



# LEGAL REVIEW OF THE IMPLEMENTATION OF CERTIFICATION OF ENDOWMENT LAND TO AVOID DISPUTES FROM A POSITIVE LEGAL PERSPECTIVE IN INDONESIA BASED ON THE VALUE OF LEGAL CERTAINTY

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Article Info	Abstract
<p><b>Article History</b> Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15</p> <p><b>Keywords:</b> <i>Land Waqf Certification, Legal Certainty, Positive Law</i></p>	<p>Certification of waqf land plays an important role in ensuring legal certainty and preventing disputes that often occur due to unclear ownership status. In Indonesian positive law, waqf land is regulated in Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006, which requires every waqf land to be registered and certified by the National Land Agency (BPN). However, in practice, many waqf lands have not been certified due to lack of public awareness, administrative limitations, and bureaucratic obstacles. As a result, waqf land often becomes the object of dispute, especially when the heirs of the waqif try to reclaim the assets that have been donated.</p> <p>This study analyzes the implementation of waqf land certification to avoid disputes in a positive legal perspective based on legal certainty. Using the normative juridical method, this study examines the laws and regulations and obstacles in the implementation of waqf land certification in Indonesia. The results of the study indicate that waqf land certification can provide legal protection for waqf assets and ensure that the land continues to be utilized in accordance with the established social and religious objectives. Therefore, it is necessary to increase the effectiveness of certification through digitalization of land services, simplification of administrative procedures, and increasing the role of Nadzir in managing waqf land. With a better certification system, legal certainty for waqf land can be guaranteed, thereby avoiding potential disputes and strengthening the role of waqf in the social and economic development of the community.</p>

## I. INTRODUCTION

Waqf land has a very important role in the social and religious system in Indonesia, especially in supporting various public facilities such as mosques, madrasahs, Islamic boarding schools, Islamic hospitals, and cemeteries. In the context of positive Indonesian law, waqf is regulated in various laws and regulations, including Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning the Implementation of the Waqf Law. However, although the regulations have clearly regulated the waqf mechanism, the reality in the field shows that there are still many waqf lands that do not have legal certainty due to the land not being officially registered.(Mubarak 2024)

The unclear legal status of waqf land is often a source of dispute, especially when the wakif's heirs try to take back the land that has been donated. This phenomenon occurs because waqf land that does not have a certificate is often considered land without a legal owner, thus

opening up opportunities for legal disputes and even acts of transfer of rights that violate waqf principles. In fact, from the perspective of Islamic law, waqf is a permanent act and cannot be inherited, sold or transferred in any way after it has been pledged.(Zuhra 2024)

The importance of legal certainty in the implementation of waqf is in line with the theory of legal certainty put forward by Sudikno Mertokusumo. Legal certainty provides a guarantee that the rights and obligations of each individual are recognized and protected by the state. In the context of waqf land, legal certainty can be realized through a certification process that ensures that the land that has been waqf has authentic evidence recognized by law.(Syarief 2014)Waqf certificates are legal instruments that clarify the status of land ownership and prevent potential disputes in the future.

However, in practice, the process of certifying waqf land faces various obstacles, both from administrative aspects and from the lack of awareness of the community and related parties

regarding the urgency of registering waqf land. Several factors that hinder the certification of waqf land include the community's ignorance of land registration procedures, the lack of authentic documents as proof of land ownership, and limited resources and funds to take care of certification. In addition, there is still an assumption among the community that even without a certificate, the position of waqf land remains strong and cannot be challenged, whereas in reality many cases of disputes arise due to the absence of official documents. (Ramadhanti, Medaline, and Zarzani 2022)

From an agrarian law perspective, registration of waqf land is part of a national policy to guarantee legal certainty for land rights. Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) explicitly states that the government is obliged to carry out land registration to guarantee legal certainty for its owners. Registration of waqf land is also regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2017 concerning Procedures for Registration of Waqf Land, which emphasizes that land that has been declared as waqf must be registered immediately to obtain a certificate.

The theory of legal protection put forward by Satjipto Rahardjo is also relevant in this discussion. Legal protection for waqf land can be divided into preventive and repressive protection. Preventive protection is carried out through land registration regulations and procedures that ensure that waqf land has a clear legal status before a dispute occurs. Meanwhile, repressive protection is provided through dispute resolution mechanisms available in the judicial system in the event of a violation of the rights to waqf land. Unfortunately, many cases show that without a valid certificate, waqf land is often difficult to defend in court.

From the perspective of Islamic law, certification of waqf land also has a strong basis in the concept of *maslahah* (benefit). Al-Ghazali stated that *maslahah* in Islamic law aims to maintain five main aspects of human life: religion, soul, mind, descendants, and property. In this context, registration of waqf land is part of an effort to maintain the welfare of the community by ensuring that waqf land continues to function according to its original purpose and is not misused by irresponsible parties. (Nurjannah and Muin 2016) Thus, certification of waqf land is not

only an administrative procedure, but also a form of protection for Muslim assets so that they can continue to be optimally utilized for social and religious interests.

In addition, the registration of waqf land also has significant economic benefits. With a certificate, waqf land can be used for productive activities in accordance with sharia principles, such as the construction of Islamic educational institutions, hospitals, or social enterprises that provide benefits to the wider community. This is in line with the principle of productive waqf which is increasingly developing in various Islamic countries, where waqf land is not only used for religious purposes, but also for economic activities that can improve the welfare of the people. (Tj, Siregar, and Rambe 2022)

Based on the various problems that have been described, this study aims to analyze the regulation of waqf land certification in Indonesia, examine legal protection for the existence of waqf land from a positive legal perspective, and evaluate the implementation of waqf land certification in order to avoid disputes based on the value of legal certainty. Through a normative and empirical legal approach, this study is expected to provide recommendations for stakeholders, including the National Land Agency, the Ministry of Religion, and waqf institutions and the community, in an effort to accelerate and strengthen the waqf land certification system in Indonesia.

With the existence of legal certainty through certification of waqf land, it is expected to not only provide protection for waqf assets, but also strengthen the role of waqf in the social and economic development of Muslims in Indonesia. Therefore, awareness and commitment from various parties, including *nadzir*, government, and society, are very much needed to ensure that all waqf land in Indonesia has clear legality and can be utilized sustainably in accordance with sharia principles and applicable positive law.

## II. RESEARCH METHODS

The research method used in this study is normative legal research that focuses on legal norms contained in laws and regulations, legal doctrines, and court decisions related to certification of waqf land. This study uses a normative legal approach that refers to primary, secondary, and tertiary legal sources, including Law Number 41 of 2004 concerning Waqf and other regulations related to registration of waqf

land. Data collection techniques are carried out through literature and documentation studies to analyze applicable legal policies and implementations. The data obtained are analyzed qualitatively by organizing information based on patterns, categories, and relevant legal systematics to understand and explain the urgency of waqf land certification from the perspective of legal certainty. (Indra Utama Tanjung 2024)

In its analysis, this study uses the theory of legal certainty, the theory of legal protection, and the theory of *maslahah* to examine the urgency of registering waqf land in guaranteeing legal status and protecting waqf land from potential disputes. The analysis was conducted by reviewing the applicable regulations and comparing their implementation in the community in order to find solutions to various obstacles in the waqf land certification process. The results of this study are expected to provide recommendations for relevant stakeholders in increasing the effectiveness of waqf land certification policies, as well as ensuring the sustainability of the social and religious functions of waqf land in accordance with the principles of positive law in Indonesia.

### III. RESULTS AND DISCUSSION

#### A. Regulation of Waqf Land Certification in Indonesia

Waqf has become one of the important instruments in Islam, although it is not explicitly mentioned in the Qur'an. The concept of waqf has undergone rapid development, recognized by both classical and contemporary scholars. (Nuridha and Khamim 2024) In Islamic jurisprudence, Abu Hanifah defines waqf as holding an object with the benefit of being donated, while the Maliki School emphasizes that ownership remains with the wakif but its use cannot be transferred. The Shafi'i and Hambali schools emphasize that waqf eliminates the ownership of the waqif after it is pledged.

In positive law, Law Number 41 of 2004 concerning Waqf defines waqf as a legal act of a wakif to separate and/or hand over his/her property for worship or public welfare in accordance with sharia. This definition is emphasized in Government Regulation Number 42 of 2006 and Compilation of Islamic Law (KHI) Article 215. Waqf has main characteristics such as the retention of property, the nature of sustainable benefits, and the prohibition on selling or inheriting waqf property.

The legal basis for waqf in Islam is not explicitly stated in the Qur'an but can be understood from verses that encourage alms and donations, such as in QS. Al-Baqarah: 261 and QS. Ali Imran: 92. Hadith is also the main source in the command of waqf, including the hadith narrated by Muslim which mentions three unbroken deeds, namely ongoing alms, beneficial knowledge, and the prayers of pious children.

The regulation of waqf in Indonesia was first regulated in PP No. 28 of 1977 concerning Waqf of Land Ownership, which limited the object of waqf to land only. Furthermore, the Compilation of Islamic Law issued through Presidential Instruction No. 1 of 1991 expanded the scope of waqf and strengthened the legal position of waqf in Indonesia. Law No. 41 of 2004 then revolutionized the waqf system by introducing the concept of waqf of movable objects, including money, securities, and intellectual property rights. (Priyatna, Zarzani, and Aspan 2022)

Law No. 41 of 2004 requires the recording and certification of waqf to ensure legal certainty. Management of waqf is also expanded, not only for the sake of worship but also for the welfare of society, by encouraging productive waqf. Government Regulation No. 42 of 2006 then details the implementing regulations of the Waqf Law, including the regulation of the role of Islamic financial institutions in managing cash waqf.

The history of waqf regulation in Indonesia began in the Dutch colonial era which implemented supervision of waqf land. After independence, waqf regulation began to develop with the issuance of Law No. 5 of 1960 concerning Agrarian Principles, which in Article 49 mentions protection of waqf land. (Nuridha and Khamim 2024)

An important development occurred with the birth of the Compilation of Islamic Law which gave special attention to waqf in Book III (Articles 215-228). Then, the discourse of cash waqf emerged which was finally accommodated in Law No. 41 of 2004, expanding the scope of waqf not only to land but also movable property that has economic value. PP No. 42 of 2006 further regulates the procedures for waqf and the role of Islamic Financial Institutions Receiving Cash Waqf (LKS PWU).

Since the enactment of the Waqf Law, the government has continued to develop the waqf administration system to ensure legal certainty and optimize the benefits of waqf. *Mu'aqqat waqf* (waqf with a certain period of time) began to be

introduced as an innovation in modern waqf practices.(Mustafidin 2023)

Waqf has great potential in empowering the people's economy. In several countries such as Singapore, waqf has been well managed and has generated great benefits for the community. In Indonesia, based on data from the Indonesian Waqf Board (BWI), the potential for waqf assets reaches IDR 2,000 trillion, but the realization of cash waqf has only reached IDR 400 billion. One of the causes of the less than optimal management of waqf is the dominance of the traditional management system which only focuses on building places of worship, without productive innovation.

Waqf regulation has evolved since the colonial era to the reform era, with Law No. 41 of 2004 being a milestone in the history of modern waqf management. The Indonesian Waqf Board (BWI) was formed in 2007 to oversee and develop national waqf. The institutional structure of waqf involves the Ministry of Religion as the regulator, the Waqf Pledge Deed Making Officer (PPAIW) as the waqf registrar, and the nazir as the waqf asset manager.

Nazir has an important role in maintaining, managing, and developing waqf. According to Law No. 41 of 2004, nazir can be an individual, organization, or legal entity, with the condition that they are Indonesian citizens, Muslim, adults, trustworthy, and physically and mentally capable. Nazir is responsible for ensuring the sustainability of waqf benefits with the principles of transparency, accountability, and productivity.

BWI as an independent institution is tasked with developing national waqf and assisting the government in optimizing waqf assets. In practice, BWI acts as a facilitator, supervisor, and nazir mentor so that waqf management is more professional and provides maximum benefits to the community.

Waqf regulation in Indonesia has undergone significant development, from PP No. 28 of 1977 to Law No. 41 of 2004 and PP No. 42 of 2006. Waqf which was initially limited to land has now been expanded to movable assets, including cash waqf. Certification of waqf land is an important aspect in ensuring legal certainty and the sustainability of waqf benefits.(Purong 2017)

Despite its great economic potential, waqf management in Indonesia still faces challenges in institutional and management aspects. The role of the Indonesian Waqf Board and nazir is crucial in optimizing waqf to be more productive. To increase the effectiveness of waqf, governance

reform is needed with the principles of professionalism, transparency, and innovation in managing waqf assets.

## **B. Implementation of Waqf Land Certification to Avoid Disputes in a Positive Legal Perspective in Indonesia Based on the Value of Legal Certainty**

Waqf land has an important position in the land law system in Indonesia because its designation is social and oriented towards the welfare of the community. However, in practice, the legal status of waqf land is often a source of dispute due to various factors, such as the absence of official registration, claims of dual ownership, or differences in understanding of waqf procedures. To avoid these problems, certification of waqf land is a legal instrument that functions to guarantee legal certainty and reduce the potential for disputes.(Kartiwi 2020)

From a positive legal perspective in Indonesia, waqf is regulated in Law Number 41 of 2004 concerning Waqf and its derivative regulations, such as Government Regulation Number 42 of 2006 and various technical regulations issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). This law explicitly states that waqf land must be registered and certified in order to have a valid legal status and obtain adequate legal protection. This certification process is carried out by involving several parties, including Nadzir as the waqf manager, the Religious Affairs Office (KUA) which is authorized to record waqf, and the BPN which is responsible for issuing waqf land certificates.(Masriani 2022)

The initial step in certifying waqf land begins with the creation of a Waqf Pledge Deed (AIW), which is made before the Waqf Pledge Deed Making Officer (PPAIW). AIW is a basic document that proves that a land has been declared as a waqf. After the AIW is issued, Nadzir is required to take care of the certification process to the BPN to obtain a Certificate of Rights to Waqf Land. This process involves several stages, including document verification, checking the status of the land, to the issuance of a certificate stating that the land has changed status to waqf land that cannot be traded or transferred to other parties other than for the interests of the waqf that has been determined.

In reality, there are various obstacles in the implementation of waqf land certification in Indonesia. One of the main challenges is the lack of public awareness of the importance of

certification. Many waqf lands in Indonesia are handed over informally without going through clear legal procedures, so that their legal status is vulnerable to disputes in the future. In addition, administrative and bureaucratic limitations are also obstacles. The waqf land certification process often takes a long time because it must go through various stages of verification and approval from authorized agencies.

Apart from administrative factors, social and cultural aspects also influence the success of waqf land certification. (Zuhra 2024) In some cases, the wakif family (the donor of the waqf) still considers that the waqf land remains within the family and has the right to manage it. This often causes conflict with Nadzir or other parties who have an interest in managing the waqf. Therefore, a more inclusive approach is needed in socializing and educating about the status of waqf land, including the rights and obligations of Nadzir and legal protection that can be obtained through official certification.

From the perspective of legal certainty, certification of waqf land has a crucial role in ensuring that the land that has been donated will not be sued or transferred illegally. With the certificate, the status of the land becomes clearer and can be used optimally in accordance with the stated waqf objectives. In Indonesian agrarian law, legal certainty is the main principle that must be upheld to avoid ownership conflicts and provide legal guarantees for interested parties. Thus, certification of waqf land is not only an administrative procedure, but also a form of implementation of the principles of justice, benefit, and legal certainty in the management of waqf assets. (Masriani 2022)

In addition, the government continues to strive to improve the effectiveness of the waqf land certification system by implementing digitalization of land services and facilitating public access to process certification. The digitalization program by the Ministry of ATR/BPN aims to accelerate the certification process, reduce the risk of data manipulation, and increase transparency in recording waqf land. This step is expected to reduce the number of uncertified waqf land and increase the accuracy of data related to waqf land in Indonesia.

Overall, the implementation of waqf land certification from a positive legal perspective in Indonesia is an important step in realizing legal certainty and avoiding potential disputes in the future. Although there are still various challenges in its implementation, efforts to accelerate

certification and increase public awareness must continue to be made so that waqf land can be managed optimally in accordance with the social and religious goals that have been set.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The conclusion of this study confirms that certification of waqf land is a crucial step in ensuring legal certainty and preventing disputes that often occur due to unclear ownership status. From the perspective of positive Indonesian law, the regulations governing waqf land are quite clear, especially through Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006, which require registration and certification of waqf land to obtain stronger legal protection. However, the implementation of this policy still faces various obstacles, both from administrative aspects, socialization, and the low level of public awareness regarding the urgency of waqf land certification. Without official certification, waqf land has the potential to be claimed by other parties, including the heirs of the wakif, which can disrupt the social and religious functions of the land.

Therefore, efforts to increase the effectiveness of the waqf land certification system need to be continuously carried out through digitization of land services, simplification of bureaucracy, and increased socialization to the community. The government, through the Ministry of ATR/BPN and the Ministry of Religion, must be more proactive in ensuring that all existing waqf land is well documented and has a clear legal status. In addition, the role of Nadzir as a waqf manager needs to be strengthened so that he can carry out his duties more professionally and transparently. With a more effective certification system and active participation from various parties, waqf land can be more optimal in providing benefits to the community, both in the fields of education, social, and economy, in accordance with the principle of benefit in Islamic law and legal certainty in positive Indonesian law.

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