

# LEGAL PROTECTION OF WAQF (*WAKAF*) LAND THROUGH ACT - LAW NO. 5 OF 1960 CONCERNING THE FUNDAMENTAL REGULATIONS OF AGRARIES (CASE STUDY OF LAND IN SEMARANG CITY)

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**Abstract:** The land legal certainty is necessary to have a rule of law. This is because in every settlement of cases of conflicts and land disputes, certainty regarding the land is needed, including knowing the status of the land, who owns it, what the evidence is, and knowing its location and extent, to guarantee legal certainty regarding the matters mentioned above to avoid the existence of an acknowledgment and expropriation and a party that recognizes the unilateral land. Empowerment of Waqf in Indonesia, judging from the amount, the waqf property itself can be said to be quite large. Most of the items that will be waqf are plots of land that will be built by places of worship, Islamic educational institutions, cemeteries, or other things which are generally not cheap. Waqf objects have useful value, namely, they are managed by very good or modern management, but must be based on the Islamic Religion *Shari'ah* under the coordination of the Indonesian Waqf Board. This research method is research that uses a normative juridical research approach. This approach examines legal issues based on normative rules associated with existing conditions in society. By looking at a case that occurred in the community related to legal protection of waqf land through land registration. Efforts to protect the law against waqf land have been specifically regulated in laws and regulations, but in practice, it is still minimal to provide legal protection for each waqf land. With the existence of arrangements related to waqf land, the government should be able to provide maximum legal protection by facilitating the registration of waqf land for the issuance of certificates by the Land Office. This is because in every settlement of cases of conflicts and land disputes, certainty regarding the land is needed, including knowing the status of the land, who owns it, what the evidence is, and knowing its location and extent, to guarantee legal certainty regarding the matters mentioned above to avoid the existence of an acknowledgment and expropriation and a party that recognizes the unilateral land. Empowerment of Waqf in Indonesia, judging from the amount, the waqf property itself can be said to be quite large. Most of the items that will be waqf are plots of land that will be built by places of worship, Islamic educational institutions, cemeteries, or other things which are generally not cheap. Waqf objects have useful value, namely, they are managed by very good or modern management, but must be based on the Islamic Religion *Shari'ah* under the coordination of the Indonesian Waqf Board. Empowerment of waqf objects includes things

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that are absolute within the framework of the economic strength of its people in improving people's welfare. Due to the need for effort in empowering waqf, it is irrational in observing the waqf land to achieve its best goals.

**Keywords:** Legal Protection, Waqf, *Wakaf* Land, Law no. 5 of 1960

## INTRODUCTION

Waqf is an agreement between a person who gives waqf (wakif) to someone who receives waqf for waqf (Nazir). An engagement is a legal bond, namely the nature of property between two or more people, on the basis that one party has the right or the other party is responsible for an achievement. If the waqf land loses its benefits according to its purpose, then the waqf land can be sold by the *nazir*. For marketing, it is obligatory to buy another land whose value and benefits are equivalent to the first waqf object that it sells. Provided that the engagement occurs automatically in it saves a sentence "agreed" following the principle of consensualism [1].

The law governing how to use and collect data on Indonesia's earth, water, and space for the common good of all Indonesians is known as agrarian law in Indonesia. Endowments of land and endowments are included in this category. The issue of land endowments is governed by Article 49 of Law Number 5 of 1960 Concerning Basic Agrarian Regulations because endowments in Indonesia typically consist of land. Property land gifts are safeguarded and managed by unofficial laws". Waqf of owned land is the subject of a government regulation, Government Regulation Number 28 of 1977. In relation to the waqf of owned land, arrangements for land registration are made with the state and society in mind. For the sake of legal certainty, the government will hold land registration in accordance with the provisions of Government Regulation Number 24 of 1997 Concerning Land Registration [2].

We can see the argument that forms the basis of the primacy of waqf worship from several verses of the Al-Quran and Hadith, among others, Surat Ali Imran verse 92: "*You will not get virtue (The Perfect One), before you spend some of the treasures that you love. And whatever you spend, about that, Allah SWT is all-knowing.*" Concerning the administration of the registration of waqf land, it is included in the category of determination of land rights, because there is an activity of determining the waqf land through a decision of an authorized official. The issue of land endowments has its place in the law in the agrarian/land sector in Indonesia [3]. Practically, waqf land is to perpetuate the benefits of land for the public interest, however, this development from time to time is not supported by formal regulations that govern it, the practice of waqf so far is only guided by traditional *fiqh* books compiled several centuries ago, many things are no longer sufficient.

Legal certainty in the field of land is necessary to have a rule of law. This is because in every settlement of cases of conflicts and land disputes, it is necessary to have certainty about land, including knowing the status of the land, who owns it, what the evidence is, and knowing its location and extent, to guarantee legal certainty regarding the matters mentioned above to avoid there is an acknowledgment and land taker and a party who recognizes the unilateral land. Empowerment of Waqf in Indonesia is seen from the amount, the waqf property itself is quite large. Most of the items that will be waqf are a piece of land that will be built by a place of worship, an Islamic educational institution, a

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cemetery, or other things that are generally unproductive. Waqf objects have useful value, namely, they are managed by very good or modern management, but must be based on the Islamic Religion *Shari'ah* under the coordination of the Indonesian Waqf Board. Empowerment of waqf objects is stated in its treatment in the context of the economic strength of its people in improving the welfare of the community. Because efforts are needed in empowering sustainable waqf by observing the waqf land to achieve the best goals. Carry out waqf, namely legal actions that develop and are carried out by people who embrace Islam [4].

## **MATERIALS AND METHODS**

Qualitative research is the method of choice. Research is this method of research. This study employs a normative juridical research methodology. This approach examines legal issues based on normative rules associated with existing conditions in society [5]. By looking at a case that occurred in the community related to legal protection of waqf land through land registration. Efforts to protect the law against waqf land have been specifically regulated in laws and regulations, but in practice, it is still minimal to provide legal protection for each waqf land. with the regulation regarding waqf land, the government should be able to provide maximum legal protection by facilitating the registration of waqf land for the issuance of certificates by the Land Office

If the empirical data obtained is in the form of a collection of words rather than a series of numbers and cannot be categorized, qualitative data analysis is

performed. The data can be gathered in a variety of ways, such as through observation interviews, case studies, and tape recordings. In qualitative research, the results of interview transcripts, data reduction, analysis, data interpretation, and triangulation are typically processed first before being used.

## **RESULTS AND DISCUSSION**

### **Legal Protection of Waqf Land Based on Law Number 5 of 1960 concerning Basic Agrarian Regulations in the City of Semarang**

The advantages and benefits of waqf are very influential if managed as well as possible, therefore a person or institution that is honest and with integrity has a big responsibility in managing and developing waqf as what can be called *anzhir*, a nazhir plays a vital part to complete a waqf, on the grounds that the administration and improvement of a waqf that tells the truth, reliable and with uprightness rely upon the nazhir himself, whenever carried out appropriately it will be exceptionally helpful in the improvement of the local area's economy. With Law Number 41 of 2004, it is hoped that developing waqf in accordance with the future will result in strong regulations and, most importantly, legal certainty for the nazir, waqif, and waqf designation. The law establishes this land right. The conversion provisions in Law No. 5 of 1996, which relates to the Basic Agrarian Law, resulted in this land right. As a result, the Basic Agrarian Law (UUPA) replaced all previous land rights with new ones. In this context, "conversion" refers to the transformation of land rights into land rights as a result of the enactment of the

Basic Agrarian Law, as outlined in Article 16 of the Basic Agrarian Law. Hereditary property rights are the strongest and most comprehensive rights that people have over land, as these rights serve a social purpose, as stated in Article 20 paragraph 1 of the Basic Agrarian Law. The term "hereditary" refers to the possibility that the land will pass to heirs in the event of a deceased owner, provided that the property satisfies legal and regulatory requirements [6]. Strongest, meaning not easily erased, rights that are stronger than other land rights, unlimited time and can be inherited, easily maintained if there is interference from other parties. Completely satisfied, implying that land possession freedoms give position to the proprietor the most broad when contrasted with other land privileges, can be the parent for other land freedoms or not, and the utilization of the land.

Individual Indonesian citizens (WNI) and government-appointed legal entities can own land ownership rights. The Basic Agrarian Law stipulates that the use of property rights must be based on the circumstances and nature of the rights, and that land rights have a social function, the land must be taken care of so that fertility is maintained and prevent damage to the land, and in using Land should not cause harm to other people. Basic Agrarian Law. Article 5 of Law Number 41 of 2004 explains the function of waqf, namely to carry out its capabilities and economic benefits of assets in waqf for worship purposes to improve public welfare [2]. The activity is to make the main goal or concern for the manager. To make the review of the importance of waqf objects must be

controlled by state institutions, in this case, the Indonesian Waqf Board is ongoing [7]. Nor other independent institutions, are not affiliated with any mass organization. It is understood, when the waqf object is managed by one of the mass organizations, it will be limited in its utilization. It may only revolve around those associated with the mass organization. Law Number 41 of 2004 concerning waqf, namely how to regulate the sale of waqf land, namely in this law, land that has been waqf cannot be traded by anyone [8].

### **Completion of the Legal Status of Waqf Land Based on Law Number 5 of 1960 concerning Basic Agrarian Regulations in the City of Semarang**

Management of waqf in several Islamic countries such as Egypt, Saudi Arabia, Qatar, and Turkey has been carried out with good management, waqf does not only focus on worship facilities, even though its scope has been expanded to all objects, both movable and immovable, tangible and intangible., but it is already known as cash waqf, vehicles, securities, precious metals, rights to intellectual property, lease rights, and usufruct rights, among other things. Waqf managers are protected or given a sense of security by the Islamic State's regulation, which employs relatively strict supervision. Restorative justice makes use of a number of methods, one of which is penal mediation. The parties, not the judiciary, determine the value of justice they want. Officials from law enforcement only serve as a mediator. In Indonesia, cases of domestic violence can be resolved through the use of penal mediation. This is because the majority of people still place a high

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value on peaceful dispute resolution, particularly when it comes to family disputes. Concordance and family trustworthiness are needs in the way of life of Indonesian culture which keeps on being kept up with. This tradition is following the nature of the collectivity of eastern countries which is different from the individuality of western countries [9].

So far, the understanding of waqf for Indonesian citizens has been shaken by the views of the Imam Madhhab which make it the reference. Within the *Malikiyah* and *Syafi'iyah* schools of thought, there is a strong emphasis on the immortality of waqf objects, even if they are damaged, waqf objects may not be exchanged for other goods even if it is damaged or do not produce anything [2]. The principle of benefit for waqf objects is to make a relevant basis for the existence of these waqf objects. This waqf worship is categorized as worship that has a continuous flow of reward value. Although the issue of waqf land has been regulated by law, there are still a lot of uncertified waqf lands in Indonesia. Since waqf assets are, in principle, people's assets, the benefits must also favor the people. In order for waqf land to serve its intended purpose of bringing people benefit, it should be managed in accordance with existing regulations. [10]. In spite of proper administration, the majority of land endowments in Indonesia are implemented through mutual trust, rendering the donated land without legal basis. A deed must be drafted by the Head of the Office of Religious Affairs (KUA) as the Official Making the Waqf Pledge Deed (PPAIW) in order to obtain legal force over the

donated land, as stated in the provisions of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 regarding Waqf. In addition, the Waqf Pledge Deed (AIW) is authorized to issue a certificate by being registered with the National Land Agency. [8].

Individual Indonesian citizens (WNI) and government-appointed legal entities can own land ownership rights. In order to use property rights, one must follow the Basic Agrarian Law, which states that land rights have a social function. This means that the use of land must be based on the circumstances and nature of the rights, the land must be cared for to maintain fertility and prevent damage, and land use should not harm other people. Basic Law of the Land In Article 5 of Law No. 41 of 2004, the purpose of waqf is explained, namely to carry out its capabilities and economic benefits of assets in waqf for worship purposes to improve public welfare. The activity is to make the main goal or concern for the manager. To make the review of the importance of waqf objects must be controlled by state institutions, in this case, the Indonesian Waqf Board is ongoing [11].

## CONCLUSIONS

Legal certainty in the land sector, the need for legal rules. This is because in every settlement of cases of conflicts and land disputes, it is necessary to have certainty about land, including knowing the status of the land, who owns it, what the evidence is, and knowing its location and extent, to guarantee legal certainty regarding the matters mentioned above to avoid there is an acknowledgment and land taker and a

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party who recognizes the unilateral land.

Empowerment of Waqf in Indonesia, judging by the amount, the waqf property itself is quite large. Most of the items that will be waqf are a piece of land that will be built by a place of worship, an Islamic educational institution, a cemetery, or other things that are generally unproductive. Waqf objects have useful value, namely, they are managed by very good or modern management, but must be based on the Islamic Religion *Shari'ah* under the coordination of the Indonesian Waqf Board. Empowerment of waqf objects is stated in its treatment in the context of the economic strength of its people in improving the welfare of the community. Because efforts are needed in empowering sustainable waqf by observing the waqf land to achieve the best goals.

In the process of land acquisition for the development of public interest, the expected objective is that development interests can proceed without harming or causing a decrease in the standard of living of landowners and owners of rights to land or objects on it after the acquisition process is carried out. Therefore, Compensation is a form of legal protection given to landowners if there are objects that have economic value in the above and below-ground space that can be requested for compensation.

### **SUGGESTION**

The existence of the government, in this case, is very necessary so that in implementing land acquisition carried out by agencies requiring land it is not carried out arbitrarily by taking rights over land belonging to the community without

providing fair and proper compensation.

The advantages and benefits of waqf are very influential if managed as well as possible, therefore an honest and integrity person or institution must have a big responsibility in the management and development of waqf as what can be called *anzhir*, a *nazhir* has a very important role to run a waqf, because the management and development of a waqf that is honest, trustworthy, and with integrity depend on the *nazhir* himself, if implemented properly it will be very beneficial in developing the community's economy.

The community must play an active role in resolving land conflicts and disputes, it is necessary to have certainty about land, including knowing the status of the land, who owns it, what the evidence is, and knowing its location and extent, to guarantee legal certainty regarding the matters mentioned above. above to avoid the existence of an acknowledgment and land taker and a party who recognizes the unilateral land.

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