

Legal Protection for *Nadzir* (*Waqf* Recipient) from Unregistered *Waqf* Land

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Abstract

Waqf in Indonesia that is carried out by the community is often not by the existing provisions and elements. As a result, there are many problems in *waqf*. One of the problems that can arise is the existence of *waqf* land that is not registered. This causes the recipient of the *waqf*, *nadzir*, as the manager of the donated land, to often get involved in disputes over the land. For this reason, legal protection and efforts are needed for *nadzir* from unregistered *waqf* land. In finding answers to these problems, researchers use certain legal theories as a basis for analyzing them. The method used in this research is normative legal research (normative juridical) and this research is descriptive analysis. The result is, the implementation of *waqf* in Indonesia is based on Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1977 concerning Land Registration, Law No. 41 of 2004 concerning *Waqf*. These provisions are regulated to ensure certainty and protection for the implementation of *waqf*. Legal protection of the *waqf* land is very important considering that many parties want to control the donated land because the land is considered to have high economic value and is a very basic human need. For this reason, in obtaining legal strength and certainty, the *waqf* land must be registered so that it is legally registered as *waqf* property by the state. The donated land must obtain a *waqf* pledge deed which is then made a *waqf* certificate to ensure legal certainty. If the donated land does not have a *waqf* certificate, then it does not have legal force.

Keywords: Legal Protection, *Waqf* Land, *Nadzir*

Introduction

The land is very important in supporting human survival and is a very basic need for every human being. Land including immovable objects is found in Article 506 of the Civil Code, book II which regulates objects (*Van Zaken*). Land in the juridical sense is the surface of the earth. There is a structure or system in land tenure, one of which is land rights, namely rights containing the authority to be able to use and utilize the land. One of the rights to land, namely ownership rights over land, is meant by ownership rights to land is the right that can be owned by someone who is hereditary, strongest, and fulfilled by considering Article 6 of the UUPA (Basic Agrarian Law). The land has a social function.¹ In this case, land ownership rights are rights granted by the state to be owned by Indonesian citizens by registering land. Also, the method of obtaining land can be done through actions that give rise to legal relations such as buying and selling, inheritance, *hibah*, exchange, loans, and others, including through *waqf*.

Waqf is worship in the form of *shadaqah* which has many benefits for social interests. *Waqf* functions for the benefit of the people in the context of devotion to Allah Swt. *Waqf* is also one of the prioritized forms of worship in Islam because in addition to one's *taqarrub* (approach) to Allah Swt., it is also a form of other social welfare.²

Waqf itself is a form of worship that has spiritual and social aspects in Islam. From a spiritual perspective, *waqf* is a practice of worship or *shadaqah* that reflects the obedience of a Muslim in carrying out the commands of Allah Swt. and Rasulullah Saw. Meanwhile, from a social perspective, it can be seen from the existence of assets that are given up and used for the public interest. *Waqf* is closely related to the socio-economic community and as a support for the development of the Islamic community in Indonesia and has the aim of realizing the benefit of mankind.

In general, *waqf* in Indonesia is used for schools, Islamic boarding schools, orphanages, mosques, prayer rooms, tombs, and so on. *Waqf* is also related to the provisions of national agrarian law

¹Johan Duparc, *Verzameling van Nederlandsch-Indische Rechtspraak En Rechtsliteratuur 1898-1907*, Vol. 1 (n.c.: n.p., 1910), p. -.

²Hasbi ash-Shiddiq, "Perjalanan Wakaf HAKI dalam Koridor Hukum *Syara'* dan Perundangan Indonesia", *Al-Syakhshiyah: Jurnal Hukum Keluarga Islam dan Kemanusiaan*, 1(2), 2019, p. 128-142. Retrieved from <https://doi.org/10.35673/as-hki.v1i2.474>.

regulations governing legal relations with earth, water, and space as well as the wealth contained therein, referred to in this case, namely land, which is contained in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

Regarding land registration administration, *waqf* is included in the category of determining land rights. There are activities to determine land rights because there is an activity to determine the *waqf* land through a decision of the competent official. The issue of land ownership has its place in the law in the field of agriculture/land in Indonesia.

Waqf is carried out by a *wakif* by handing over the property to *nadzir* to be managed and developed for the public interest. Property that is most often used in *waqf* is usually land. However, in the implementation of land *waqf*, it is often carried out based on trust alone, namely *wakif* handing over the donated land to *nadzir* not in front of the authorized *waqf* deed maker and later the official will issue a *waqf* pledge deed as proof that the *waqf* has been done. In the absence of the *waqf* pledge deed, the *waqf* land cannot be registered with the authorized government agency and is not recorded as *waqf* property. With a lack of knowledge in the implementation of the *waqf*, *nadzir* as the recipient of the *waqf* often gets problems with the *waqf* land he manages. The problem that arises is because the donated land managed by *nadzir* is not registered so that it does not have a definite legal force. Moreover, if the *wakif* has passed away then the heirs do not recognize the existence of *waqf*, because there is no evidence regarding the provision of *waqf* and during the life of the *wakif* the heirs do not know the provision of *waqf*.

In this case, the reason for the writer to raise the issue is looking for legal efforts or protection against *nadzir* as the recipient of unregistered *waqf* land. Formulation of the problem in this research is, "How are the legal force and legal protection against *nadzir* from unregistered *waqf* land?"

Methodology

The research method used in this research is normative legal research (normative juridical). According to Soerjono Soekanto, research is generally differentiated according to data obtained directly from the public (primary data) and library materials (secondary data).³ Normative legal research or also known as library research is legal

³Soerjono Soekanto and Sri Marmudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2011), p. -.

research that is carried out by researching or examining secondary data.

Normative legal research is also called doctrinal legal research. In this type of legal research, whenever the law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior it is deemed appropriate.⁴ This research is descriptive-analytical. The nature of descriptive analysis research is to describe the results of the research with complete and detailed data.

In normative legal research, the data used are secondary. Secondary data is data obtained from library materials. Secondary data consists of primary legal materials and secondary legal materials. *First*, primary legal materials, are binding legal materials, consisting of basic legal norms or rules, basic regulations, statutory regulations, uncodified legal materials, jurisprudence, treaties, and legal materials from the colonial era which are still in use.⁵ The primary materials to be used in this research are in the form of laws and regulations, including: (1) Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA); (2) Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*; (3) Government Regulation No. 24 of 1997 concerning Land Registration; (4) Law No. 41 of 2004 concerning *Waqf*. *Second*, secondary legal materials, are legal materials that can assist in providing explanations for primary legal materials, such as draft laws, research results, and scientific works from legal circles, related to research problems.

Results and Discussion

Waqf is a legal action carried out by *wakif* by releasing or separating his/her property which is used forever or for a certain period, which has the aim of being in the public interest and is intended to get the reward and pleasure of Allah Swt. From this description, it can be concluded that *waqf* is a practice of worship that has *shadaqah jariyah* value for Muslims by releasing their property for the public interest.

The function of *waqf* is to perpetuate the benefits of the donated land, by the objectives of the *waqf* concerned. By making the land of the

⁴Qomaruddin, "Makna Zakat dan Pajak", *Jurnal QIEMA (Qomaruddin Islamic Economy Magazine)*, 4(2), 2018, p. 114-128. Retrieved from <http://ejournal.kopertais4.or.id/pantura/index.php/qiema/article/view/3354>.

⁵Soekanto and Marmudji, *Penelitian Hukum Normatif*, p. -.

ownership rights as a *waqf*, the ownership rights concerned are canceled. But the land does not become state land, but rather has a special status as *waqf* land, which is regulated by Islamic Religious Law.⁶

In Indonesia, the legal basis for the implementation of *waqf* is regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1977 concerning Land Registration, and Law No. 41 of 2004 concerning *Waqf*.

In doing *waqf*, it must first fulfill the *waqf* elements which are listed in the Law No. 41 of 2004 Article 6, namely as follows: *wakif*; *nadzir*; *waqf* property; *waqf* pledge; the allocation of *waqf* objects; and *waqf* period.

A. *Wakif*

Wakif is the party who donates his property.⁷ *Wakif* includes individuals, organizations, and legal entities. The *wakif* requirements:

1. Individual *waqf* can only do *waqf* if it meets the following requirements: (a) Adult; (b) Common sense; (c) Not prevented from doing legal actions; and (d) The legal owner of the property.
2. The organization's *waqf* can do *waqf* if it is by the organization's provisions to donate the organization's *waqf* assets based on the articles of association of the organization concerned.
3. Legal entity *waqf* can perform *waqf* if it is by the provisions of the legal entity to donate the *waqf* property of the legal entity based on the articles of association of the legal entity concerned.

B. *Nadzir*

Nadzir is the party that receives *waqf* property from *wakif* to manage it according to its function or allotment. *Nadzir* consists of individuals, organizations, and legal entities. The *nadzir* requirements are contained in Law No. 41 of 2004 Article 10, namely:

1. An individual can only become a *nadzir* if he meets the following requirements: (a) Indonesian citizens; (b) Muslim; (c) Adult;

⁶Asri Agustiwi, "Hukum dan Kebijakan Hukum Agraria di Indonesia", *Ratu Adil*, 3(1), 2014, p. 1-7. Retrieved from <https://ejournal.unsa.ac.id/index.php/ratuadil/article/view/17>.

⁷Muammar Alay Idrus, "Keabsahan, Kepastian Hukum, dan Perlindungan Hukum atas Perwakafan yang Tidak Tercatat (Studi Kasus Praktek Perwakafan Tanah di Kecamatan Sukamulia)", *Jurnal IUS Kajian Hukum dan Keadilan*, 5(1), 2017, p. 30-48. Retrieved from <http://dx.doi.org/10.29303/ius.v5i1.342>.

- (d) *Amanah*; (d) Able physically and spiritually; and (e) Not prevented from doing legal actions.
2. An organization can become a *nadzir* if it meets the following requirements: (a) The management of the organization concerned meets the requirements of an individual *nadzir*; (b) Organizations that work in the social, educational, social and/ or Islamic religious fields.
 3. A legal entity can become a *nadzir* if it meets the following requirements: (a) The management of the legal entity concerned meets the requirements of an individual *nadzir*; (b) Indonesian legal entity established by the applicable laws and regulations; and (c) The legal entity concerned is engaged in the social, educational, social, and Islamic religious fields.

Nadzir's duties are contained in Article 11 of Law No. 41 of 2004 concerning *Waqf* as follows: (1) Performing the administration of *waqf* assets; (2) Managing and developing *waqf* assets by their objectives, functions, and objectives; (3) Overseeing and protecting *waqf* property; (4) Report the implementation of tasks to the Indonesian *Waqf* Board.

C. *Waqf* Property

Waqf property is a property that has long-lasting durability and can be used in the long term and has an economic value according to the *sharia* which a *wakif* gives to *nadzir*. Also, the donated property must have the status of a *wakif's* property, the *waqf's* property must be free from all the burdens of bonds, guarantees, confiscation, and disputes. Land that contains imposition or is in the process of a case or dispute, cannot be donated until the problem is resolved first.⁸

According to Article 16 of Law No. 41 of 2004 concerning *Waqf*, assets can be classified into:

1. Immovable object. Inanimate objects that can be represented include: (a) Land rights by the provisions of the applicable laws and regulations, both registered and unregistered; (b) The building or part of the building consisting of land as referred to in letter a; (c) Plants and other objects related to soil; (d) Ownership rights of apartment units by the provisions of the applicable laws and regulations; (e) Other immovable objects by the provisions of the *sharia* and applicable laws and regulations.

⁸Agustiwi, "Hukum dan Kebijakan Hukum Agraria di Indonesia", p. -.

2. Moving objects. Movable objects that can be represented include: (a) Money; (b) Precious metal; (c) Securities; (d) Vehicle; (e) Intellectual property rights; (f) Lease rights; and (g) Other movable objects by the provisions of the *sharia* and applicable laws and regulations.

D. *Waqf* Pledge

A *waqf* pledge is a statement of *wakif*'s will that is spoken orally and in writing to *nadzir* to donate his property. According to the Law No. 41 of 2004 Article 17 states: (1) The pledge of *waqf* is carried out by *wakif* to *nadzir* before PPAIW and witnessed by 2 (two) witnesses; (2) The *waqf* pledge as referred to in Paragraph (1) shall be stated orally and/or in writing and outlined in the *waqf* pledge deed by PPAIW.⁹

If the *wakif* in the implementation of *waqf* is unable to attend to declare the *waqf* pledge verbally/in writing for reasons justified by law, then the *wakif* can appoint a proxy by providing a power of attorney which is strengthened by 2 (two) witnesses. To be able to carry out the *waqf* pledge, the *wakif* or its proxies provide proof of ownership of the *waqf* property to PPAIW. According to Law No. 41 of 2004 Article 20 states the requirements for witnesses in the *waqf* pledge as follows: adult; Islam religion; common sense; and not prevented from doing legal actions.¹⁰

E. *The Allocation of Waqf Objects*

In achieving the goals and functions of *waqf*, the allocation of property for *waqf* can only be designated for: (1) Religious facilities and activities; (2) Education and health facilities and activities; (3) Progress and increase in the economy of the people; and/or (4) Other public welfare advances that are not against the *sharia* and laws and regulations.

In the implementation of *waqf*, it must fulfill these elements, so that the *waqf* is considered valid by the state. However, the community often simply performs *waqf*, that is, only fulfills certain elements and conditions. The implementation is enough by pledging *nadzir* then witnessed by several witnesses. The implementation of *waqf* like this

⁹What is meant by PPAIW is the authorized officer appointed by the minister to make a *waqf* pledge deed.

¹⁰Solikhul Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)", *Jurnal Penelitian*, 8(2), 2014, p. 319-338. Retrieved from <http://dx.doi.org/10.21043/jupe.v8i2.840>.

is still widely practiced by the community because the procedure is very easy to carry out so that it can facilitate the implementation of *waqf* on their land.

Many lands have been donated but have not been registered according to the prevailing laws and regulations and in reality, *nadzir* or *wakif* ignore this. If the *waqf* land is registered and obtains the *waqf* pledge deed, the legal result will be guaranteed.

By not registering the donated land and implementing it only under the hands, it will cause problems in the future. Problems that arise are the cases of *waqf* land disputes that often occur, in which parties deny the existence of the *waqf* land because there is no strong evidence. Moreover, *wakif* (*waqf* giver) and *nadzir* (as manager) as well as the witnesses have passed away, it can cause problems due to the unclear status of the land as well as the function and designation of the land.

It can be seen that the issue of *waqf* land disputes in the case at the Surabaya High Religious Court Decision No: 332/Pdt.G/2011/PTA.Sby has examined and tried the case at the appeal level. In this case, the implementation of *waqf* is not by the existing rules or regulations. In the Intervention, the case stated that a plot of land and a school building on it located on Jl. Kedungsroko Gang V, Pacar Kembang Village, Tambaksari District, Surabaya, with an area of 800 m² (eight hundred square). Recorded in Petok D No. 107, Parcel 21 d, in the name of Abd. Wahab Baiman, with the following boundaries: North side (Yard of Simun/Abd. Salam/Alimun); South side (Jl. Kedungsroko V); West side (Yard of Ngateni/H.M. Toha); East side (Yard of P. Sari); is the property of K.H. Ardjo Usman who had been donated to Madrasah Nahdlatul Ulama Pacar Kembang, Surabaya in 1926.

And also stated that the statement of the *Waqf* Pledge Deed No: BA.03.1.5/99/III/2009, which was issued by the Head of the Tambaksari District Office of Religious Affairs in Surabaya was deemed not to have legal force. The *Waqf* Pledge Deed has no legal force because it is not implemented by existing regulatory procedures in Indonesia.

In such cases where the object of the disputed island, as represented by K.H. Ardjo Usman to Madrasah Nahdlatul Ulama without the heirs knowing or other parties who report to the head of the henna flower environment or the local government and has

not been registered with the local land office. Then the heir of K.H. Ardjo Usman, who did not know that the land had been donated to Madrasah Nahdlatul Ulama, instead of handed over the *waqf* land to another party, namely H. Moh Toha as *nadzir* and as chairman of the Diponegoro educational park foundation with Deed of Pledge No: BA.03.1.5/99/III/2009, issued by the Head of the Office of Religious Affairs in Tambaksari District, Surabaya. However, the *Waqf* Pledge Deed is considered invalid and has no legal consequences by the Religious High Court.

The High Religious Court thinks that all of K.H. Ardjo no longer has a legal relationship with the object of the *waqf* because the *waqf* property has been separated from the inheritance. And the land has been donated by K.H. Ardjo to Madrasah Nahdlatul Ulama as *nadzir*. Then the High Religious Court decided that the Taman Diponegoro foundation had illegally (against the law) occupied or utilized the donated land from K.H. Ardjo which had been given to the Nahdlatul Ulama Madrasah without *nadzir*'s permission was the Nahdlatul Ulama Madrasah.

Judging from the case, there must be legal protection against *nadzir*, from parties who want to claim the *waqf* land for personal gain. As for what is meant by legal protection according to experts is to protect human rights that have been harmed by others and protection is given to the people so that they can enjoy all the rights provided by law.¹¹

The existence of Law No. 5 of 1960 on Basic Agrarian Basic Regulations (UUPA) states "*Representation of owned land is protected and regulated by Government Regulation*".¹² Then the Indonesian government issued Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*. In Government Regulation No. 28 of 1997 concerning Freehold Land *Waqf*, there is a procedure that must be implemented, namely that *waqf* is not only carried out using a verbal contract but must also be done in writing in front of the Official *Waqf* Pledge Deed (PPAIW) to ensure legal certainty and protection law.

By law, the donation which is done orally is not sufficient to make the donated land legal. Indeed, in Islamic law, the way of a donation is by fulfilling the elements of a *wakif* (person who donates property), *mauquf bih* (goods or property that is *waqf*), *mauquf 'alaih*

¹¹Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000), p. -.

¹²Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

(the person that given *waqf*), and *shighat* (statement or pledge of *waqf*). In the elements of doing *waqf* according to Islam, by fulfilling these elements it is said to be valid. However, it needs to be remembered again, that we live in a country where our feet stand, so we also have to comply with the rules that apply in this country regarding the requirements so that the *waqf* process is legal both nationally and religiously. So that it will create legal certainty and assurance.

Waqf land as the object of land registration must be registered immediately so that it has legal force. Before being registered, you must prepare the "AIW - *Waqf Pledge*", the original certificate of ownership which will later be converted into a *waqf* certificate. Land registration is carried out by PPAIW (the Official of the *Waqf Pledge Deed*) on behalf of *nadzir* to the authorized agency no later than 7 (seven) working days from the signing of the *waqf* pledge deed. Then the authorized agency will issue proof of registration of the *waqf* land. What is meant by proof of registration of *waqf* land is a certificate issued by the competent government agency wherein the statement states the status of the land as *waqf* property and the *waqf* land has been registered and registered with the state. The government agency authorized in registering *waqf* land is the National Government Agency. The agency authorized to register *waqf* for movable objects other than money is the "Indonesian *Waqf Board*".¹³ As for the money itself, *wakif* can donate through the *sharia* financial institution appointed by the minister.¹⁴

From the start, the *waqf* land certification procedure must be completed with all the requirements, namely someone who is donating, someone who receives a *waqf*, and their existence must be clear. After that *wakif* registers the land with *nadzir*, then *nadzir* reports it to the head of the local KUA/PPAIW. After being investigated by the KUA/PPAIW regarding the existence of the land to be donated as *waqf*, they were asked to come to the KUA to read the *waqf* pledge in front of PPAIW and witnessed by two witnesses then signed the *waqf* pledge. All of these sets of requirements must be fulfilled to issue a *waqf* pledge.

Nadzir on behalf of the head of the KUA/PPAIW submitted to the Department of Religious Affairs the division of *zakat* and *waqf*

¹³C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989), p. -.

¹⁴*Ibid.*

settlement. Furthermore, the office of the Ministry of Religion will submit to the land office for a certificate of *waqf*. Requirements that must be met for submission to the land office are photocopies of *nadzir*'s Identity Cards (KTP), *waqf* pledge deeds, a certificate from the village head, land certificate or seal, and *nadzir* endorsement letter. After it is processed by the land office and a *waqf* certificate is made, the *waqf* certificate is then submitted to the office of the Department of Religious Courts. Then the religious department office will submit it to the land office through *nadzir* to be recorded in the registration of the donated land.¹⁵

The implementation of *waqf* is inseparable from the existence of the *Waqf* Pledge Deed which becomes authentic evidence relating to the existence of the *waqf* land regarding the status, function, and allocation of the land to be managed and developed by *nadzir*.

The *Waqf* Pledge Deed, hereinafter abbreviated as AIW, is evidence of *wakif*'s will to donate his property to be managed by *nadzir* by the allotment of *waqf* assets as outlined in the form of a deed.¹⁶ The purpose of the issuance of the deed is to clarify the status and position of the land, provide clarity regarding *wakif* and *nadzir* and become evidence when there are heirs of the *wakif* who do not recognize the land as *waqf*, when a *waqf* land already has a *Waqf* Pledge Deed, the legal status is valid and can be protected. The contents in AIW according to the applicable regulations state that: "*The contents and form of the Waqf Pledge Deed are determined by the Minister of Religion*".¹⁷

The *Waqf* Pledge Deed (AIW) issued by the Official *Waqf* Pledge Deed (PPAIW) is legally recognized by the state so that it can become evidence of the implementation of *waqf* or the provision of *waqf*. If there is a provision of *waqf* carried out under the hand without a *Waqf* Pledge Deed, the provision of *waqf* is null and void and not legally recognized by the state.

In addition to the *Waqf* Pledge Deed, there is also the *Waqf* Pledge Replacement Deed, what distinguishes it is when the *waqf* implementation occurs. The Deed instead of the *Waqf* Pledge is used

¹⁵Mochammad Andre Agustianto, "Wakaf Sebagai Strategi Pemberdayaan Ekonomi Masyarakat", *El-Qist: Journal of Islamic Economics and Business (JIEB)*, 9(2), 2019, p. 143-163. Retrieved from <https://doi.org/10.15642/elqist.2019.9.2.143-163>.

¹⁶Dul Manan, "Wakaf Produktif dalam Perspektif Imam Madhab", *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 1(2), 2016, p. 363-382. Retrieved from <https://journal.iaimnumetrolampung.ac.id/index.php/jm/article/view/46>.

¹⁷Neneng Hasanah, "Kontekstualitas Ayat-Ayat Hukum Wakaf di Indonesia", *Asy-Syari'ah*, 20(2), 2018, p. 133-144. Retrieved from <https://doi.org/10.15575/as.v20i2.3446>.

for *waqf* land that was carried out before the enactment of Government Regulation No. 28 of 1977, which is intended for *waqf* at the time that the *Waqf* Pledge of *wakif* has passed away. While the *Waqf* Pledge Deed is used for *waqf* land which is carried out after the enactment of Government Regulation No. 28 of 1977, which is intended for *waqf* at the time the *Waqf* Deed will be drawn up.

The *Waqf* Pledge Deed and the *Waqf* Pledge Substitute Deed are used as material for registering *waqf* land which will later be converted into a *waqf* certificate. This registration is based on Government Regulation No. 24 of 1997 on Land Registration. In which Article 9 states that the donated land is one of the objects of registration.¹⁸

Based on the case above No: 332/Pdt.G/2011/PTA.Sby, between *nadzir* and the *waqf* giver, they only carry out the *waqf* process orally, the *waqf* land is not legally registered by state law. As a result of the law, the *waqf* land which has been verbally donated does not gain legal force when the heirs of the donator of the *waqf* sue *nadzir*. Lack of conditions that must be met will make the *waqf* land not change its status to *waqf* land. *Waqif* (the person who gives the *waqf*) has indeed separated the *waqf* property from the inheritance, but a *nadzir* must register the *waqf* land with the KUA/PPIW so that its status changes to land *waqf* instead of freehold land.

Legal protection for *nadzir* who does not register the donated land, the law still does not regulate in detail and firmly. However, when a dispute occurs, such as a case No: 332/Pdt.G/2011/PTA.Sby, a *nadzir* has rights, namely the right to be able to consult with the heirs of *waqif* (*waqf*) so that the dispute can be resolved peacefully.

We can see the reasons for *nadzir*'s negligence in registering the donated land, including: (1) *Nazhir* does not understand the knowledge in the field of *waqf* land registration that has been carried out or a *waqf* pledge deed has been made, so that some *nazhir*'s neglect their duties regarding the registration of *waqf* land; (2) The unregistered *waqf* is due to limited funds from the government, while all this time *nazhir* has only hoped for programs held by the government; (3) Lack of facilities from the government in the form of *waqf* management funds that can be used as the main capital. So that it makes *nazhir* confused in managing and developing *waqf* which should be able to generate income which later from the management of the *waqf* can then continue to develop the *waqf* land;

¹⁸Government Regulation No. 24 of 1997 concerning Land Registration.

(4) The unregistered *waqf* is also due to the incompleteness of land administration to be realized, for example, the donated land island that has not been certified as the title;¹⁹ (5) There is *nazhir*'s concern that a third party controls the *waqf* land because the *waqf* land has not been registered so that in managing the donated land that has not been registered, tighter supervision is needed until the *waqf* is certified.²⁰

Waqf is a legal act. As a legal basis, it is necessary to realize the procedures or procedures outlined in the regulation regarding *waqf*. However, seeing that there are still donated land cases that are not registered, will lead to various conflicts. There are several factors why *wakif* implementing *waqf* does not register: (1) There is a kinship between *wakif* and *nadzir* so that *wakif* feels that it is sufficient to just make a verbal pledge without written evidence in donating his land. This family factor also encourages *waqif* not to feel worried about irregularities and misappropriation of the land that is being donated in the future; (2) The high sense of trust from *waqif* to *nazhir* to maintain the integrity of the donated land, where this is motivated by the culture of the community at that time, namely being able to uphold the trust given to others, so that *waqif* feels sufficient to carry out *waqf* orally; (3) *Waqif* knowledge about the importance of authentic documents is still minimal because *waqif* does not know the rules contained in Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf* and Law No. 41 of 2004 concerning *Waqf*; (4) The certificates of ownership of the *waqf* land are not clear so that completing the documents required to register the *waqf* land requires a large amount of money and time; (5) The number of administrative costs for registering *waqf* land and certifying it is a factor that causes *waqif* to carry out unregistered *waqf*.²¹

The absence of complete firmness in imposing sanctions for parties who do not carry out the mandate of *waqf*, such as whether it was deliberately or unintentionally did not register the *waqf* land,

¹⁹Ahmad Djalaluddin, "Legitimasi Fiqih bagi Optimalisasi dan Pendayagunaan Wakaf", *Iqtishoduna: Jurnal Ekonomi dan Bisnis Islam*, 3(1), 2007, p. 1-18. Retrieved from <https://doi.org/10.18860/iq.v2i1.210>.

²⁰Muhammad Yusuf Siddik, "Sistem Pendayagunaan Wakaf Tunai dalam Tinjauan Ilmu Fiqih", *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam*, 16(2), 2017, p. 221-236. Retrieved from <https://doi.org/10.15408/kordinat.v16i2.6440>.

²¹Idrus, "Keabsahan, Kepastian Hukum, dan Perlindungan Hukum atas Perwakafan yang Tidak Tercatat (Studi Kasus Praktek Perwakafan Tanah di Kecamatan Sukamulia)", p. -.

it has made weaknesses in the *waqf* law. If we look at Article 68 Paragraph 1 of Law No. 41 of 2004 reads “*The Minister can impose administrative sanctions for violations of non-registration of waqf assets by Islamic financial institutions and PPAIW as referred to in Article 30 and Article 32*”. However, in the next Article, there is no clarity about what administrative sanctions should be. This opens up opportunities for irregularities and violations that are likely to be neglected in the management of almsgiving. So when it is found that fraud by individuals, groups of people, or legal entities in *nadzir*, it is difficult to solve it because there is no public corridor in dispute advocacy or settlement of *waqf* misuse.

Conclusion

From the above discussion, it can be concluded that *waqf* itself is a practice of worship for a Muslim to get closer to Allah Saw. Where *waqf* functions to support the socio-economy in society. The existence of *waqf* can also improve the community's welfare. The implementation of *waqf* in Indonesia is based on Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1997 concerning Land Registration, Law No. 41 of 2004 concerning *Waqf*. These provisions are regulated to ensure certainty and protection for the implementation of *waqf*. Legal protection of the *waqf* land is very important considering that many parties want to control the donated land because the land is considered to have high economic value and is a very basic human need. For this reason, in obtaining legal strength and certainty, the *waqf* land must be registered so that it is legally registered as *waqf* property by the state. The donated land must obtain a *waqf* pledge deed which is then made a *waqf* certificate to ensure legal certainty. If the donated land does not have a *waqf* certificate, then it does not have legal force.

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