

## Legal Protection for Religious Foundations Over Land Ownership Certificates Granted

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**Abstract.** *This study aims to determine and analyze the legal protection of religious foundations for land grant certificates and to determine and analyze the legal procedures for religious foundations to obtain land grant certificate status. The research approach method used in this thesis is the normative legal research method. The specifications of this study use normative legal research. The types of data used in this study are primary data including the 1945 Constitution; civil law book, compilation of Islamic law, basic law on agrarian principles, PP no. 38 of 1963, and ATR/BPN head regulation no. 2 in 2013, as well as secondary data containing books and other supporting documents. Data collection research with document study research techniques or library materials. The data analysis method used in analyzing the data is qualitative analysis, namely the inventory of primary and secondary legal materials in a structured manner. The results of the study will describe the results of the Research and discussion consisting of; Regulation of legal protection for religious foundations for land grant certificates, and Legal procedures for religious foundations to obtain land grant certificate status.*

**Keywords:** *Certificate; Foundation; Legal; Protection.*

### 1. Introduction

Indonesia is an agricultural country, which means that land is a source of national wealth that can be beneficial for prosperity and public interest, especially for the Indonesian nation, most of whose population works in agriculture, land management, and utilization of natural energy sources. Along with the increasing human population that requires land as space, land ownership continues to develop, both in terms of ownership concepts and the laws that regulate it.

Humans have a very important need for land as a place to live and a source of life, in other words, humans directly or indirectly need land to fulfill their needs, both

economic, social and cultural needs.<sup>1</sup>Fulfillment of human needs for land causes the transfer of land ownership rights from one person to another. The transfer of land is carried out through buying and selling, inheritance, wills, grants, and auctions as regulated in Government Regulation No. 24 of 1997 concerning land registration. Every person who has the right to receive inheritance from legal blood family members, or outside of marriage, and the longest living husband and wife according to Article 832 of the Civil Code.<sup>2</sup>In social life, land owned by individuals is often transferred to other parties, both individuals and legal entities such as religious foundations to support social, educational and religious interests. One of the mechanisms for transferring land ownership rights from individuals to foundations is grants.

Land grants also have their own rules according to Article 171 letter g of the Compilation of Islamic Law, where grants must be made voluntarily, must not conflict with inheritance laws, and must be submitted in real terms to the recipient of the grant. It is important for all parties involved in land grants to understand the applicable legal aspects so that the grant process can run smoothly and legally. The interpretation of Grants is in Article 1666 of the Civil Code, in principle a grant given by one person to another cannot be withdrawn or canceled, except in cases as regulated in Article 1688 of the Civil Code. The law only recognizes grants between living people.<sup>3</sup>

The purpose of land grants to religious foundations is to be a real form of community contribution in supporting the social, educational, and religious functions of the land in the long term. Based on Law Number 28 of 2004 concerning foundations as legal entities, they have the capacity to manage assets in a more structured and sustainable manner. However, in practice, there are still many legal aspects that need to be considered so that the transfer of rights through grants can run in accordance with the regulations in force in Indonesia. Legal awareness is needed for the community regarding the correct land grant procedures, as well as support from the government in improving regulations and law enforcement in creating a transparent, fair, and common interest land law system.

Problems that often arise regarding the transfer of property from parents to their children which are usually in the form of grants, the causes of legal problems that often arise in land grants include: The heir has an emotional closeness to other people or socio-religious institutions, therefore in general the heir assumes that he is the sole owner of his property, so that the heir has full authority to take legal

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<sup>1</sup> Dewi Purnama Julianti. (2018). Proses Penyelesaian Sengketa Hak Atas Tanah Bangunan Yang Telah Dijual Tetapi Masih Dipakai Oleh Pihak Lain (Studi Kasus Di Pengadilan Negeri Surakarta), *Jurnal, Fakultas Hukum*, Universitas Muhammadiyah Surakarta. P.14.

<sup>2</sup> Hilman Hadikusuma. (1991). *Hukum Waris Indonesia Menurut Perundangan, Hukum adat, Hukum Agama Hindu Islam*, Bandung: PT Citra Aditya Bakti. P. 5.

<sup>3</sup> Anisus Amanat. (2001). *Membagi Warisan Berdasarkan Pasal-pasal Hukum Perdata BW*, Jakarta: PT Raja Grafindo Persada. P. 82

action either in the form of inheriting his property to the heirs or donating his property to others. Sometimes these legal actions are not known to the heirs, so that the heirs do not know that they have lost their right to inherit and cause disputes between the heirs. The heir grants to others the amount of which reduces the portion of the heirs, because the property that may be given as a gift is 1/3 of the heir's property.<sup>4</sup>Not using deliberation with the family makes the granting of the gift take place without witnesses from the grantor. Therefore, misunderstandings often occur between the two parties, such as mutual claims of property due to the lack of clarity when the grant was given at the beginning which led to disputes between the heirs.<sup>5</sup>

As well as problems that often occur in cases of land grant disputes caused by the lack of public understanding of the Laws and Regulations governing the procedures for valid grants, which should be known and recorded by the local sub-district which can then be used as evidence in order to be registered with the Land Deed Making Officer (PPAT) so that it can be used as strong evidence (authentic) in the future so that land grant disputes do not occur in the community.

Land dispute resolution can be resolved with norms and regulations based on applicable laws. Regulations on land have been regulated in a separate law, namely the Basic Agrarian Law or abbreviated as UUPA. Article 4 of Law Number 5 of 1960 concerning Basic Agrarian Regulations explains the definition of land, namely that on the basis of the right to control from the state as referred to in Article 2, there are various types of rights to the surface of the earth called land, which can be given to and owned by people, either alone or together with other people and legal entities.<sup>6</sup>State-owned land is used for the benefit of the state. In the end, all land disputes can be resolved amicably (mediation) to reach an agreement between the parties in dispute over the land.

Legal protection is a guarantee provided by the state to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.<sup>7</sup> Legal protection of land aims to ensure legal certainty for land owners and other parties who have rights to the land. provide a sense of security for land rights owners, as well as provide justice for the entire community in managing and utilizing land, and prevent conflicts, disputes, and practices that are detrimental to land owners or parties entitled to land. The state has a primary role in regulating and guaranteeing land ownership rights through various regulations and policies contained in Law Number 5 of 1960 concerning Basic Agrarian Principles which regulate land rights, including land use rights, use rights, and ownership rights.

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<sup>4</sup>Rocky Marbun(2011). *Kiat Jitu Menyelesaikan Kasus Hukum*, Jakarta Selatan: Trans Media Pustaka. P. 214

<sup>5</sup>Muniroh, Misbahatul. (2022). "Dampak Hibah Dalam Pembagian Waris Perspektif Hukum Islam."

<sup>6</sup>Santika Ayu Trisnawati(2018). Proses Penyelesaian Sengketa Hak Atas Tanah Bangunan Yang Telah Dijual Tetapi Masih Dipakai Oleh Pihak Lain (Studi Kasus Di Pengadilan Negeri Surakarta), *Jurnal, Fakultas Hukum*, Universitas Muhammadiyah Surakarta. p. 3.

<sup>7</sup>Philipus M. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: Bina Ilmu. p. 3.

UUPA also regulates land certification and land registration.

Land Registration based on article 19 of law number 5 of 1960 concerning basic regulations on agrarian principles regulates the government's obligation to register land throughout Indonesia, for that reason there are also quite a few lawsuits from heirs against land ownership rights obtained because of grants already have land ownership certificates. The implementation of Land Registration in general includes land registration activities and maintenance of land registration data. Both of these things are equally important, because if one of them is not given enough attention, it will cause unexpected things in the future.<sup>8</sup>

Certificates are issued for the benefit of the relevant rights holders in accordance with the physical data and legal data that have been registered in the land book. Therefore, certificates are a strong means of proof as referred to in Article 19 of the UUPA. PP No. 24 of 1997 also provides confirmation regarding the evidentiary power of certificates, which are stated as strong means of proof by the UUPA in order to provide legal certainty to land rights holders.

Based on the background above, the researcher is interested in discussing a study entitled Legal Protection for Religious Foundations for Granted Land Ownership Certificates.

## 2. Research Methods

Method is the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge. Therefore, research methods can be interpreted as the process of principles and procedures for solving problems faced in conducting research.<sup>9</sup>The aim of legal research is to broaden insight and increase the depth of the substance of legal science.<sup>10</sup>

### 3.1. Results and Discussion

#### 3.1. Regulation of Legal Protection for Foundations for Granted Land Certificates.

A grant is a gift of something to a person or legal entity that is voluntarily desired. According to the Civil Code (KUHP) Article 1666, the definition of a grant is a gift, an agreement by which the donor, during his lifetime, freely and irrevocably hands over an object for the needs of the recipient of the gift who accepts the gift.<sup>11</sup> In terminology, this means granting direct and absolute ownership rights to an object while still alive without replacement, even from a higher person.<sup>12</sup>

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<sup>8</sup>Solikin, N. (2018). Kajian Yuridis Mengenai Pendaftaran Tanah Menurut Pasal 19 Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria. *Lex Privatum*, 6(5).

<sup>9</sup> Soerjono Soekanto, (1985). *Pengantar Penelitian Hukum*, Jakarta: UI-Press.p. 6

<sup>10</sup> Artidjo Alkostar. (2018). *Metode Penelitian Hukum Profetik*, Yogyakarta: Ull Press., p.21

<sup>11</sup> JCT Simorangkir. (2015). *Kamus Hukum*, Jakarta: Sinar Grafika. P. 64.

<sup>12</sup> Mardani, (2013). *Fiqh Ekonomi Syariah*, Jakarta: Kencana Prenada Group. 342-343

Based on KHI Article 171, a grant is defined as the voluntary giving of an object without compensation from one person to another person who is still alive to be owned.<sup>13</sup>The legal basis for gifts in Islamic law has been regulated in the Al-Qur'an and the Hadith of the Prophet Muhammad, which defines a gift as a gift from one person to another.<sup>14</sup>

A foundation is a legal entity whose establishment is stipulated in a deed approved by a notary, whose activities are in the religious and social fields.<sup>15</sup>Based on law no. 28 of 2004 concerning foundations. As well as Religious foundations must have the status of a legitimate legal entity in order to become a legal subject that can receive and record land grants in the name of the foundation itself. Without official legal status from the Ministry of Law and Human Rights, the foundation does not have the capacity to handle the legality of land ownership.

Based on Law No. 5 of 1960 concerning the basic principles of agrarian law, Article 21 paragraph 2 in conjunction with PP No. 38 of 1963 Article 4, Religious and Social Legal Entities can have Ownership Rights to land used for purposes directly related to religious and social endeavors. However, the community still often ignores formal procedures such as notarial deed of gift and land registration with the BPN to make a certificate in the name of the foundation, which can open up opportunities for disputes from third parties, especially heirs.

Before the enactment of Government Regulation Number 24 of 1997 Concerning Land Registration, for those subject to the Civil Code, deed of gift and will must be made in written form from a Notary. Deed of gift that is not made by a Notary has no legal force, The legal force of the deed of gift lies in the function of an authentic Deed which is a valid and perfect evidence, as referred to in Article 1870 of the Civil Code.<sup>16</sup>so that this is a requirement of the statutory provisions, that there must be authentic deeds as a means of proof.

"An authentic deed is a document made in accordance with the provisions of the law, by or before an authorized public official at the place of making the deed. Based on Article 1 point 1 of Law No. 30 of 2004 concerning PPAT, a Public Official is authorized to make an authentic Deed and other authorities that are still related to the land sector and its powers.

Land registration is carried out by the National Land Agency and is a manifestation of the State's right to control, in this case the executive power.<sup>17</sup>In relation to land registration in order to guarantee legal certainty, a certificate will be issued to the

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<sup>13</sup> Chapter 171 letter g Compilation of Islamic Law

<sup>14</sup> M. Idris Ramulyo(2004). *Perbandingan Hukum Kewarisan Islam Dengan Kewarisan Kitab Undang-undang Hukum Perdata*, Jakarta: Sinar Grafika. p. 116

<sup>15</sup> Yan Pramadya puspa. *Kamus Hukum*, Semarang: Aneka Ilmu. p. 925

<sup>16</sup> Subekti, *Civil Code, Op. Cit.*, bab. 1870.

<sup>17</sup> Boedi Harsono, (2008). *Hukum Agraria Indonesia (Sejarah, Pembentukan, Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya)*, Jakarta: Djambatan. p. 472

entitled party as proof of their rights. In Article 32 paragraph (1 and 2) of Government Regulation Number 24 of 1997 concerning Land Registration.

### **3.2. Legal procedures for religious foundations to obtain land grant ownership certificate status.**

Based on the provisions of land law, land owned by a person personally is generally certified as land ownership rights, and if the land is donated, because the foundation is a legal entity, then the status of the land ownership rights must experience a reduction in land rights to building use rights. The underlying regulation is Law of the Republic of Indonesia Number 5 of 1960 concerning Agrarian Principles, Article 36. However, in some conditions, land donated to religious foundations can still have the status of a land ownership certificate in the name of the foundation, Based on Law No. 5 of 1960 concerning Agrarian Principles, Article 21 paragraph 2 in conjunction with PP no. 38 of 1963 Article 4 that religious and social legal entities can have Ownership Rights to land used for purposes directly related to religious and social efforts, especially if the foundation meets the requirements and submits an application for a letter of appointment to obtain the rights status.

The procedures that must be met are the administrative requirements specified in the Head of ATR/BPN Regulation No. 2 of 2013. These procedures include:

- 1) Foundation must have official legal entity status from the Ministry of Law and Human Rights and all foundation land assets to be certified, individual SHM with non-agricultural land status (perkaban 2/2013)
- 2) Making a deed of grant statement with power of attorney from an individual to a foundation, notary/notary deed Article 1868 of the Civil Code. (the validity of the agreement 1320 of the Civil Code.) has not been registered, still waiting for the Decree of Appointment of the ATR/BPN RI. (Article 21 paragraph 2 of UUPA 5/1960 in conjunction with Article 4 PP 38/1963)
- 3) Create a list of assets containing the number or in order, shm number, land area, number and date. binding of grant with power of attorney, nop. (for attachment of recommendation application)
- 4) Making a letter of recommendation request to the district/city Ministry of Religion, provincial Ministry of Religion, and central/Republic of Indonesia Ministry of Religion
- 5) Make a letter of application for the determination of SHM to the ATR/BPN RI land office to obtain a Decree of Appointment that the Foundation may have a Certificate of Ownership (SHM) for the land.
- 6) Make a letter of application for SKB (tax-free certificate) to Bappenda, based on the BPHTB Law 20/2000 article 3
- 7) Making a PPAT Deed of Gift (PP 24/1997 Article 40 paragraph (1) states that it must be registered within 7 days.) (the first party and the second party are signed by the chairman of the foundation because there is already a deed of gift statement with power of attorney)

- 8) Registering a Certificate with ATR/BPN to remove an individual's name and replace it with the foundation's name.

A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the measurement letter and the relevant land title book. If at any time there is a lawsuit or legal claim in court over the land object for which the certificate has been issued, then all information contained in the certificate has strong evidentiary force as long as there is no other evidence that contradicts it.

#### 4. Conclusion

The results of the study show that legal protection for religious foundations over land title certificates is only effective if the grant process is carried out in accordance with legal provisions, officially recorded in the certificate, and registered with the National Land Agency (BPN). Certification in the name of the foundation is an important element in ensuring legal certainty and preventing disputes in the future. Legal Protection for Religious Foundations for Certificates of Ownership of Granted Land has been regulated in various regulations, including the Civil Code, Compilation of Islamic Law, Law No. 5 of 1960 concerning Basic Agrarian Principles, PP No. 38 of 1963, and Regulation of the Head of ATR/BPN No. 2 of 2013. These regulations provide a legal basis for religious foundations to legally receive grant land and have it recorded as ownership as long as it is used for social and religious activities. This protection is important to ensure legal certainty, avoid disputes, and protect foundations from third-party claims. The procedures that must be taken by religious foundations to obtain ownership rights status for donated land include: making a deed of gift by a PPAT, registering the land at the land office, and applying for recognition of ownership rights status based on the provisions of Article 21 paragraph (2) of the UUPA in conjunction with PP No. 38 of 1963 and Regulation of the Head of ATR/BPN No. 2 of 2013. Religious foundations must have the status of a valid legal entity in order to become legal subjects that can receive and record donated land in the name of the foundation itself. Without official legal status from the Ministry of Law and Human Rights, foundations do not have the capacity to manage the legality of land ownership.

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