

Alternative Solutions To Wakf Land Problems In Indonesia

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Abstrak

Wakaf diatur dalam Undang-Undang Republik Indonesia Nomor 41 Tahun 2004. Dalam implementasinya, khususnya wakaf tanah/lahan masih terdapat permasalahan. Terdapat tanah/lahan wakaf yang belum bersertikat dan masih terdapat tanah/lahan wakaf yang belum dikelola secara profesional. Masalah pertama berkaitan dengan aspek legalitas keabsahan tanah/lahan wakaf. Masalah kedua berkaitan dengan aspek ketermanfaatan tanah/lahan wakaf untuk orang banyak. Solusi alternatif yang ditawarkan dalam artikel ini : (1) mendorong Badan Wakaf Indonesia dibantu stakeholder lainnya untuk membuat tim percepatan sertifikasi tanah/lahan wakaf, (2) mendorong Badan Wakaf Indonesia untuk bermitraan dengan lembaga syariah lainnya untuk mengelolah secara profesional tanah/lahan wakaf, memaksimalkan manfaat tanah/lahan wakaf. Dengan solusi alternatif ini ke depan tujuan perwakafan yang di amanahkan oleh peraturan/perundangan yang berlaku, yaitu bermanfaat untuk kesejahteraan umum menurut syariah dapat tercapai.

Kata kunci: Solusi Alternatif, Tanah Wakaf, Permasalahan Tanah, Indonesia

Abstract

Waqf is regulated by the Law of the Republic of Indonesia Number 41 of 2004. In its implementation, especially land waqf, there are still problems. There is waqf land/land that has yet to be certified, and there is still waqf land/land that needs to be managed professionally. The first problem relates to the legal aspect of the validity of waqf land. The second problem is related to the aspect of utilizing waqf land/lands for many people. Alternative solutions offered in this article: (1) encourage the Indonesian Waqf Board, with the assistance of other stakeholders, to create a team to accelerate land/waqf land certification, (2) encourage the Indonesian Waqf Board to collaborate with other sharia institutions to professionally manage the land/ waqf land professionally, maximizing the benefits of waqf land/lands. With this alternative solution in the future, the goal of waqf, as mandated by the applicable regulations/legislation, can be achieved to benefit the general welfare, according to Sharia.

Keywords: *Alternative Solutions, Waqf Land, Land Problems, Indonesia*

INTRODUCTION

Following the mandate of Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, it is explained in Chapter 1 Article 1 paragraph 1 that Waqf is a legal act to separate and hand over part of one's assets to be used forever or for a certain period according to one's needs for the purposes worship and general welfare according to sharia (Andika, 2022; Lubis et all, 2022). Islamic mass organizations, Nazhir mosques and prayer rooms, educational institutions and the government have managed Waqf (Agama, 2008; Masyudi, 2010). However, in its development, there has been a shift in the understanding of the definition of Waqf towards one that is looser, more flexible and more profitable for the wakif with another understanding that Waqf is interpreted as the legal act of the wakif to separate and hand over part of his property to be used forever or for a certain period following its importance for worship and general welfare according to sharia,

means that waqfs and waqf managers can take advantage of these profits so that it can create benefits for Muslims in general and far from general benefits (Department of Religion of the Republic of Indonesia 2006: 11). The existence of a legal umbrella as in Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, is proof that the government takes Waqf seriously as part of steps to protect and develop Waqf now and in the future (Al farisi, 2022; Nurfitriah et al., 2022). The government's efforts through related regulations and their implementation continue to be carried out to empower religious institutions optimally to improve the welfare of the community at large (Praja, 1995; Aslina & Addieningrum, 2022). Although the government's efforts still require synergistic support and cooperation, and the seriousness of all parties involved so that Waqf truly has a positive impact and is beneficial for society (Department of Religion of the Republic of Indonesia 2006). There are quite a lot of waqf assets in Indonesia, including religious, social and other facilities (Ghofur, 2006; Safitri, 2023). However, there are still many problems with waqf assets regarding their legality and utilization (Habibaty, 2017). From a legal aspect, there are still many waqf assets that need to be certified, and from a utilization aspect, there are still many waqf lands that are idle land, meaning land that has been left unused or has yet to be managed to become helpful land (Hasan, 1995; Wibowo, 2022). Therefore, the author considers the study of alternative solutions to waqf land problems a critical thing to review as a contribution to solving waqf land problems now and in the future.

The problem studied in this article is how alternative solutions can be made to the problems of (1) waqf land/land that has not been certified and (2) the condition of waqf land/land that has not been managed professionally and is not yet beneficial for general welfare according to sharia. With alternative solutions to these two problems, in the future, the objectives of waqf that are mandated by the applicable regulations/legislation, namely the legal aspect of waqf land/lands, are legally fulfilled, and the goal of waqf for general welfare according to sharia can be achieved.

Juridical Basis Of Witness In Indonesia

1. In 1946, precisely on January 3 1946, the Department of Religion (Religious Affairs Bureau) was formed, and Waqf began to become the authority of the Department of Religion. The basis is Government Regulation Number 8 of 1950, followed by the issuance of Minister of Religion Regulations 9 and 10 of 1952. This regulation states that the Department of Religion, with its hierarchical institutions downwards, is obliged to investigate, determine, register and supervise the maintenance of waqf assets. For this reason, the authority of the Department of Religion is limited to these matters. This does not mean the Government intends to interfere or make waqf objects state land (Juhaya S. Praja: 1995:23).
2. The birth of Government Regulation Number 28 of 1977. On May 17 1977, the Government established Government Regulation Number 28 of 1977, published in the 1977 State Gazette Number 38. The background to the issuance of this Government Regulation is as stated in the preamble (Anshori, Abdul Ghofur, 2006), are a) that Waqf is a religious institution that can be used as a means to develop religious life for Muslims in order to achieve spiritual and material prosperity towards a just and prosperous society based on Pancasila, b) that the current legislation governing the Waqf of owned land, apart from not fulfilling the need for waqf methods, also opens up the possibility of undesirable things arising due to the absence of accurate and complete data regarding the waqfed land. After the issuance of Government Regulation Number 28 of 1977, this was followed by Minister of Religion Regulation Number 1 of 1978 as an Implementing Regulation of Government Regulation Number 28 of 1977 concerning the Endowment of Owned Land. With the issuance of Government Regulation Number 28 of 1977, various other regulations have also been issued which follow as implementing regulations, including: (Department of Religion of the Republic of Indonesia, 2006)
 - a. Minister of Home Affairs Regulation Number 6 of 1977, concerning Procedures for Land Registration regarding the Endowment of Owned Land,
 - b. Minister of Religion Regulation Number 1 of 1978, concerning Implementing Regulations of Government Regulation Number 28 of 1977,

- c. Joint Instruction of the Minister of Religion and the Minister of Home Affairs Number 1 of 1978 concerning the Implementation of Government Regulation Number 28 of 1978,
 - d. Decree of the Minister of Religion Number 7 of 1978, concerning the Delegation of Authority to the Regional Office of the Provincial Department of Religion/at the same level to appoint and dismiss each Head of the District KUA as PPAIW (Official for Making Waqf Pledge Deeds),
 - e. Regulation of the Director General of Islamic Community Guidance Number: Kep/D/75/1979, concerning Forms and Guidelines for Implementing Regulations concerning the Endowment of Owned Land.
3. The validity period of Law Number 5 of 1960. In 1960, Indonesia had a Basic Agrarian Law, Law Number 5 of 1960, promulgated on September 24 1960 and published in the 1960 State Gazette Number 104. In Article 14, paragraph (1) letter (a) states that: "The government, in the framework of the socialization of Indonesia, makes a general plan regarding the supply, allocation and use of earth, water and space as well as the natural resources contained therein, (b) For worship and other sacred needs, following the basis of belief in the Almighty Godhead. In the context of controlling waqf land and reforming agrarian law in Indonesia, the issue of land waqf has received attention from the government. We can pay attention to this provision contained in Article 49 of Law Number 5 of 1960: All land ownership rights of religious and social bodies, as long as they are used for business in the religious and social fields, are recognized and protected. These bodies are also guaranteed to obtain sufficient land for their buildings and businesses in the religious and social fields. For worship and other sacred purposes, as intended in Article 14, land can be controlled directly by the state with the right to use. Government regulations protect and regulate the Waqfation of owned land (Juhaya S. Praja: 1995:56).
 4. The birth of the Compilation of Islamic Law (KHI). The birth of the Compilation of Islamic Law is closely related to the enactment of Law Number 7 of 1989 concerning Religious Courts, which gives more comprehensive competence to Religious Courts and makes their position the same as District Courts. The competence of Religious Courts, which was previously only in the field of marriage, was then expanded to the field of inheritance, waqf, wills, and grants. (Presidential Instruction Number 1 of 1991 concerning KHI)
 5. Article 70 of Law Number 41 of 2004 states that all statutory regulations governing waqf remain in effect as long as they do not conflict and have not been replaced by new regulations based on this law. Law Number 41 of 2004 regulates broader and more flexible substances (Tholhah Hasan 2009:20)

METHOD

The method used in this research is the empirical social, legal research method (Syahrudin Nawi, 2018), namely legal research that focuses attention on legal issues as problems regarding the existence of gaps between obligations, namely orders or prohibitions (*das sollen*) contained in various regulations—legislation related to Law Number 41 of 2004 concerning Waqf. As for *das sein* (empirical reality) in social/empirical legal research, it can be found in the following things, among others (Syahrudin Nawi, 2018: 18), (1) based on the results of previous legal research which differs in certain study aspects, (2) based on the statement of a competent official in a particular agency in print media, (3) based on various legal scientific works, (4) based on various experiences and facts that arise in society and (5) based on secondary data in various reports from government and private agencies. Based on this method, qualitative analysis was then continued.

RESULT

The study in this article is limited to waqf assets in the form of land that has been donated. Problems regarding land/land waqf assets can be identified in two aspects: the legality aspect and the utilization aspect of land/land waqf assets. From the legal aspect, many waqf lands still have not been certified (Hasan, 2009). This situation has become a source of conflict after

several decades of waqf implementation (Hasanah, 2017). Because the waqf land/lands, when handed over by individual wakifs, have not been certified, the area of the waqf land/lands may be complained about by their descendants (grandchildren) at a later date (Hayati, 2018). The author observed this fact when conducting qualitative research on several land waqf objects in the village (Havita & Hakim, 2017). Without a land/land certificate donated by an individual wakif, there is no binding legal fact that an individual wakif donated land/land with such an area (Kahaf, 2005). So, in the future, the heirs of the wakif may withdraw part of the wakif land.

From the aspect of the utilization of waqf land/land, facts on the ground show that there is still a lot of waqf land/land that has yet to be utilized and has yet to be managed professionally. This impacts the purpose of waqf for the benefit of people's welfare according to Sharia, many of which are not fulfilled (Ibad et al., 2018). Because the waqf land/land is not managed professionally by Nadzir or the Waqf Board and is just left as idle land, the fact on the ground is that the waqf land/land is again managed individually by the wakif heirs. Of course, this situation does not follow the objectives of waqf.

Alternative Solutions

Based on the two main problems of waqf that have been explained above, the author proposes an alternative solution, as follows: (1) the problem that there is a lot of waqf land/land that has not been certified, encourage the Indonesian Waqf Board with the help of other stakeholders to create a team to accelerate land/certification waqf land. This integrated team must move simultaneously while still guided by the applicable laws and regulations. (2) for problems with waqf land/land that have yet to be managed professionally, encourage the Indonesian Waqf Board to partner with other sharia institutions to maximize waqf land/land use. With this alternative solution, the goals of waqf, as mandated by the applicable regulations/legislation, can be achieved in the future for the welfare of society according to sharia.

DISCUSSION

As explained in the problem, this study is limited to land waqf. There are 358,710 land waqf locations in Indonesia, with a land area of 1,538,198,586 m². The facts show that of the many land/land waqfs, there are still land/land waqfs that have not been certified (Kamaria et al., 2021), waqf land that some families are still suing, waqf land that is sold by the party who was given the mandate to managing it, including the unfair and disproportionate exchange of waqf land (ruislag). There is still waqf land/land that cannot provide a maximum role in improving the welfare of the people and empowering the community's economy (Firman Muntaqo, 2015). The two facts that have been revealed, namely (1) there is still certified waqf land/land and (2) there is still waqf land/land that has not been useful for the welfare of the community according to Sharia, are the basis for finding alternative solutions for the future of waqf land/land. According to Sharia, having the legality of Waqf and Waqf land is beneficial for the general welfare of the community.

This alternative solution is a mandate from Law Number 41 of 2004 concerning Waqf. Problems regarding waqf land/land assets that have yet to be certified relate to the legality aspect, while issues regarding useful waqf land/land relate to the utilization aspect. The lack of legality has become a source of conflict after several decades of waqfation. Waqf land/lands (not yet certified) which had been handed over by individual wakifs over time were complained about by the wakif's descendants at a later date because there was no black-and-white evidence, namely certificates and proof of handover of the land/lands as Waqf. The author observed this fact when researching several land waqf objects in the village. Without a land/land certificate donated by an individual wakif, there is no binding legal fact that an individual wakif donated land/land with such an area. So, in the future, the heirs of the wakif may withdraw part of the wakif land. From the aspect of the utilization of waqf land/land, facts on the ground show that there is still a lot of waqf land/land that has yet to be utilized and has yet to be managed professionally. This impacts the purpose of Waqf for the benefit of people's welfare according to Sharia, many of which are not fulfilled. Because the waqf land/land is not managed professionally by Nadzir or the Waqf Board and is just left as idle land, the fact on

the ground is that the waqf land/land is again managed individually by the wakif heirs. Of course, this situation needs to follow the objectives of Waqf.

Based on the two main problems of Waqf that have been explained above, the author proposes an alternative solution, as follows: (1) the problem that there is a lot of waqf land/land that has not been certified, encourage the Indonesian Waqf Board with the help of other stakeholders to create a team to accelerate land/certification waqf land. This integrated team must move simultaneously while still guided by the applicable laws and regulations. (2) for problems with waqf land/land that have yet to be managed professionally, encourage the Indonesian Waqf Board to partner with other sharia institutions to maximize Waqf land/land use. With this alternative solution, the goals of Waqf, as mandated by the applicable regulations/legislation for the welfare of society according to Sharia, can be achieved in the future.

CONCLUSION

Following the mandate of Law of the Republic of Indonesia Number 1 of 2004 concerning Waqf, it is explained in Chapter 1 Article 1 paragraph 1 that Waqf is a legal act to separate and hand over part of one's property to be used forever or for a certain period according to one's needs for the purposes worship and general welfare according to Sharia. In its implementation, especially land waqf, there are still problems. There is waqf land/land that has yet to be certified, and there is still waqf land/land that needs to be managed professionally. The first problem is related to the legal aspect of the validity of the waqf land/land. The second problem concerns using the waqf land/land for many people. Alternative solutions offered in this article: (1) encourage the Indonesian Waqf Board, with the help of other stakeholders, to create a team to accelerate Waqf land/land certificates, (2) encourage the Indonesian Waqf Board to partner with other sharia institutions to manage Waqf land/lands professionally, maximizing the benefits of waqf land/lands. With this alternative solution in the future, the goal of Waqf, as mandated by the applicable regulations/legislation, namely for the welfare of the community according to Sharia, can be achieved.

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