

## **The Role of Notaries in the Process of Implementing Wakaf with Land Rights as the Object in Blora Regency**

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**Abstract.** *The purpose of this study is to determine the role of notaries and land deed officials in the process of implementing waqf with land rights objects in Blora Regency, to determine the procedure for implementing waqf with land rights objects in Blora Regency. The type of research using Juridical Sociology is to emphasize research that aims to obtain legal knowledge empirically by going directly to the object with a qualitative approach method based on phenomenology and the constructivism paradigm in developing science. The data used are primary and secondary data obtained through interviews and literature studies, while the data analysis method is carried out using analytical descriptive analysis. This study produces 1. the role of notaries in the process of implementing waqf with land rights objects in Blora Regency. Notaries can be appointed as Waqf Pledge Deed Officials (PPAIW). The main requirements for a Notary to become a PPAIW must be Muslim, trustworthy and have a competency certificate in the field of Waqf issued by the Ministry of Religion, besides that notaries can help record or provide legal certainty for the waqf process and the land transfer process. 2. procedures for implementing waqf in Blora Regency. Blora with the object of land rights, efforts made to overcome problems that can hinder the waqf process require related communication between Notaries and the KUA and the Ministry of Religion as well as socialization in the notary association forum so that it leads to an understanding of the existing problems.*

**Keywords:** *Notary; Provide; Role; Waqf.*

## 1. Introduction

Waqf is one of the important instruments in managing Muslim assets that have social, economic, and religious value. In Islamic law, waqf is defined as the provision of a portion of property that is permanent to a certain party for public or religious interests with the aim of obtaining continuous rewards. In Indonesia, the implementation of waqf is regulated in Law Number 41 of 2004 concerning Waqf and other supporting regulations. Although the role and function of land waqf is so important and has so many benefits in community life, in practice its implementation in the community is still carried out simply, namely based on a sense of trust alone and with the fulfillment of certain elements and conditions, namely its implementation is simply declared to Nazhir and witnessed by several witnesses. The implementation of such waqf is still widely carried out by the community because the procedures and methods are not complicated and not convoluted, making it easier for the community to carry out waqf on their land. However, because it is not recorded, it can cause chaos and unrest if there are parties who deny the waqf land, because its existence is not supported by strong evidence. Because there is no strong evidence, there is no legal certainty about the existence of land waqf.

This is because there are still many people who do not know, understand and comply with the applicable laws on waqf. In resolving issues regarding the implementation of waqf, it is not enough to just rely on religious norms but must also be in accordance with applicable regulations. With the law on waqf not yet known, understood and complied with, problems arise in the implementation of land waqf in society. If this is allowed to continue, it will result in chaos, waqf law cannot be implemented in accordance with its objectives and benefits so that citizens will be reluctant to implement land waqf.

It can be assumed that the fact that the Deed of Waqf Pledge has not been made, or until the process of transferring land rights from the wakif or the person who made the waqf to the name of the recipient of the waqf, results in difficulties in the process of proof when a dispute occurs. The only people who can be used as evidence are those who witnessed the waqf event directly. However, when the witness dies, it will certainly be difficult to find other evidence. In addition to written evidence, other things that can be used as evidence are confessions accompanied by oaths from the wakif and nazhir who are still alive. And if both parties have died, then the strongest evidence to prove the waqf land is the Deed of Waqf Pledge or Deed of Replacement of the Deed of Waqf Pledge ("APAIW") and the certificate for the waqf land.<sup>1</sup>

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<sup>1</sup>Muhammad Abid Abdullah al-Kabisi, 2004, *Waqf Law (The First and Most Comprehensive Contemporary Study on the Function and Management of Waqf and Settlement of Waqf Disputes)*, Dompot Dhuafa Republika and Ilman Press, Jakarta, p. 585 – 587.

In practice, many waqf lands are sued and withdrawn by the heirs of the waqf. Because the waqf land does not have strong evidence, because it was only done verbally and without considering the provisions of the Waqf Law.

Waqf that occurs in the life of society has not been fully orderly and efficient so that in various cases waqf assets are not maintained properly, neglected or transferred to third parties in an unlawful manner. Such a situation is not only due to negligence or inability of the nazhir in managing and developing waqf assets but also because of the attitude of the community who are less concerned or do not yet understand the status of waqf assets that should be protected for the sake of public welfare in accordance with the objectives, functions, and designation of waqf.<sup>2</sup>

From the above problems, it can be concluded that the absence of authentic evidence of the implementation of land endowment has given rise to various kinds of endowment disputes. In fact, with authentic evidence in the form of a waqf certificate, it provides legal certainty regarding the existence of land endowment acts. With legal certainty, all kinds of endowment disputes in the future can be resolved easily. In this context, notaries have a crucial role in the waqf process, especially in the preparation of the Waqf Pledge Deed (AIW) and the legalization of the waqf document. In Blora Regency, the role of notaries is very important to ensure that the waqf process runs in accordance with the law and the requirements set. However, the effectiveness of the role of notaries in the waqf process in this area still needs to be studied further, considering the various factors that can influence its implementation, including public understanding of waqf law, the availability of notaries who understand Islamic law, and coordination between notaries, the Indonesian Waqf Board (BWI), and other related parties.

The role of Notaries is very important to ensure that the waqf implementation process runs in accordance with applicable legal provisions. However, in practice, various obstacles often arise, such as the lack of public understanding of waqf procedures, administrative obstacles, and other legal obstacles. Therefore, an in-depth study is needed on how Notaries carry out their role in supporting the implementation of waqf in Blora Regency, as well as the challenges faced in the process.

Based on the problems that the author presents, according to the author, this problem needs to be studied and studied further to find a solution. Departing from the problems above, the author needs to pour the problem into a thesis by taking the title: THE ROLE OF NOTARIES IN THE PROCESS OF IMPLEMENTING WAKAF WITH LAND RIGHTS OBJECTS IN BLORA REGENCY.

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<sup>2</sup>AP Protection, 1991, Comments on the Basic Agrarian Law, Alumni, Bandung, p. 20.

## 2. Research Methods

Research methods are very important in a research, both in sociological or empirical research and normative research. The approach that the author uses in this research is the Juridical Sociological approach. The Juridical Sociological approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.<sup>3</sup>Qualitative approach is a research approach based on phenomenology and constructivism paradigm in developing science. Types and sources of data use primary data, secondary data. Data collection methods with observation, interviews, documentation, and literature studies. The Data Analysis Method used in this study is analytical descriptive research.

## 3. Results And Discussion

### 3.1. The Role of Notaries in the Process of Implementing Waqf with Land Rights Objects in Blora Regency.

Legal certainty is one of the most important legal objectives that must be achieved because with this legal certainty, order and regularity are achieved in society. Certainty itself is essentially the main objective of law. If all people cannot implement the law properly, it will cause various disputes or problems in the future because of the absence of legal certainty.<sup>4</sup>Notaries have a special role in making the Deed of Waqf Pledge (AIW), which is authentic evidence that the land has been declared as a waqf. In Blora Regency, Notaries are responsible for ensuring that the waqf pledge process is carried out correctly and according to procedure. After the AIW is made, the PPAT also plays a role in registering the waqf land with the local Land Office to obtain a waqf land certificate, which provides legal certainty regarding the status of the land.<sup>5</sup>

AIW made before a Notary has binding legal force for both parties as based on the principle of *pacta sunt servanda* as a fundamental principle in contract law. AIW made with a Notarial deed is intended to provide legal certainty, especially regarding the rights and obligations of the Wakif and Nazhir over the waqf property, in addition to also aiming to protect other parties who are interested in the existence of the AIW. Regarding a Notary, he does have the authority to make an AIW as an authentic deed as mandated by the UUJN. Since the enactment of the Waqf Law, there has been an expansion of waqf objects which were originally limited to immovable objects such as land and buildings, currently

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<sup>3</sup>Soerjono Soekanto, 2005, Introduction to Legal Research, Publisher, University of Indonesia Press, Jakarta, p. 51.

<sup>4</sup>Fandri Entiman Nae. "Legal certainty regarding land ownership rights that have been certified". Lex Privatum, Vol.I, No.5, November, 2013.

<sup>5</sup>Interview with Mrs. Elizabeth Estiningsih, SH, Notary & PPAT Kab. Blora January 14, 2025

waqf objects can also be movable objects in the form of money and movable objects other than money.<sup>6</sup>

The role of a notary in the waqf implementation process is very important to ensure the legality and validity of documents related to the waqf. Here are some specific roles performed by a notary in the implementation of the waqf. The notary plays a role in making the Waqf Pledge Deed which is the legal basis for the validity of the waqf. This deed is needed to ensure that the assets being waqf are officially transferred in accordance with legal provisions. The notary will prepare and ratify the Waqf Pledge Deed so that it has valid legal force.

After the Deed of Waqf Pledge is completed, the notary is responsible for registering the deed with the Office of Religious Affairs (KUA) or the Indonesian Waqf Board (BWI) to obtain official recognition and registration from the government. This step is important to officially record waqf assets so that their legal status is recognized by the state.<sup>7</sup>The notary acts as the Waqf Pledge Deed Making Officer (PPAIW) who is tasked with making the Waqf Pledge Deed (AIW) to validate the waqf made by the wakif. Article 37 paragraph (1) of Law No. 41 of 2004, which states that the waqf pledge must be made in the form of a Waqf Pledge Deed by the PPAIW. Government Regulation No. 42 of 2006 concerning the Implementation of the Waqf Law, which further regulates the duties and authorities of the PPAIW, including Notaries and the Regulation of the Minister of Religion No. 73 of 2013, which confirms that Notaries can act as PPAIW for waqf assets other than land. For Land Waqf, the PPAIW is generally held by the Head of the District Religious Affairs Office (KUA) but for Waqf Other Than Land, a Notary can act as PPAIW in accordance with applicable provisions.<sup>8</sup>

Notaries play a role in assisting the legal process and recording of endowments, especially if the endowment involves more complex legal aspects such as changes in asset ownership status. With this regulation, the implementation of endowments in Indonesia has stronger legal certainty, while ensuring that each endowment asset is managed properly and in accordance with applicable provisions.

Notary as a neutral party who ensures that the agreement occurs legally and voluntarily. In the waqf process, a notary can also bridge communication between the wakif and nazhir so that the agreement and implementation of the waqf run smoothly and according to the rules. With the presence of a notary in the waqf implementation process, the risk of legal disputes in the future can be

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<sup>6</sup>Article 16 paragraph (3) of Law Number 41 of 2004 concerning Waqf: "Objects Movable assets as referred to in paragraph (1) letter b are assets that cannot be used up through consumption, including: a. Money; b. Precious metals; c. Securities; d. Vehicles; e. Rights to wealth.

<sup>7</sup>Interview with Mr. Muh Sabuni, Notary and PPAT Kudus as a member of the Kudus Waqf Board.

<sup>8</sup>Ibid.

minimized. The notary ensures that the waqf document is prepared correctly, legally, and in accordance with the wishes of the wakif and applicable legal provisions. If a dispute arises in the future, documents legalized by a notary can be used as strong evidence in court.

In the author's opinion, the results of the analysis related to the duties and authorities of Notaries in their role as PPAIW are indeed still limited. However, in terms of the regulations that regulate it, there are actually very open opportunities where it can be expanded considering that efficiency and effectiveness in this land process are also not easy and require quite a long time.

From the research in the field, the author received many responses from the community who did not understand the process, plus the indirect transfer of rights meant that the land was still jointly owned. From there, the author wants that the INI organization and the related ministries, in this case the Ministry of Religion and BPN, need to take strategic steps or breakthroughs in waqf, especially land.

An important role in the protection of waqf in Blora Regency, especially in terms of making waqf pledge deeds and waqf land certification. Based on Government Regulation Number 42 of 2006, a qualified notary can become a Waqf Pledge Deed Making Officer (PPAIW). These requirements include being Muslim and having a competency certificate in the field of waqf. This provides legality and legal certainty for the waqf pledge deed that is made.

In Blora, the main focus is usually on land waqf for the construction of public facilities such as mosques, schools, or social institutions. Notaries & PPAT also help local communities understand procedures that are often considered complicated, thus facilitating the process of implementing waqf according to law. In certain cases, if there is a dispute related to the implementation of waqf, a notary can provide legal assistance either as a mediator or as a party that provides official documents to support the resolution of the dispute.<sup>9</sup>

The role of a notary as a PPAIW is very crucial in the process of implementing waqf in Indonesia, especially in Blora Regency. With the authority to make a deed of waqf pledge and the responsibility to protect waqf assets, notaries contribute greatly to legal certainty and security in waqf transactions. Therefore, selecting a notary who meets the requirements and competence is very important to ensure that the implementation of waqf runs well and in accordance with sharia principles and applicable laws and regulations.

Overall, the role of Notaries in waqf protection in Blora Regency is seen through increasing legality, legal certainty, and ease in the certification process and

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<sup>9</sup>Location Cit

management of waqf assets. Synergy between notaries, the Ministry of Religion, and BPN is the key to achieving these goals.

### **3.2. Procedures for Implementing Waqf with Land Rights Objects in Blora Regency.**

The practice of endowment as practiced by Indonesian society in the past, where the oath was simply uttered in front of a Kiyai, Ustadz, Community Leader or Mosque Imam, is no longer adequate in its development. In today's society, a provision has been enacted that the perfect means of proof in legal traffic (civil) such as endowments, is written or written evidence in the form of an authentic deed. A Kiyai, Ustadz, Community Leader or Mosque Imam is not a Public Official, so of course he cannot produce an authentic deed. If the practice of endowment is still maintained as before, then the existence of the endowment institution can be threatened because the endowment institution is often defeated when disputed in court. According to Taufiq Hamami<sup>10</sup>, this kind of reality is what underlies the idea of holding the Waqf Deed Making Officer (PPAIW).

This kind of new authority needs to be seen in reality related to the use of Notaries in carrying out their duties in addition to being a general official as well as an Official Making the Deed of Waqf Pledge. The position of a Notary as an Official Making the Deed of Waqf Pledge is administratively very important and strategic, namely for the sake of securing waqf assets from a legal perspective, especially from disputes and actions of irresponsible third parties, for which PPAIW must always act in a trustworthy manner in carrying out its duties.<sup>11</sup>

The following are the procedures for implementing waqf with land objects:

- 1) The Wakif or his proxy comes to the Head of the Religious Affairs Office (KUA) as the official who made the waqf pledge deed (PPAIW) bringing:
  - a) Original land ownership documents;
  - b) Certificate stating that the property is not in dispute/case, is not burdened with any type of encumbrance, or is not guaranteed by any authorized agency;
  - c) Name and identity card (KTP) of the wakif, nazhir, and witnesses.
- 2) The Wakif or his proxy pronounces the waqf pledge to the nazhir in the presence of two witnesses in the presence of the official who made the land waqf pledge deed, namely the head of the KUA.

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<sup>10</sup>Taufiq Hamami, 2003, Land Endowment in National Agrarian Legal Politics, Tatanusa Jakarta, p. 118.

<sup>11</sup>Ministry of Religious Affairs of the Republic of Indonesia Directorate General of Islamic Community Guidance Directorate of Waqf Empowerment 2013, Waqf Service Standards for Waqf Deed Making Officials by, <http://papua.kemenag.go.id/file/file/Data/dvsu1457068454.pdf>, accessed on November 7, 2024.



- 3) PPAIW issues a waqf pledge deed (AIW) in 7 (seven) copies to be delivered to:
  - a) Wakif,
  - b) Nazir,
  - c) May Allah bless him,
  - d) Head of the Regency/City Ministry of Religion Office,
  - e) District/City Land Office
  - f) Indonesian Waqf Board, and
  - g) Other authorized agencies.
- 4) PPAIW issues a nazhir approval letter.
- 5) PPAIW or Nazhir submits Nazhir registration to the Indonesian Waqf Board.
- 6) PPAIW or nazhir registers waqf land with the Regency/City Land Office.<sup>12</sup>

There is also an interview with the author with a notary in Kudus who also serves as PPAIW, it was obtained that the procedure for implementing land rights waqf is as follows:

#### 1) **Document Preparation and Verification**

Before implementing the waqf pledge, the Notary/PPAIW verifies the required documents, namely:

- a. **Identity of the Wakif (Donor):**KTP and KK.
- b. **Identity of Nazhir (Waqf Manager):**KTP and KK, as well as a Certificate from the Indonesian Waqf Board (BWI) if the Nazhir is in the form of an organization.
- c. **Proof of Land Ownership:** Certificate of Ownership Rights (SHM) or Certificate of Building Use Rights (SHGB).
- d. **Land Certificate:**From the Sub-district/District Office, ensure that the land is not in dispute.
- e. **Declaration of Endowment:**Willingness to donate land voluntarily.
- f. **Heir Consent Letter (if any):**If the land is inherited property or is still under joint ownership.

#### 2) Preparation of Waqf Pledge Deed (AIW) by PPAIW.

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<sup>12</sup> [www.bwi.go.id/literasiwakaf/tata-cara-berwakaf-tanah](http://www.bwi.go.id/literasiwakaf/tata-cara-berwakaf-tanah). Accessed on January 14, 2025



- a. Wakif and Nazhir came before the Notary who served as PPAIW.
- b. A waqf oath is made, namely an official statement by the Wakif to donate his land to the Nazhir.
- c. The Notary/PPAIW states the waqf pledge in the Waqf Pledge Deed (AIW) according to the format specified in PP No. 42 of 2006.
- d. The AIW is signed by the Wakif, Nazhir, and two witnesses.
- e. PPAIW provides a copy of the AIW to relevant parties, including the Office of Religious Affairs (KUA) or the Indonesian Waqf Board (BWI).

### 3) Registration of Waqf at the Land Office.

- a. The notary/PPAIW submits an application for a change in land rights to the local Land Office so that the land that is being donated can be changed to Waqf Ownership Rights.
- b. The Land Office issued a certificate of waqf land in the name of Nazhir with the status of Waqf Ownership Rights.
- c. Once the waqf certificate is issued, the land officially becomes waqf property and its ownership cannot be transferred other than for waqf purposes.

The new authority of the Notary as the Official Making the Deed of Waqf Pledge in reality cannot yet be implemented in Blora Regency. The new authority of the Notary in relation to being the Official Making the Deed of Waqf Pledge is still very common and cannot yet be addressed widely.

Based on the conclusion in Blora Regency, there is no Notary who is also an Official Making Waqf Deeds, however, there are 2 Notaries & PPAT who were used as respondents to explore data on factors inhibiting notaries from submitting applications as Official Making Waqf Deeds. The results of interviews with notaries in Blora Regency that inhibit the effectiveness or authority of notaries to become Official Making Waqf Land Deeds in Blora Regency are<sup>13</sup>:

1. There is no access that can be provided as a further reference regarding the Notary in making this Land Waqf Pledge Deed. This form of socialization has never existed in Blora Regency, initial discussions in the Blora Regency Branch of the Notary Association Forum have never existed.
2. There is also no socialization to the community, because as far as the community knows, only the Head of the Religious Affairs Office can issue the related Waqf Pledge Deed as his position as Waqf Pledge Deed Making Officer.

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<sup>13</sup>Interview with Mrs. Elizabeth Estiningsih, SH, MKn, Notary in Kab. Blora, 12 November 2024.

3. There is no understanding between the parties, including: Understanding by the notary in the agreement to make the Deed of Waqf Pledge in his capacity as a notary, not a Land Deed Making Officer, because many people know that land is the task of the Land Deed Making Officer, not a notary.

The requirements for a Notary as an Official Making a Deed of Waqf Pledge are regulated in Article 27 of the Regulation of the Minister of Religion Number 73 of 2013 concerning the Procedures for Waqf of Immovable Property and Movable Property Other Than Money, namely:

1. Notaries are appointed as PPAIW by Ministerial Decree.
2. The requirements for a notary to be appointed as a PPAIW are as follows:
  - a. Muslim;
  - b. trust; and
  - c. have a competency certificate in the field of endowments issued by the Ministry of Religion.
3. The notary as referred to in paragraph (2) letter c, may be appointed as PPAIW after submitting an application to the Minister.

The following are possible solutions that can be considered due to obstacles to the role of Notaries & PPAT in carrying out their roles as PPAIW, namely:

1. Increasing Understanding and Socialization.
2. Simplification of Regulations.
3. Strengthening Cooperation with KUA
4. Increasing Public Awareness.

By implementing these solutions, it is hoped that the role of Notaries as PPAIW can increase, so that they can contribute more optimally to the management of waqf in Indonesia. This will not only strengthen the legal position of waqf but also provide convenience for the community in carrying out waqf worship legally and securely.

#### **4. Conclusion**

With the existence of AIW made by a Notary, the waqf document has binding legal force and can be used as evidence in court if problems arise in the future. Although the role of Notaries in land waqf is still limited compared to the KUA, there is an opportunity to expand their authority to improve the efficiency and effectiveness of waqf management. Although legally notaries have the authority to become Waqf Pledge Deed Making Officials, implementation in Blora Regency

still experiences obstacles due to lack of socialization, the absence of a decision to appoint a notary as PPAIW, and minimal public understanding and coordination between institutions. Therefore, there needs to be concrete steps in the form of socialization, simplifying regulations, increasing coordination, and providing incentives so that the role of notaries in waqf can be more optimal and provide benefits to the community. Continuous training is needed for notaries regarding waqf, as well as socialization to the community regarding the importance of notary involvement in waqf implementation to ensure legality and validity. Synergy between notaries, the Ministry of Religion, and the BPN needs to be improved, especially through the waqf land certification acceleration program, to ensure that the waqf process runs smoothly and in accordance with the rules. Building an integrated service system that makes it easier for the community to access AIW creation services.

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