

The Implementation of Individual *Waqf* to Foundations for Land Management Rights (HPL)

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Abstract. *This research aims to know and analyze the implementation of Waqf from private individuals to Educational Foundations on Land Management Rights (HPL). The method used in this research is Sociological juridical, namely a research approach that studies the influence of society on, the extent to which the symptoms that exist in society can influence and vice versa. Sociological juridical research uses secondary data as initial data, which is then followed by primary data or field data, meaning besides seeing Act No. 41 of 2004 concerning Waqf, researchers also saw directly what happened in the field or field research. The types and sources of data that the authors used in this study used primary data that the authors collected directly through interviews as primary data and supported by secondary data. includes laws and regulations books, articles, journals, from the results of the author's research it is possible to carry out personal Waqf to educational foundations on land with management of Land Management Rights (HPL) managed by the Batam Concession Agency (BP) Waqf Land Objects on Land with Management Rights with the type of Building Use Rights (HGB), as well as Usage Rights (HP) can be given a Waqf Rights Period within a certain period of time until the HGB or Rights Use ends or forever with the condition of obtaining written permission / release from the HPL holder*

Keywords: Implementation; Land; Management; Waqf.

1. Introduction

Some Fiqh experts have several definitions of *Waqf*, one of which is Syafi'i and Ahmad who argue that *Waqf* is releasing the *Waqf* property from *Waqf* ownership, after completing the *Waqf* procedure. The waqif may not do anything to the *Waqf* property, such as treating the owner by way of ownership to another, either in exchange or not. If the *wakif* is *Waqf*, the property that is donated cannot be inherited by the heirs. The waqif distributes the benefits of the assets that are donated to the *mauquf'alaih* (those who are given the *Waqf*) as binding alms, where the waqif cannot prohibit the distribution of these donations. If the *wakif* forbids it, then the Qadli has the right to force it to give it

to the *mauquf'alaih*. Therefore the Shafi'i school of thought defines *Waqf* as:¹

Waqf is a legal act of *wakif* to separate and or surrender part of his property to be used forever or for a certain period of time according to his interests for the purposes of worship and/or public welfare according to sharia.²

According to Islamic law, *Waqf* is valid if there is a *shighat*, namely a statement or pledge of *wakif* as an intention to donate part of one's property. However, in the case of *Waqf*, the verbal and unrecorded statement of the *Waqf* pledge meant that the act was not positively recognized by Indonesia. and not recording the pledge, will cause various kinds of problems, one of which is that the *Waqf* land will become a dispute where when the *Waqf* land is re-occupied by the *wakif* or the *wakif*'s heirs.

Land Management Rights (HPL) are part of state land that has the authority to exercise State Controlling Rights (HMN) which is delegated to HPL holders. This HPL is implied in Article 2 paragraph (4) of the PA Law which reads "The above-mentioned HMN can be delegated to autonomous regions and customary law communities, it is only necessary and does not conflict with national interests according to government regulations."³

Land management rights (HPL) are not land rights as property rights (HM), business use rights (HGU), building use rights (HGB), and use rights (HP) and how for the method of implementing *Waqf* over Land Management Rights (HPL) is not fully known by the *Waqf* actors/executors who are in the Land Management Rights (HPL) area.

In order to create legal order and administration of *Waqf* to protect *Waqf* assets, the law confirms that *Waqf* legal actions must be recorded and set forth in the deed of *Waqf* pledge and registered and announced, the implementation of which is carried out in accordance with the procedures regulated in laws and regulations governing *Waqf* and must be implemented. So it is important to know how the implementation of personal *Waqf* to Educational Foundations on Land Management Rights. In order to get Legal Certainty and not become a dispute in the future. So that analyzes the implementation of *Waqf* from private individuals to Educational Foundations on Land Management Rights (HPL) Batam Concession Agency (BP).

¹Indonesian Waqf Board). "Definition of Waqf"<https://www.bwi.go.id/pengertian-wakaf> accessed on 15 February 2023 Pkl. 18.55

²Article 1 Paragraph 1 Act No. 41 of 2004. Waqf. 27 October 2004. State Gazette of the Republic of Indonesia of 2004 Number: 159. Jakarta

³Indonesian republic's finance ministry "HPL is not a land right as HM, HGU, HGB and HP"<https://www.djkn.kemenkeu.go.id/berita/baca/4972/> Accessed on 18 February 2023 at 20.06

2. Research Methods

This research used sociological juridical with qualitative approach method, type and source of data that the author uses in this study uses primary data as the main data and is supported by secondary data Primary data is the basic or main data that the authors use in research. In this study, the authors obtained primary data by means of direct interviews with research subjects, in addition to primary data, the authors obtained information from secondary data, which the authors collected which would be used to complement research data needs. Legal materials in the secondary data are in the form of Primary Legal Materials, including laws and regulations and all official documents containing legal provisions. Secondary legal materials used in this research are books, articles, journals, research results, papers and others.

3. Results and Discussion

3.1. Implementation of *Waqf* from private individuals to Educational Foundations on Land Management Rights (HPL) land

Implementation comes from the word exemplify which means to carry out or carry out an activity, implementation is an action or implementation of a plan that has been prepared in a mature and detailed manner, implementation is usually carried out after the plan is considered ready, in simple terms implementation can be interpreted as implementation⁴

Waqf is a legal act of *wakif* to separate and or surrender part of his property to be used forever or for a certain period of time according to his interests for the purposes of worship and/or public welfare according to sharia.⁵

Land Management Rights (HPL) are part of state land that has the authority to exercise State Controlling Rights (HMN) which is delegated to HPL holders. This HPL is implied in Article 2 paragraph (4) of UUPA which reads "The implementation of the HMN mentioned above can be delegated to autonomous regions and customary law communities, it is only necessary and does not conflict with national interests according to government regulations". HPL subjects include, among others, government agencies, State/Regional Owned Enterprises (BUMN/D) PT Persero, authority bodies, and other government legal

⁴Abdullah Gratitude, Study of the Implementation of the Background Concept of the Approach and Its Relevance in Development, (Jakarta: Persadi Ujung Pandang 1987), p. 40.

⁵Article 1 Paragraph 1 Act No. 41 of 2004. Waqf. 27 October 2004. State Gazette of the Republic of Indonesia of 2004 Number: 159. Jakarta

entities appointed by the government⁶

Normatively, legal certainty can be interpreted as a statutory regulation that is made and promulgated with certainty. This is because legal certainty can regulate clearly and logically so that it will not raise doubts if there are multiple interpretations. So that it will not clash and not cause conflicts in the norms that exist in society. Legal certainty can also be concluded as certainty of the rule of law and not certainty of action against actions that are in accordance with the rule of law.

Some rules that can be used as a basis for *Waqf* include:

1. Basic Agrarian Act No. 5 of 1960.
2. Government Regulation Number 28 of 1977 concerning Procedures for *Waqf* of Owned Land.
3. Regulation of the Minister of Religion Number 1 of 1978 concerning Details of PP No. 28 of 1977 concerning Procedures for *Waqf* of Owned Land.
4. Joint Instruction of the Minister of Religion of the Republic of Indonesia and the Head of the National Land Agency Number 4 of 1990, Number 24 of 1990 concerning Certification of *Waqf* Land.
5. National Land Agency Number 630.1-2782 Concerning the Implementation of *Waqf* Land Certification.
6. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law.
7. Act No. 41 of 2004 concerning *Waqf*.
8. Republic of Indonesia Government Regulation No. 42 of 2006 concerning Implementation of Act No. 41 of 2004 concerning *Waqf*⁷

In Article 49 paragraph (3) UUPA, confirms that all matters related to land *Waqf* are regulated through Government Regulations. This is what underlies the issuance of Government Regulation Number 28 of 1977 concerning *Waqf* of Owned Land (PP 28/1977). PP 28/1977 regulates all matters related to *Waqf* land, especially those related to the transfer of land with ownership rights

⁶Indonesian republic's finance ministry "HPL is not a land right as HM, HGU, HGB and HP"<https://www.djkn.kemenkeu.go.id/berita/baca/4972/> Accessed on 18 February 2023 at 20.06

⁷Elsa Kartika Sari, Introduction to Zakat and *Waqf* Law, Jakarta: Grasindo, 2007, pp.57-58

through the form of *Waqf*. As for what is regulated in PP 28/1977 regarding the function of *Waqf*, procedures for endowment and its registration, changes to *Waqf* objects, dispute resolution, and supervision of *Waqf* land property rights, and sanctions.

It can be seen in Article 38 and Article 39 of PP 42/2006 concerning procedures for registering *Waqf* objects in the form of freehold land, namely:

1. Registration of immovable *Waqf* assets in the form of land is carried out based on the *Waqf* Pledge Deed or Deed of Substitute *Waqf* Pledge Deed.
2. In addition to the requirements referred to in paragraph (1) the following requirements are attached: a. land title certificate or apartment unit certificate concerned or other evidence of land ownership; b. a statement from the person concerned that the land is not in dispute, case, confiscated and not guaranteed as known by the village head or other designation of the same level, which is confirmed by the local sub-district head.

In Article 39 PP 42/2006:

1. Registration of *Waqf* land certificates is carried out based on the Deed of *Waqf* Pledge or Deed of Substitute Deed of *Waqf* Pledge with the following procedures:
 - a. for land that has been registered as a *Waqf* land in the name of *Nazhir*;
 - b. for the freehold land that is donated only a part of the total area must first split the ownership certificate, then register it as *Waqf* land in the name of *Nazhir*;
 - c. for land that has not yet had the status of ownership rights originating from customary owned land, it is directly registered as *Waqf* land in the name of *Nazhir*;
 - d. with respect to building use rights, usufructuary rights or usufructuary rights over state land as referred to in Article 17 paragraph (1) letter c which have obtained approval for the release of rights from the competent official in the land sector to be registered as *Waqf* land in the name of *Nazhir*;
 - e. with respect to state land on which the mosque, prayer room, tomb is built, it is registered as *Waqf* land in the name of *Nazhir*;
 - f. The official in charge of the local Regency/Municipal land affairs shall record the endowment of the land in question in the land book and certificate.

2. Further provisions regarding the procedure for registering *Waqf* land are regulated by a Ministerial Regulation after receiving advice and considerations from the authorized official in the field of land.⁸

HPL is a portion of state land that has the authority to exercise the State Controlling Rights (HMN) which is delegated to HPL holders. This HPL is implied in Article 2 paragraph (4) of UUPA which reads "The implementation of the HMN mentioned above can be delegated to autonomous regions and customary law communities, it is only necessary and does not conflict with national interests according to government regulations". This has the implication that the HPL is not actually the right to land gempian from HMN. HPL cannot be transferred and cannot be used as collateral for debts burdened with Mortgage Rights (HT). "However, on this HPL, land rights can be given HGB/HP with an SPPT (Land Use Agreement. HGB/HP on this HPL, ownership can be transferred and burdened with HT with the approval of the HPL holder. HPL subjects include, among others, government agencies ,⁹

Waqf land objects on land with management rights with the type of building use rights (HGB) or usufructuary rights (HP) can be given a period of *Waqf* rights for a certain period of time until the HGB or usufructuary rights expire or forever on the condition that obtaining written permission / release from the holder HPL.

For the registration of *Waqf* land with the original *Waqf* land with Building Use Rights or Usage Rights over Management Rights, the following application documents must be prepared:

1. Photocopy of *Nadzhir's* KTP,
2. UN SPPT,
3. Application letter,
4. Measure Letter,
5. Certificate,
6. AIW or APAIW,
7. Letter of Approval of *Nadzhir*,

⁸LBH protects "Implementation of Waqf in Indonesia" <https://lbhpengayoman.unpar.ac.id/pelaksanaan-wakaf-tanah-di-indonesia-pengaturan-dan-problematika/> accessed on 21-02-2023 pkl. 20.53

⁹Indonesian republic's finance ministry "HPL is not a land right as HM, HGU, HGB and HP" <https://www.djkn.kemenkeu.go.id/berita/baca/4972> accessed on February 24, 2023 at. 20.01

8. Statement of no disputes, confiscation and not guaranteed,
9. Release Permit from the HPL Holder.

Procedure for registration of *Waqf* land:

1. PPAIW on behalf of *Nazhir* submits AIW or APAIW and other documents to the Land Office.
2. If the requirements are correct and complete, the Head of the Land Office issues a confirmation decision as *Waqf* Land.
3. After the issuance of the Confirmation Decree as *Waqf* land, the Head of the Land Office issues the *Waqf* Land Certificate on behalf of *Nazhir*.

Requirements for Making a *Waqf* Certificate of Ownership

1. *Waqf* Pledge Deed (AIW) or Deed of Substitute Deed of *Waqf* Pledge (APAIW) and all evidence of land ownership by the *Wakif*:
2. Sale Purchase Certificate or Deed;
3. Sporadic Statement Letter;
4. Ownership statement;
5. Statement Letter from the Head of KUA regarding Land Leasehold;
6. Photocopy of *Nazhir*'s KTP;
7. Copy of SPPT PBB for the current year etc
8. Land title certificate or other evidence of land ownership;
9. A statement from the person concerned that the land is not in dispute, case, confiscated and not guaranteed which is known by the village head which is confirmed by the local sub-district head;
10. Permits from authorized officials in accordance with statutory provisions in terms of land obtained from government agencies, local government, BUMN/BUMD and village government or other designations that are equivalent to that;
11. Permit from the official in the land sector if the certificate and decision on

the granting of the rights require a relinquishment/transfer permit. Management permits or ownership rights in the case of building use rights or usufructuary rights that are represented as *Waqf* over management rights or property rights;

12. Permit from the holder of management rights or property rights in the case of building use rights or usufructuary rights that are donated over management rights or property rights

4. Conclusion

Waqf should be implemented in any area, even though the area of Land Management Rights can be implemented in accordance with the rules and regulations in Indonesian legislation, by being registered with the competent authority in order to provide legal certainty for the *Waqf*. For this reason, officials and government agencies in charge of the Land Management Rights Area (HPL) can jointly facilitate the recording of *Waqf*. It is also necessary to hold seminars and socialization for the procedures for implementing *Waqf* on HPL land, both for the notary as one of the officials authorized to make *Waqf* deeds, the general public and foundations as endowment actors and together with the land agency, The Indonesian *Waqf* Board and also the Land Management Right Holder as the giver of land allocation permits and also the one who can give permission for the transfer of Management Right land. So that in general it can be known and carried out the procedures for implementing *Waqf* on Land Management Rights (HPL) land.

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