the replacement of the nazhir from the local Office Religious Affairs addressed to the Indonesian Waqf Board and (b) a formal request letter submitted to the local Office of Religious Affairs to forward the nazhir replacement to the Indonesian Waqf Board, outlining the reasons for the replacement in accordance with relevant laws and regulations. In this case, the reason that can be submitted is stated in one section that reads, "Neglecting responsibilities as a nazhir and/or breaching prohibitions related to the management and development of waqf assets in compliance with applicable laws and regulations, supported by a formal objection from the wakif or heirs with the required stamp duty".

In practice, the replacement of the nazhir cannot be carried out because it does not comply with the applicable law. Article 13 of Law Number 41 of 2004 stipulates that the replacement of the nazhir must be carried out in accordance with the established procedures, which the following rule Based on Article 13 of Law No. 41 of 2004 concerning Waqf, which balances the protection of the rights of the nadzir with the enforcement of accountability in waqf management, the nadzir may be dismissed if:

1. No longer meets the requirements as a nadzir;
2. Fails to perform duties in accordance with regulations;
3. Uses waqf assets not in accordance with their intended purpose.

Although there is an agreement in mediation to replace the nazhir, this process must not be carried out by seizing or withholding the endowment certificate by the heirs of the wakif. Such actions violate the legitimate rights of the nazhir and create disputes over document ownership. It is better to handle the replacement of the nazhir in accordance with the applicable laws and regulations. This is what prompted the nazhir to report the heirs of the wakif to the police on the grounds of seizure of the land certificate.

2. Legal Protection Efforts for Nazhir in Waqf Management

2.1. Designated use of waqf land

The limits of the nazhir's authority in managing waqf assets, as stated by Asror & Triana (2023), are that the nazhir is only limited to managing waqf assets. However, in the case in question, the nazhir has managed the assets but has committed a violation by allowing another party to hold activities in the mosque that are not in accordance with the regulations, and these activities even disturb the surrounding community. Additionally, constructing buildings that do not align with the intended purpose of the endowment (i.e., buildings unrelated to places of worship).

The intended use of endowment land is specified in the certificate; however, there is no provision outlining penalties if the land is used contrary to its intended purpose. This constitutes a fundamental violation, as it alters the function and intended use of endowment assets without following proper procedures.

In accordance with Article 5 of Law Number 41 of 2004, waqf property is prohibited from being transferred, gifted, sold, inherited, mortgaged, or transferred in any other form of transfer of rights. In this case, there are indications that Habib purchased a house near the mosque and then used the waqf land for personal gain, which can be categorized as a form of indirect transfer of rights.

The waqf pledge must contain the elements mentioned in Article 17 of the Waqf Law, including the allocation of waqf property. The following are some of the discrepancies that have caused problems with the land donated as waqf.

- a) The purpose has been clearly defined, namely that the land is endowed for a mosque with a building area of 105 m².
- b) Violation of the purpose, as the additional construction carried out by Habib is not in accordance with the initial endowment pledge.
- c) Legal consequences, based on Article 40 of the Endowment Law, changes to the purpose can only be made with the approval of the Indonesian Waqf Board and must remain in line with the purpose of the endowment.

In this case, the construction of new buildings without permission constitutes a violation of the established waqf pledge. Religious activities should be managed in accordance with the function of the mosque as a place of worship to enhance the religious activities of the Muslim community. However, activities conducted until late at night disturb the surrounding community. This contradicts the principle of public interest, as the dominance of the

majority of worshippers from outside the area may disregard the interests of the local community as the primary beneficiaries of the endowment.

Based on the principles of fiqh wakaf and Article 4 of the Wakaf Law regarding the purpose of wakaf for the public interest, it can be evaluated that the activity is not entirely appropriate because it causes harm (loss) to the surrounding community and does not fulfill the principle of *maslahah 'ammah* (public interest). The *nazhir* should play a role in coordinating with the local community and the wakif. Due to the lack of coordination with the local community and the mosque administrators, this has caused problems.

Given the various aspects that have been violated, the following legal recommendations are offered during the problem-solving process:

- a) Replacement of the *nazhir* in accordance with Article 13 of the Waqf Law, namely that a *nazhir* who fails to perform his duties may be replaced.
- b) Building Regulation. Buildings that do not comply with their intended use must be demolished or adjusted in accordance with the waqf declaration.
- c) Activity Regulation. Clear rules are needed regarding the time and type of activities that can be carried out in the mosque.
- d) Comprehensive mediation involving the Indonesian Waqf Board and the Ministry of Religious Affairs to resolve issues in accordance with waqf regulations.

Thus, this discussion revolves around "The Implications of Waqf Declarations and Legal Protection for Trustees: A Study of the Nurul Islam

Pudakpayung Mosque, Banyumanik, Semarang.”

CONCLUSION

- 1) The waqf pledge has very fundamental legal implications in the management of waqf, as seen in the case of the Nurul Islam Pudakpayung Mosque. Based on Law Number 41 of 2004, waqf is permanent and the ownership rights cannot be revoked after the waqf process has been carried out in accordance with the applicable legal procedures. There are several implications in this study, such as Certificate Ownership. Here, the nazhir has full rights to the waqf land certificate because, based on Article 32 of the Waqf Law, waqf land must be registered in the name of the nazhir as the trustee. The actions of the wakif's heirs in withholding the certificate have no strong legal basis. The wakaf declaration has designated the land for a mosque with a building area of 105 m². However, there has been a violation of the designation through additional construction that is not in accordance with the initial wakaf declaration and activities that disturb the surrounding community.
- 2) Legal protection efforts for nazhir in waqf management by replacing nazhir who do not carry out their duties, regulating buildings that are not in accordance with their designation, regulating activities in mosques, and comprehensive mediation involving the Indonesian Waqf Board and the

Ministry of Religion. The Process of Replacing the Nazhir Although there is a desire to replace the nazhir from the wakif's heirs, the replacement procedure must be carried out in accordance with Article 13 of the Waqf Law and Indonesian Waqf Board Regulation Number 3 of 2008, not through the seizure or withholding of the waqf certificate.

There are several fundamental violations in the management of the endowment, namely: first, a violation of the intended use of the endowment property, where the land designated for the mosque has been misused by the construction of other buildings that do not align with the original purpose of the endowment; second, the failure of the Nazhir to fulfill their duties and authorities due to inadequate supervision and allowing third parties to construct buildings that deviate from the intended use of the endowment; third, weak oversight from the Indonesian Waqf Board, allowing these violations to occur without adequate preventive measures.

Legal protection for the Nazhir in managing waqf can be achieved through various efforts; however, in this case, the Nazhir has committed violations that require legal action. This case demonstrates that legal protection for nazhir is not only about protecting their rights but also enforcing their obligations to manage waqf in accordance with its intended purpose and the principle of *maslahah*. The

violations committed by the nazhir contradict the principle of *maslahah* because they cause harm (loss) to the surrounding community and fail to meet the principle of *maslahah 'ammah* (public interest).

This study emphasizes the importance of a comprehensive understanding of waqf law and effective supervision to prevent similar disputes in the future. Synergy between various related parties is needed to ensure that waqf management is carried out in accordance with sharia principles and applicable laws, so that it can provide optimal benefits for the welfare of the *ummah* and society in general.

The author suggests that it would be better to make a breakthrough by creating a digital platform such as Wakafnet, where data is transparent so that all parties can access transparent reports on waqf assets, and a community supervisory committee to monitor mosque activities and ensure compliance with waqf objectives.

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