

## Legal Protection of Land Assets of Waqf Muhammadiyah and Nahdlatul Ulama in Magelang District

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### Abstract

The legal protection of Waqf land is regulated in the Republic of Indonesia Act No. 41 of 2004 on Waqf. Waqf assets in Indonesia generally often have very varied disputes. Thus, the purpose of this research is to analyze the efforts to protect the assets of Wakf Muhammadiyah and Nahdlatul Ulama in the Magelang district in keeping the land Wakf so that it is safe and there is no dispute. This research method uses field research, the primary and secondary sources of data used in this research. It is then analyzed decipherably and presented qualitatively. The results of this research are the first is the protection of the legal assets of the waqf land carried out by the Assembly of Governors of the Muhammadiyah District (MPW PDM) Magelang and the Foundation of the Governor of Nahdlatul Ulama (LWPNU) of the district of Magelang to conduct the management, utilization, and development of the waqf land properly. Secondly, if there are obstacles or obstacles in the process of protecting the law of the waqf land, then there should be a deeper socialization of the waqf, monitoring and evaluation in the implementation of the law protection as well as collaborative communication between the relevant agencies.

**Keywords:** *Legal Protection, Waqf Land, Muhammadiyah, Nahdlatul Ulama*

### Abstrak

Perlindungan hukum tanah wakaf diatur dalam Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf. Aset wakaf di Indonesia secara umum sering terjadi sengketa yang sangat bervariasi. Dengan demikian tujuan penelitian ini menganalisis upaya perlindungan aset tanah wakaf Muhammadiyah dan Nahdlatul Ulama di Kabupaten Magelang dalam menjaga tanah wakaf agar aman dan tidak terjadi sengketa. Metode penelitian ini menggunakan studi lapangan (*field research*), sumber data yang digunakan yaitu primer dan sekunder yang berkaitan dengan penelitian ini. Selanjutnya dianalisis secara deksriptif dan disajikan secara kualitatif. Hasil penelitian ini yang pertama yaitu perlindungan hukum aset tanah wakaf yang dilakukan oleh Majelis Pemberdayaan wakaf Pimpinan Daerah Muhammadiyah (MPW PDM) Magelang dan Lembaga Wakaf Pimpinan Nahdlatul Ulama (LWPNU) Kabupaten Magelang yakni melakukan pengelolaan, pemanfaatan, dan pengembangan tanah wakaf secara baik. Kedua, adanya kendala atau hambatan dalam proses upaya perlindungan hukum tanah wakaf maka harus diadakan sosialisasi tentang wakaf lebih mendalam, monitoring dan evaluasi dalam pelaksanaan perlindungan hukum serta komunikasi yang kolaboratif antara lembaga yang bersangkutan.

**Kata Kunci:** *Perlindungan Hukum, Tanah Wakaf, Muhammadiyah, Nahdlatul Ulama*

### Introduction

The legal protection of waqf land is regulated by the Republic of Indonesia Act No. 41 of 2004 on Waqf.<sup>1</sup> He law provides legal protection to the waqf land as a Waqf asset that must be guarded and properly managed. The efforts to protect the assets of the Muhammadiyah walker and Nahdlatul Ulama in Magelang district are essential to keep the walker's land to be properly managed in its use and development. Legal protection is implemented to keep waqf's land from misuse or problems later on.

Waqf lands that do not have a certificate of land according to Islamic law their status remains valid.<sup>2</sup> As mentioned in the fiqh books, there is no obligation for a wakif to record the land of his waqf. The execution of a waqaf is deemed to be valid when it has fulfilled the terms and conditions

<sup>1</sup> Republik Indonesia, "Undang-Undang No 41 Tahun 2004 tentang Wakaf" (2004).

<sup>2</sup> Fatahillah Zahrul, "Perlindungan Hukum Tanah Wakaf yang Tidak Mmiliki Sertifikat (Studi terhadap Putusan di Mahkamah Syari'ah Aceh)," 2019.

prescribed. However, the status of the waqf land without a certificate in the positive law has no legal force so it has a chance to raise questions later on.<sup>3</sup>

Waqf as a religious practice in Islam, has an important role in allocating some of the wealth for the benefit of the people and the development of the community. The Act No. 41 of 2004 on Waqf in Indonesia specifies in detail that the waqf is a legal act that obliges the representative to separate part of the property for use in accordance with the Sharia law.<sup>4</sup> This view is supported by the Quran, as mentioned in QS. Ali Imran verse 92, which affirms the importance of infak to good in the eyes of Allah.

In the context of Waqf land in the district of Magelang, Muhammadiyah and Nahdlatul Ulama play important roles in waqf management. Previous research, as presented by Irwan<sup>5</sup> and Fitri<sup>6</sup> has identified the great benefits of waqf management in various areas such as education, social, health, economics, and worship.

Research related to law protection and waqf management has been much done to identify challenges and solutions in different contexts. For example, a study by Febya has commented in depth on the administrative procedures in the registration of waqf land in Indonesia, while Juwaini focus on the legal implications of the Ministry of Agriculture and Spatial Affairs Regulations in the Waqf land registration system.<sup>7</sup>

Waqf is seen from the management perspective, the research carried out Busro describes the significant differences in Muhammadiyah and Nahdlatul Ulama's approaches to waqf management, in terms of the nadzir duties and the waqf time limits.<sup>8</sup> This analysis provides a deeper understanding of how major Islamic organizations manage their waqf assets and the challenges they face.

The attempts to protect the law of the waqf land include preventive and repressive efforts. waqf land that does not have a certificate of land according to Islamic law its status remains valid.<sup>9</sup> As mentioned in the fiqh books, there is no obligation for a pewaqf to record the land of his waqf. The execution of a waqaf is deemed to be valid when it has fulfilled the terms and conditions prescribed. However, the status of the waqf land that does not have a certificate in the positive law has no legal force so has the opportunity to raise questions in later days.<sup>10</sup>

Despite this, the legal protection of waqf land remains a major challenge on the ground. The process of waqf land certification in Indonesia, although already regulated by the Waqf Act No. 41 of 2004, still faces significant administrative constraints. According to the latest study by Dakum dkk, the delay in the certification process often leads to uncertainty about the status of Waqf land ownership and potential future legal conflicts.<sup>11</sup>

Based on the diversity of existing research, the study will expand its scope with a special focus on issues in the Magelang district, which is an important example of the implementation and protection of the law in waqf management. It is expected that the results of this research can make a significant contribution for academics, practitioners, and the government in improving the sustainability and effectiveness of waqf management in Indonesia.

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<sup>3</sup> Putri Kurniawati, "Perlindungan Hukum Tanah Wakaf yang Tidak Memiliki Sertifikat," *Universitas Nusantara PGRI Kediri* 01 (2017): 1–7.

<sup>4</sup> Republik Indonesia, *Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf*, 2024.

<sup>5</sup> Irwan A, "Perlindungan Hukum terhadap Harta Benda Wakaf sebagai Aset Publik di Kecamatan Wiradesa Kabupaten Pekalongan," *Ijtihad* 16, no. 2 (2016): 159–77.

<sup>6</sup> Natasya Umi Fitri, "Pengelolaan dan Pemanfaatan Harta Wakaf di Kabupaten Pidie dan Dampak terhadap Perekonomian Umat (Studi Kasus di Masjid Baitul Istiqomah Kecamatan Glumpang Tiga)," 2021.

<sup>7</sup> M Febya, "Implementasi Kebijakan Persertipikatan Tanah Wakaf Dalam Rangka Perlindungan Dan Kepastian Hukum Di Kabupaten Magelang," 2022.

<sup>8</sup> B Busro, "Konsep Nazhir Wakaf Profesional Dan Implementasinya Di Lembaga Wakaf NU Dan Muhammadiyah," 2021.

<sup>9</sup> Fatahillah Zahrul, "Perlindungan Hukum Tanah Wakaf yang Tidak Memiliki Sertifikat (Studi terhadap Putusan di Mahkamah Syar'ah Aceh)" 7 (2019): 65–82.

<sup>10</sup> Kurniawati, "Perlindungan Hukum Tanah Wakaf yang Tidak Memiliki Sertifikat."

<sup>11</sup> F Dakum, "Kebijakan Percepatan Sertifikasi Tanah Wakaf," 2023.

The study aims to explore the challenges in the legal protection and exploitation of Muhammadiyah and Nahdlatul Ulama walkways in the Magelang district. By analyzing the differences in management approaches and the administrative problems faced, the study is expected to provide concrete recommendations for improving legal protection of walkers in Indonesia.

### **Research method**

The main issues to be addressed include how the legal protection efforts are applied to the waqf land managed by MPW Muhammadiyah district of Magelang and LWP Nahdlatul Ulama district Magelang as well as the obstacles encountered in its implementation and the solutions that can be found to overcome such obstacles. This research uses a qualitative approach with field research methods.<sup>12</sup> The data collection techniques used include in-depth interviews with several related parties such as MPW Muhammadiyah district of Magelang and LWP Nahdlatul Ulama district Magelang, legal experts, and documentation studies to gather information related to policies and regulations related to the protection of the law of the land of the waqf. The data collected will be analyzed qualitatively taking into account the relevant legal and social contexts to draw up a comprehensive conclusion regarding the legal protection of assets of the Muhammadiyah and Nahdlatul Ulama land in Magelang district.

### **Results and discussion**

#### **A. Law Enforcement of Waqf Muhammadiyah Land and Nahdlatul Ulama in Magelang District**

Waqf comes from the Arabic word “waqafa” which means standing, standing or standing. He is the one who keeps his wealth and gives it in the way of God. The purpose of waqf is to give benefits or benefits from a property which is given to a person who is entitled and used according to the teaching of shariah. Waqf is done by pronouncing lafadz waqf or is called with ikrar waqf. In addition to doing with pronouncing ikrar wakaf, the registration of waqf objects by the Office of the Maker of the Act of Ikrar Waqf (PPAIW) is important to do. This is intended to ensure that trade practices are well controlled, so as to avoid unnecessary disqualification.<sup>13</sup>

The registration and registration of waqf lands is one of the efforts to obtain legal protection. The recording of the land in the present time runs in accordance with the macacid of the syariah which means more of its benefits than its disadvantages or losses. Ideally, every waqf land should have protection and legal security. Land that is not registered automatically has no security and legal protection.<sup>14</sup> The registration and registration of the land of the waqf is an act confirming that the property has been separated from some of the property of the waqf and used for the interests or purposes of worship according to the teachings of Islam.<sup>15</sup>

The legal protection of the waqf land can make it a primary protection when there is later on a dispute concerning the land. According to Philip M, there needs to be an effort to protect the land. The effort encompasses two aspects: the preventive and repressive protection of the law.<sup>16</sup> The first preventive legal protection exists in the laws or regulations of the Indonesian Waqf Board (BWI) which affirm the duties and functions of the superintendent in the management, development, and use of the waqf land. The second is the repressive legal protection where there

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<sup>12</sup> Muhammad Irkham Firdaus, “Criticism Analysis Of The Effectiveness Of Indonesia ’ S Economic Criminal Policy In The Perspective Of Islamic Law” 8, no. September (2022): 85–102, <https://doi.org/10.3376/jch.v8i1.570>.

<sup>13</sup> Ansari, “Pengelolaan Harta Wakaf: Studi Komparasi Nahdlatul Ulama Dan Muhammadiyah Kabupaten Magelang,” *Istidlal* 3, no. 2 (2019): 173–90.

<sup>14</sup> Isnaini Munawir, “Perlindungan Hukum Tanah Wakaf yang Tidak Memiliki Sertifikat” 5 (2020): 24–44.

<sup>15</sup> Fatimah, “Pendaftaran Tanah Wakaf Dalam Konteks Kepastian Hukum Hak Atas Tanah,” *Jurnal Hukum Samudra Keadilan* 13, no. 2 (2018): 286–94.

<sup>16</sup> Dyah Permata dan Budi Asri, “Perlindungan Hukum Hak Kekayaan Intelektual Bagi Produk Kreatif Usaha Kecil Menengah di Yogyakarta,” *Jurnal Hukum Ins Quia Iustum* 1, no. 27 (2020): 130–50.

is an effort or movement made by law enforcement to its purpose in the concept of legal protection of waqff land.<sup>17</sup>

Preventive efforts were made to keep the waqf land protected by law, namely by registering waqfs in accordance with the provisions of the Law No. 41 of 2004 on Waqf, the BWI Regulations and the Compilation of Islamic Law (KHI). Preparation of a complete waqf act in accordance with procedures and validity and containing clear information can be one way in protecting waqf landining or administering documents related to waqfs well and safely; providing legal advice and education to the public about the importance of legal protection of waqf land; and the use of information technology to facilitate the management and monitoring of waqf land. The success of the waqf land management depends on the performance of the nadzir so it is useful for the progress of society.<sup>18</sup> This is supported by the involvement of the BWI who plays a role in providing guidelines and guidance related to waqf management that can be done with socialization regarding waqf procedures and processes.<sup>19</sup>

In addition to the preventive efforts made, there are also repressive efforts made when there is a possibility of violation of the waqf land. Some repressive efforts can be made by law enforcement through the judicial system when there are violations committed by the parties deliberately against the waqf land; the restoration of waqf land management to the institution or the nadzir if there is violation made by the previous administrator; the strict monitoring of waqf lands management to prevent the occurrence of abuse or concealment of the assets of the waqf soil; and the granting of strict legal sanctions such as fines or penalties for the party who breaches the provisions in relation to the management or care of the waqf land. Law enforcement through such a judicial system involves religious courts when the dispute relates to the validity of the waqf or the presence of a deliberate violation of the conditions of the waqf.<sup>20</sup> In addition to the religious courts, there is a waqf dispute settlement through the state courts that is against cases that violate the rules of the laws in force.

The governance of the waqf land should be carried out by the nadzir with a professionalism so that the purpose and the benefits of the waqf soil are achieved. The achievement of the purposes and benefits of waqf land is not apart from some aspects that should be taken into account, namely, the basis of eternity of the benefits, the foundation of responsibility and professional management in its management<sup>21</sup>.

Two islamic organizations in Indonesia that are very concerned with the protection of the law of the waqf land are Muhammadiyah and Nahdlatul Ulama. The protection of the law provided by Muhammadiyah in addition to adhering to the Law No. 41 of 2004 on Waqf, and other regulations relating to waqf, there are other rules owned by the Muhammadiyah.<sup>22</sup> According to the rules of the MPW Muhammadiyah for the movement to pursue the land of the waqf who are still in the hands of the individual, the hand is transferred to the shadow of the supervisor of the association and has a Decision from the Head of the Muhammadiyah District of Magelang district. Nadzir was given legality from the Muhammadiyah Central Leader. The leader of the

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<sup>17</sup> Desy Trihartini, Anriz Nazaruddin Halim, dan Erny Kencanawati, "Perlindungan Hukum terhadap Nazhir dari Tuntutan Ahli Waris Atas Akta Ikrar Wakaf yang Dibuat Di Hadapan Pejabat Pembuat Akta Ikrar Wakaf (PPAIW)," *Journal od Legal Research* 4, no. 2 (2022): 505–26.

<sup>18</sup> A Zamakhsyari Baharuddin and Qowiyul Iman, "Nazir Wakaf Profesional, Standarisasi Dan Problematikanya" 3 (2018): 62–74.

<sup>19</sup> Muammar Alay Idrus, "Keabsahan, Kepastian Hukum Dan Perlindungan Hukum Atas Perwakafan Yang Tidak Tercatat (Studi Kasus Praktek Perwakafan Tanah Di Kecamatan Sukamulia)," *Jurnal Kajian Hukum Dan Keadilan IUS* 5, no. 1 (2017): 32–48.

<sup>20</sup> Irvanda Rizqi Maulana et al., "Peran Pengadilan Agama Dalam Menyelesaikan Kasus Sengketa Wakaf," *Jurnal Kajian Agama Dan Dakwah* 4, no. 1 (2024).

<sup>21</sup> Amir Mu'allim, "Ijtihad Ekonomi Dalam Pengelolaan Aset Wakaf," 2017, 291–310.

<sup>22</sup> Achmad Irwan Hamzani dan Mukhidin Mukhidin, "Perlindungan Hukum terhadap Harta Benda Wakaf sebagai Aset Publik di Kecamatan Wiradesa Kabupaten Pekalongan," *IJTIHAD Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 2 (2017): 159, <https://doi.org/10.18326/ijthad.v16i2.159-177>.

Muhammadiyah Center has appointed three persons, including the chief, secretary and treasurer, as the legal basis for continuing the process of legal protection of the waqf land in Muhammadiyah.

In line with Soejono Soekanto's theory of legal protection of effective legal protection,<sup>23</sup> so in clarifying the protection of the law required a clear, systematic and comprehensive attitude by the MPW Muhammadiyah. Furthermore, in practice, the MPW Muhammadiyah did not directly deal with the process of waqf land. The process begins with a branch or branch of the Muhammadiyah who reports the existence of a waqf to the leader of the Muhammadiyah area, who then processes the certification of the waqf's land on behalf of Muhammadiyah. Another alternative is that the waqf land is handed over by the wakif to the head of the branch, forwarded to the KUA to obtain the Act of Waqf Pledge (AIW), and then certified in the name of Muhammadiyah. The registration of such land was intended to provide legal certainty of the status of the land, in this case confirms that the land belongs to Muhammadiyah. This is important to prevent future disputes and to protect the rights of representatives and supervisors.<sup>24</sup>

The legal protection of waqf's land assets cannot stand without the presence of a waqf land object.<sup>25</sup> Many of the waqf lands in Indonesia are unregistered, thus hindering the management and productive use of such waqf land.<sup>26</sup> In the MPW of Muhammadiyah the waqf land is clearly owned by the nadzir individual and nadzir Muhammadiyah association of a number of 491. Whereas the number of waqf lands that have been or have not been certified is currently inaccurate because it is still in the data renewal phase. The process of certifying the waqf's land may be used at the expense of its own for accommodation or the cost for the process of accommodation of waqf's certification of land is fully borne by Muhammadiyah's Amal Usaha (AUM).

The form of legal protection provided by the MPW Muhammadiyah against the property of waqf's own land is the AIW, a certificate that is already a valid part of the Muhammadiyah waqf's land as well as plangisation or giving a sign that the land is a waqf land. Once the waqf lands are protected by the law, they can be used for the benefit of the people or for the well-being of the peoples. However, it should be noted that the superintendent of the association may reject the waqf land if it is felt that it is not able to realize the wishes of the representative optimally from the beginning of the process. The refusal was made so that no quarrel would arise the next day.

The waqf lands administered by the MPW Muhammadiyah are divided into several areas used for the benefit of the people. There are 307 fields of education, consisting of PAUD, TK, SD, Primary and Secondary Schools, and five health fields, including hospitals and clinics. On the economic side, there is one store in Salaman district, Magelang district. There are more than 18 buildings in each Ranting Muhammadiyah district of Magelang. The remainder of the total amount of waqf land utilization is used for musholas, mosques or other social fields according to the results of the presentation by Mr. Antok as head of the MPW Muhammadiyah district of Magelang.<sup>27</sup>

In addition to the waqf lands that are used for the common good for the welfare of the people, there are also waqf land that is used for productive purposes. Some examples of productive waqf land owned by the MPW Muhammadiyah district of Magelang are waqf lands used for the cultivation of grasses for feeding cattle. If waqf lands are productive, then the value of the waqf land benefits is expected to be higher. There are two types of land use in the MPW Muhammadiyah

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<sup>23</sup> Ratna Artha, "Penegakan Hukum terhadap Perlindungan Anak di Indonesia," *Jurnal Undiksba* 11, no. 23 (2002): 66–85.

<sup>24</sup> Siska Petridila and Khoirul Moch Anwar, "Upaya Kantor Urusan Agama Kecamatan Sedati Dalam Efektivitas Percepatan Sertifikasi Tanah Wakaf," *Jurnal Ekonomi Dan Bisnis Islam* 8, no. 1 (2023): 13–22.

<sup>25</sup> U. Rifatunnisa, "Perlindungan Hukum Tanah Wakaf Atas Peralihan Kepada Pihak Ketiga yang Melanggar Hukum Menurut Hukum Islam dan Dikaitkan dengan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf," *Waqaf dan Ekonomi Islam* 4, no. 4 (2004): 121–29.

<sup>26</sup> Lambang Prasetyo, "Kedudukan Hukum Pengambilalihan Tanah Wakaf Yang Batal Demi Hukum Untuk Dibagikan Sebagai Harta Warisan Dalam Kajian Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Jurnal Ius Constituendum* 3, no. 1 (2017).

<sup>27</sup> Antok, Wawancara Majelis Pemberdayaan Wakaf Kabupaten Magelang (2024).

district of Magelang, namely long-term or permanent use and land use within a certain period of time.

The use and management of various fields of waqf land that have been carried out by MPW Muhammadiyah and LWPNU Magelang district can not be said to be successful in accordance with the regulations of the legislation, especially the Law No. 41 Year 2004 about Waqf. Success is seen if all the waqfs land that has been certified is used all, but the fact in the field has not been 100% in the use of waqf land that belongs to MPW Muhammadiyah and LWPNU of Magelang district.

In addition to the law or legal protection granted by the state, the Muhammadiyah association also provides additional protection with the presence of plangisations (name boards) and adds the Building Identification Number (NIB). The purpose of such additional protection is to further strengthen and affirm that the waqf land belongs to MPW Muhammadiyah district of Magelang and already has a strong legal umbrella so that the protection obtained is undoubtedly and guarantees no dispute later on against the property.

The law provides legal protection to the waqf land as a waqf asset that must be guarded and properly managed. Some of the efforts to protect the waqf land law, among other things, are by registering the waqf land in accordance with the provisions in force, ensuring that the waqf land is not abandoned or abused by other parties, as well as performing maintenance and surveillance of the waqf land to stay awake and wellined. In addition, cooperation between the parties involved in the waqf land management is also an important legal protection effort.<sup>28</sup>

The protection of the waqf land by the MPW Muhammadiyah district of Magelang:

### 1. The protection of the waqf land by the MPW Muhammadiyah district of Magelang

The Act of Waqf is a proof of the will of the person who has a wahawaf or a representative to transfer some or all of his property to the receiver of the waqf (nadzir) in accordance with the provisions of the waqf for the welfare of the people in the form of an act. The Act of Waqf is a proof of the will of the person who has a wahawaf or a representative to transfer some or all of his property to the receiver of the waqf (nadzir) in accordance with the provisions of the waqf for the welfare of the people in the form of an act:

- a. The wakif prepares various documents needed for the waqf process.
- b. The wakif, nadzir and witnesses came to the KUA where the waqf land object was located.
- c. The KUA acts as the Office of the Maker of the Act of Ikrar Waqf (PPAIW) checking the required documents provided by the wakif.
- d. KUA confirmed nadzir
- e. The wakif made the vows in front of nadzir and 2 witnesses
- f. After pronouncing the pledge, the AIW and a copy are issued.
- g. Wakif, nadzir and the witness took home a copy of AIW.

The process to obtain a waqf land certificate has several stages, namely:

- a. Have a Waqf Pledge Deed (AIW)
- b. AIW is submitted to the National Land Agency (BPN) for the process of issuing waqf land certificates.

The land donated by the wakif gets a certificate in the name of the nadzir persyarikatan, so the wakif gets a charter or proof in the form of a certificate given by MPW Muhammadiyah Magelang Regency which confirms that the wakif has donated the land.

### 1. The process of signage or providing nameplates

Legal protection efforts carried out by MPW Muhammadiyah Magelang Regency took the form of planing. Signposting is a form of protection in the form of marking waqf land with a board or sign containing information confirming that the land has been legally donated to MPW Muhammadiyah Magelang Regency. Some examples of land that have been planed by MPW

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<sup>28</sup> Irfan Christianto, "Perlindungan Hukum terhadap Tanah Wakaf Melalui Pendaftaran Tanah Berdasarkan Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 10, no. 01 (2022): 91, <https://doi.org/10.30868/am.v10i01.2027>.

Muhammadiyah Magelang Regency include the areas of Muntilan (SD Muhammadiyah Gunungpring), Srumbung (BA Aisyiyah).

## 2. Providing a Land Plot Identification Number (NIB)

The Land Plot Identification Number or NIB is a special identifier given to each land parcel throughout Indonesia. The NIB for each plot of land is different, making it easier to check whether the land is owned by individuals or other people. In this context, drawing on the NIB makes it easier for MPW Muhammadiyah Magelang Regency to check waqf land in Magelang Regency. So far, the implementation of NIB granting on every waqf land has not yielded any results because legal protection by granting NIB is still being sought and discussed.

## 3. Muhammadiyah Asset Management Information System (SIMAM)

The Muhammadiyah asset management information system is a digital recording and inventory system for all organization assets in every element of leadership and business charities owned by Muhammadiyah throughout Indonesia. One of the assets is waqf land, so the administrative records of the waqf land have been stored digitally as proof that the waqf land is registered.

Apart from Muhammadiyah, Nahdlatul Ulama (NU) also provides legal protection for waqf land. NU's management of waqf assets has different characteristics compared to Muhammadiyah, NU's waqf management tends to focus on physical development and social activities.<sup>29</sup> In addition, the legal protection provided by LWPNU is only that regulated in law, without additional special regulations from Nahdlatul Ulama. The attitude taken by Nahdlatul Ulama in implementing a form of legal protection for waqf land in Magelang Regency is by securing waqf land documents that are valid and archived by LWPNU. Apart from the attitude in implementing the legal protection of waqf land, several forms of protection are also implemented by LWPNU to protect the waqf land. The attitude taken by LWPNU in protecting waqf land includes registering the waqf land with the KUA so that the AIW is issued and then continuing with the certification process carried out by LWPNU to BPN so that the waqf land certificate is issued. Apart from legal protection in the form of waqf land certification, there is another method implemented by LWPNU to protect waqf land, namely by providing signage in the form of boards or signs containing information that the land has been donated and has strong legal protection from the state.<sup>30</sup>

There are only 20 waqf lands that have been certified and have strong legal protection in the LWPNU data during the leadership period. The number of other waqf lands that have not been certified is still large because data is currently being collected and updated.<sup>31</sup> Apart from legal protection for waqf land according to MPW Muhammadiyah Magelang Regency, there is also legal protection for waqf land according to Nahdlatul Ulama's view. Legal protection of waqf land carried out by LWPNU Magelang Regency, namely:

### 1. Process of waqf pledge deed and waqf land certificate

The AIW is proof of a statement of the will of the person who has the endowment or wakif to donate part or all of his property to the waqf recipient (nadzir) in accordance with the allocation of the waqf objects for the welfare of the community as stated in the form of a deed.<sup>32</sup>

The application to obtain AIW through LWPNU Magelang Regency as nadzir organization includes several stages, namely:

- a. The Wakif prepares various documents needed for the waqf process.
- b. The Wakif, Nadzir and witnesses came to the KUA where the waqf land objects were located.
- c. The KUA acts as the PPAIW checking the required documents provided by the wakif.
- d. KUA confirmed nadzir.

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<sup>29</sup> Ansari, "Pengelolaan Harta Wakaf: Studi Komparasi Nahdlatul Ulama Dan Muhammadiyah Kabupaten Magelang."

<sup>30</sup> Syaiful, "Wawancara Lembaga Wakaf Dan Pertanahan Nahdlatul Ulama Kabupaten Magelang," 2024.

<sup>31</sup> Syaiful Anam dan Cash Waqf, "Efektivitas Pelaksanaan Wakaf Tunai di NU-Care Lazisnu," *Qawānīn Journal of Economic Syariah Law* 8, no. 7 (2024): 61–83, <https://doi.org/10.30762/qaw.v8i1.428>.

<sup>32</sup> Sistem Informasi Komunikasi Penataan Ruang, 2021.

- e. The Wakif said the vows in front of nadzir and 2 witnesses.
- f. After pronouncing the pledge, the AIW and a copy are issued.
- g. Wakif, nadzir and the witness took home a copy of AIW.

The process of obtaining a waqf land certificate has several stages, namely:

- a. Have a AIW.
- b. AIW is submitted to the National Land Agency (BPN) for the process of issuing waqf land certificates.

2. Signboard or nameplate process

The legal protection effort carried out by LWPNU Magelang Regency is in the form of planning. Signposting is a form of protection in the form of marking waqf land with a board or sign post containing information confirming that the land has been legally donated to LWPNU Magelang Regency. Some examples of land that have been planed by LWPNU Magelang Regency include the Mungkid (PC NU) and Borobudur areas.

3. Nahdlatul Ulama Waqf Site System (e-SIWAKNU)

The e-siwak system in Nahdlatul Ulama is an administrative system that accommodates all files online and is proof that certified waqf land is registered in the system. Wakif and nadzir can access this system to find out waqf data. The data in the e-siwak system is directly connected and recorded under the auspices of the Ministry of Religion of the Republic of Indonesia.

According to the views of MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency, individual nadzir or nadzir in the form of organizations/institutions can be seen from different points of view. According to MPW Muhammadiyah Magelang Regency, it is better to donate waqf to organizations/institutions because they already have a clear legal umbrella and are recognized by the state so that existing waqf assets are guaranteed legal protection. Apart from that, as long as the organization/institution is still in existence, legal protection is still available for the waqf assets. Meanwhile, according to the view of the Magelang Regency LWPNU, the majority in Nahdlatul Ulama are still individual nadzir due to greater trust in the ulama and ignorance about the LWPNU.

The implementation of the legal protection of waqf land in Magelang Regency by MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency seen from the perspective of Law No. 41 of 2004 concerning Waqf is appropriate. The conformity of legal protection efforts with article 11 which states that the nadzir's duties in efforts to implement protection include administration, utilization, management and development.

Registration of waqf land is the main first step to provide legal certainty, the procedures for registration and replacement of the nadzir of waqf property are clearly regulated.<sup>33</sup> Efforts to legally protect waqf land in accordance with the Indonesian Waqf Board carried out by MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency are in accordance with the reality on the ground. Based on the reality in the field in the implementation of legal protection of waqf land in Magelang Regency by MPW Muhammadiyah Magelang Regency with LWPNU Magelang Regency, if drawn based on Soejono's theory, Soekanto explains that there are five aspects that influence the process of law enforcement and legal protection as follows:

1. Legal factors

The implementation of legal protection for waqf land is in accordance with Law Number 41 of 2004 concerning Waqf. Where MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency have carried out a form of legal protection by registering waqf land with the KUA using procedures written in the law so that they get AIW which is then continued with the process to BPN to obtain a waqf land certificate.

2. Law enforcement factors

Waqf land protectors who act as law enforcers are MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency. Both institutions as nadzir are responsible for the

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<sup>33</sup> Rachmat Taibu and Ulfa Novrianti, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Akta Ikrar Wakaf," *Jurnal Ilmu Hukum Kanturuna Wollo* 4, no. 1 (2023): 31–40.



management, utilization and development of waqf land. The implementation of the two institutions acting as nadzir has not been fulfilled optimally in management, utilization and development because there are several obstacles.

The existing obstacles are in the form of a mismatch between the wakif's wishes and the existing conditions, for example the wakif's desire to donate land to be used as a mosque, but the situation is that in the environment near the waqf land there is already a mosque so the use of the waqf land is less than optimal, constraints on the costs that will be used in managing the waqf land, obstacles during the process of collecting data required for registration of waqf land so that it is certified and gets legal protection.

### 3. Facilities or facilities factors that support law enforcement

One of the facilities or facilities that support law enforcement is skilled human resources. The officers in MPW Muhammadiyah Magelang Regency and LWPNU Magelang Regency are not yet fully optimal in carrying out their duties and providing services to the community who will carry out waqf. For example, officers do not explain in detail what needs to be prepared for the waqf process up to the stage of obtaining a waqf certificate, resulting in unequal information received by the public from information providers.

### 4. Community Factors

The community factor is one of the most important factors in the waqf process to obtain legal protection for the waqf land. The view of the Muhammadiyah community in waqf is more inclined to believe in the Persyarikatan as the nadzir in waqf so that the land donated gets stronger legal protection because the Persyarikatan already has a legal umbrella from the state. Meanwhile, the Nahdlatul Ulama community is more inclined to believe in individuals as nadzir in waqf on the grounds that individual nadzir such as ulama, kyai, and elders are considered to understand better how to use it in accordance with existing sharia. However, if you trust individual nadzir in terms of getting legal protection, it is not as strong as when waqf is regulated. If the wakif, individual nadzir, and witness die, it will cause problems where the heirs of the nadzir claim that the land is privately owned.

### 5. Cultural Factors

The culture that exists in society greatly influences a person's waqf, one of which is that the majority of people believe that Muhammadiyah will donate waqf to the Nadzir Persyarikatan in order to obtain clear and strong legal protection. Meanwhile, the majority of Nahdlatul Ulama communities will donate waqf to individual nadzir due to the belief that individual nadzir such as kyai, ulama and elders in using waqf land will be in accordance with sharia and provide legal protection for the waqf land.

One of the cultural factors is that there are still people who entrust the use and management of waqf land, especially to individual nadzir such as ulama and kyai, there are several weaknesses that arise, namely: there is uncertainty and lack of clarity in the management of waqf land so that it is not transparent in reporting; there is a risk of political or social involvement in the use and management of waqf land and the proceeds from productive waqf land for purposes that are not in accordance with the waqf provisions; dependence on individuals such as kyai and ulama will create a risk if the kyai or ulama do not carry out their responsibilities in carrying out their duties; lack of supervision and accountability where there is no clear mechanism to monitor whether the waqf land is used according to the provisions that have been determined or not; and differences in understanding in managing waqf land.

## **B. Obstacles Faced and Solutions in Implementing Legal Protection of Waqf Land**

Various obstacles are often faced in implementing waqf land protection. These obstacles include administrative problems, lack of public understanding of the importance of registering waqf land, as well as challenges in managing and supervising waqf assets.<sup>34</sup> Legal protection for waqf land does not always run smoothly. In its implementation, many obstacles or obstacles are

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<sup>34</sup> M. Khozinul Asror dan Nita Triana, "Perlindungan Hukum Wakif bagi Pemegang Wakaf Sukuk Ritel terhadap Resiko Gagal Bayar," *Menara Ilmu* 17, no. 01 (2023): 72–77.

encountered. Barriers or obstacles can be material during the process or implementation of legal protection for waqf land. Even though the implementation of legal protection by two Islamic organizations, namely Muhammadiyah and Nahdlatul Ulama, there are still several obstacles or barriers encountered during implementation.<sup>35</sup>

Obstacles or barriers encountered during the process of implementing legal protection according to the chairman of the MPW Muhammadiyah Magelang Regency, Mr. Antok and the secretary of the MPW Muhammadiyah, Magelang Regency, Mr. Karim, include a lack of trust between the wakif and the MPW Muhammadiyah Magelang Regency administrators when asked to collect personal data in the form of KTP, KK or photo for the purposes of the legal protection process for waqf land.<sup>36</sup> Apart from that, another obstacle is that someone does not understand the waqf and certification process so that they get legal protection. Another obstacle is the wakif's disagreement when the waqf land donated to individual nadzir will be replaced or secured to the nadzir of the MPW Muhammadiyah association. There was even a case of cancellation of waqf land in Kawedanan Village because there were heirs from the wakif who did not agree and the cancellation of waqf land was due to the nadzir not being able to manage the waqf land in accordance with the wakif's request in the waqf process.

Apart from the obstacles or obstacles that exist for Muhammadiyah in implementing legal protection, there are also several obstacles faced by LWPNU in implementing this legal protection. The obstacles that exist with LWPNU include that when the process of inputting data into the e-Siwak system there is one photo or attachment that is not clear, the data is incorrect, then registration to the system is automatically rejected so AIW cannot be printed.

This is the same as previous research, which shows that these obstacles include the community's lack of understanding about the importance of registering waqf land, administrative problems, and conflicts between the parties involved. Strategies that can be implemented to resolve these obstacles include increasing public education, strengthening regulations, and collaborating with related institutions.<sup>37</sup> Meanwhile, there are several solutions or efforts made by MPW Muhammadiyah Magelang Regency to resolve the obstacles or constraints faced in the implementation of legal protection, including holding hearings for people who will donate their land, preparing data from the start of the waqf process so that no data is left behind during the implementation process. legal protection of waqf land. Solutions that can be used to resolve the problems of obstacles and obstacles that arise in the implementation of legal protection according to MPW Muhammadiyah's view are: holding hearings or outreach to the community; educate the public to understand about waqf; collaborative attitude between people involved in the waqf process and the Magelang Regency MPW Muhammadiyah institution; and mutual communication between MPW Muhammadiyah Magelang Regency and KUA.

Apart from that, several solutions also exist from the Nahdlatul Ulama's point of view in addressing the problems of obstacles or constraints that arise in the implementation of legal protection, namely looking at the people in the land area that will be donated. If the land to be donated is the majority of the Muhammadiyah community then the land will be donated to the Muhammadiyah waqf institution only, whereas if the majority of the community is Nahdlatul Ulama then the land will be donated to the Nahdlatul Ulama waqf institution only or if the community is a homogenous mixture of Muhammadiyah and Nahdlatul Ulama it should be donated to individuals only.

Detailed explanation or analysis relating to obstacles or constraints in implementing the legal protection of waqf land. There are several factors that occur as obstacles or obstacles. The factors that influence the occurrence of obstacles are divided into two things, namely internal and external factors. Obstacles caused by internal factors are:

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<sup>35</sup> Munawirsyah, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Sertifikat."

<sup>36</sup> Karim, Wawancara Majelis Pemberdayaan Wakaf Muhammadiyah Kabupaten Magelang (2024).

<sup>37</sup> Syamsul Mohammad Arifin, "Peran Badan Wakaf Indonesia Dalam Penyelesaian Sengketa Tanah Wakaf," *Jurnal Hukum Dan Kenotariatan* 4, no. 1 (2020): 27–40.

### 1. Obstacles that exist in MPW Muhammadiyah Magelang Regency

In implementing the legal protection of waqf land by the Magelang Regency Muhammadiyah MPW, there were several obstacles from internal factors that hampered the process, including, namely a lack of communication which resulted in non-collaboration between the KUA and the Magelang Regency Muhammadiyah MPW and insufficient Human Resources. optimal in data collection.

Meanwhile, external factors that hinder the implementation of legal protection for waqf land are: the wakif's lack of trust when asked to submit personal documents for the waqf land certification process which has the impact of obtaining legal protection for the land; lack of public understanding about the urgency of legal protection for waqf land; and the lack of public awareness when waqf is in the form of land so that they do not receive legal protection for the waqf land.

### 2. Obstacles that exist in LWPNU Magelang Regency

In implementing the legal protection of waqf land by the LWPNU of Magelang Regency, there were several obstacles from internal actors that hampered the process, including, namely: slow handling by the LWPNU of Magelang Regency in collecting data on waqf land; less than optimal administration resulting in inaccurate waqf land data; lack of collaboration between KUA and LWPNU Magelang Regency.

Constraints or obstacles that arise due to external factors, namely the lack of education received by the community regarding the protection of waqf land; there is no quick response from the wakif when asked for data to obtain legal protection for waqf land; and have greater trust in individual nadzir than in waqf to nadzir in the form of institutions or organizations. The existing constraints or obstacles seen from the perspective of Law No. 41 of 2004 concerning Waqf are not in accordance with the real situation today. It is stated in Law No. 41 of 2004 concerning Waqf article 10 that individual nadzir is still permitted. According to the journal by Nurfitriah stated that as time goes by and the times develop, society's view of individual nadzir is no longer relevant for use today.<sup>38</sup>

Individual nadzir is not relevant today because individual nadzir does not have a strong legal umbrella from the state. When individual nadzir and witnesses involved in the waqf process die, the waqf assets are on the verge of problems. The problems in question include the ownership of waqf land being recognized by other people, the development and use of waqf land being less than optimal. In the view of the MPW Muhammadiyah management nowadays, it is more relevant to use the nadzir form of institution or organization, because the institution or organization has a strong legal umbrella from the state, according to Mr. Karim's explanation. The use and management of waqf land assets is more optimal in handling. Supervision of waqf land assets is stricter so as to minimize the emergence of problems or obstacles.

The view of the Indonesian Waqf Board regarding the constraints or barriers that exist in efforts to legally protect Muhammadiyah and NU waqf land in Magelang district according to Article 2 of the BWI which states that nadzir must manage and develop waqf assets, management and development of waqf assets must be in accordance with sharia, in managing nadzir it is permissible to request administration costs to the wakif without reducing the waqf, there is a need for sharia guarantees in terms of management and development of waqf assets.<sup>39</sup> Of the many paragraphs in Article 2 BWI, there are several realities in the field that are not appropriate, such as the management of waqf land which is less than optimal because the costs used for development

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<sup>38</sup> Arif Wibowo Nurfitriah, Marluwi, "Wewenang Nadzir Perorangan dan Yayasan untuk Mengelola Tanah Wakaf ditinjau Menurut Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dan Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004" 02, no. 2 (2022): 401–15.

<sup>39</sup> Taibu and Novrianti, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Akta Ikrar Wakaf."

and management are insufficient. There are several land waqf properties that are neglected due to less than optimal management.<sup>40</sup>

Apart from the views of the law and the Indonesian Waqf Board, there is still a view according to the theory put forward by Soejono Soekanto which contains 5 factors, namely:

1. Legal factors

From a legal perspective, this means Law No. 41 of 2004 concerning Waqf which states in article 11 concerning the duties and authority of the nadzir to administer waqf assets, manage and develop waqf assets, supervise and protect waqf assets and report on implementation. assignment to BWI.<sup>41</sup> Based on the contents of article 11 in Law No. 41 of 2004 concerning Waqf, there are several things that do not match the regulations with reality. For example, the administrative management carried out by waqf management institutions is not optimal so that the existing data is less than optimal in terms of storage.

2. Law enforcement factors

The law enforcer in question is the Ministry of Religion which has supervised the Magelang Regency MPW and Magelang Regency LWPNU in properly handling existing obstacles in efforts to protect the law of Muhammadiyah and Nahdlatul Ulama waqf land in Magelang Regency. Law enforcement efforts to overcome obstacles include holding outreach about the importance of legal protection for waqf land.<sup>42</sup>

3. Infrastructure factors

Facilities and infrastructure factors include Human Resources, supporting tools in implementing protection efforts and resolving existing obstacles or obstacles.<sup>43</sup> However, the reality in the field is not running optimally either in terms of human resources or tools. The human resources referred to by service officers are not yet optimal in carrying out their duties. As is the lack of good communication between the parties involved in the waqf process.

4. Community factors

Community factors are meant by community life, the habits of people in an environment. The public in general does not really understand the concept of giving waqf to organizations that have strong legal protection. So in the field there are still many people who give waqf to individual nadzir rather than waqf to waqf institutions.<sup>44</sup>

5. Cultural factors

Culture is a factor that leads to the culture of an ethnicity or society in a region. The community culture in waqf is more trusting in individual nadzir who do not fully have a strong legal umbrella compared to institutional or organizational nadzir. The current view of society is that it is more relevant to the nadzir of institutions or organizations in implementing the legal protection of waqf and its management, utilization and development so as to minimize the emergence of obstacles or obstacles.

If you look broadly, according to Soejono Soekanto's theory, there are several obstacles and barriers that exist in the field that are different in theory, giving rise to a dissimilarity between theory and reality. Based on this theory, it states that the resolution of existing obstacles or barriers has not been optimally fulfilled. Solutions that can be provided to resolve several obstacles or barriers that exist in the process of legal protection of waqf land assets are: holding more frequent outreach to the community regarding legal protection of waqf land; provide understanding to the public about the importance of legal protection of waqf land assets; monitor and evaluate the performance of MPW Muhammadiyah or LWPNU officers in handling the protection of waqf land; and build

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<sup>40</sup> Muhammad Zulfikar Yusuf, "Optimalisasi Wakaf Tanah Perspektif Istibdal (Studi Pada Harta Wakaf Pimpinan Daerah Muhammadiyah Kota Yogyakarta)," *Jurnal Magister Ekonomi Syariah* 1, no. 1 (2022): 63–72.

<sup>41</sup> Muhammad Zulfikar Yusuf, "Optimalisasi Wakaf Tanah Perspektif Istibdal (Studi Pada Harta Wakaf Pimpinan Daerah Muhammadiyah Kota Yogyakarta)," *Jurnal Magister Ekonomi Syariah* 1, no. 1 (2022): 63–72.

<sup>42</sup> Taibu and Novrianti, "Perlindungan Hukum Tanah Wakaf Yang Tidak Memiliki Akta Ikrar Wakaf."

<sup>43</sup> Arifin, "Peran Badan Wakaf Indonesia Dalam Penyelesaian Sengketa Tanah Wakaf."

<sup>44</sup> Nur Fadhillah, "Sengketa Tanah Wakaf Dan Strategi Penyelesaiannya," *De Jure, Jurnal Syariah Dan Hukum* 3, no. 1 (2011): 71–85.

good communication again between KUA and MPW Muhammadiyah and LWPNU Magelang Regency.

### Conclusion

The legal protection of waqf land in Indonesia is regulated by Law Number 41 of 2004, which stipulates waqf land as an asset that must be safeguarded and managed well. Protection efforts include registration of waqf land, supervision to prevent misuse, and maintenance carried out by institutions such as MPW Muhammadiyah and LWPNU Magelang Regency through certification processes, giving plaques, and digital systems such as SIMAM and e-SIWAK. Obstacles in implementing legal protection originate from internal factors such as lack of communication and human resources, as well as external factors such as low community insight and lack of trust in wakifs. To overcome this obstacle, further outreach is needed, increased cooperation between institutions, as well as monitoring and evaluation of officer performance. Institutions such as MPW Muhammadiyah and LWPNU Magelang Regency need to optimize the management and use of waqf land, as well as innovate in developing waqf land so that it is more beneficial to the community.

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