

Mechanism for Issuing Waqf Land Certificates Based on Village Letter C Rights

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Abstract. *The issuance of waqf land certificates is an important part of land administration to provide legal certainty for land declared as waqf. This study aims to analyze the mechanism for issuing waqf land certificates based on village Letter C rights at the Tegal Regency Land Office, covering administrative stages, land technicalities, obstacles encountered, and solutions implemented in the registration process. The author employed an empirical legal research method, based on field studies and examining applicable legal provisions in relation to the realities of society. The data analysis technique employed descriptive qualitative analysis, which involved analyzing problems by obtaining data directly from respondents. This study concludes that the issuance of waqf land certificates with Letter C village rights in Tegal Regency can be implemented effectively if there is synergy between the village, the nazhir, and the Land Office, supported by complete documents and certainty of physical data. These findings are expected to serve as recommendations for strengthening waqf land registration governance to ensure orderly land administration and provide legal protection for waqf assets.*

Keywords: *Endowments; Official; Pledge; Registration; Waqf.*

1. Introduction

In the agrarian sphere, land is part of the earth which is referred to as the “surface of the earth”. Land as part of the earth is outlined in Article 4 Paragraph (1) of the Basic Agrarian Law. The state plays a very important role in controlling land for the benefit of its people, so that the state has the authority to regulate and manage the natural resources contained therein which are used for the greatest prosperity of the people, both individually and through mutual cooperation. Furthermore, in this case, the government as the manager indirectly has the authority to regulate agrarian affairs as a whole which is known as the State's Right to Control (HMN). This right leads the government to regulations aimed at the welfare of the people.

One of the legal acts in transferring control of land rights is waqf. Based on the Regulation of the Minister of ATR/BPN Number 2 of 2017 concerning Waqf, waqf is a legal act of a waqif to separate and/or hand over part of his/her property to be used forever or for a certain period of time according to his/her interests for the purposes of worship and/or general welfare according to sharia. The existence of waqf is affirmed in Law Number 5 of 1960 concerning Basic Agrarian Principles Article 49, namely:

- 1) Land ownership rights or religious and social bodies as long as they are used for business in the religious and social fields are recognized and protected. The agency is also guaranteed to obtain sufficient land for its buildings and businesses in the religious and social fields.
- 2) For the purposes of worship and other sacred purposes as referred to in Article 14, land may be provided which is directly controlled by the State with the Right of Use.
- 3) Endowment of land is protected and regulated by Government Regulation.

Waqf is a distinctive characteristic of Muslim society and an ideal Islamic teaching for fostering social and economic development. Previous scholars prioritized waqf discussions and established laws and regulations related to its implementation and application, in order to safeguard and develop waqf assets for their continued benefits, in accordance with the wishes and desires of the waqif, as stated in the Waqf Pledge Deed.¹ Waqf is an act of worship whose practice continues even after a person's death. One of the assets commonly donated is land. Slightly different from charity, charity usually involves giving something consumable, such as food to those in need.²

However, in practice, waqf in Indonesia has not been fully effective. This is undoubtedly due to numerous problems that trigger disputes in waqf implementation. In various cases, waqf assets are not properly maintained, lacking valid waqf certificates, being neglected, or having their ownership transferred through unlawful acts. This situation is caused not only by the negligence or inability of the Nazir to manage and develop waqf assets, but also by a lack of public awareness and understanding of the importance of protecting waqf assets for the common good.³

Therefore, the importance of waqf land certification has long been recognized. However, participation remains relatively small. This is likely because the public doesn't yet consider the process of waqf land certification important. This is

¹Juhaya S. Praja and Mukhlisin Muzarie, 2009, *Islamic Economic Institutions: Waqf*, Yogyakarta, Dinamika, p. 11.

²Ahmad Mujahidin, 2021, *Waqf Law in Indonesia and the Dispute Resolution Process*, Jakarta, Kencana, p. 6.

³Purwanto, "Obstacles in Managing Productive Waqf", *Journal: Islamic Studies*, Vol.3 No.2 (October, 2017), p. 3.

closely related to the practice of waqf, which in Indonesia is largely based on religion or mutual trust. Consequently, this situation ultimately leaves waqf land without a legal basis. If questions arise later regarding waqf land ownership in Indonesia, they will be difficult to resolve, particularly in terms of proof. This is the root of problems and debate within society.

Coupled with the public perception that equates waqf with gifts or wills, a common problem in waqf implementation is that waqf assets are inherited from the waqif to the Nazhir without the consent of the prospective waqif heirs, resulting in some heirs managing the waqf after the waqif's death. Although regulations related to waqf in Indonesia are binding and provide strict sanctions for violators, the implementation of waqf regulations cannot immediately resolve all existing problems. Based on the various explanations above, it is very interesting for the author to examine the mechanism for issuing waqf land certificates that are not yet certified or based on Village Letter C rights at the Land Office through this research.

This study aims to analyze the implementation mechanism for issuing waqf land certificates based on Letter C title and aims to analyze the obstacles and solutions to overcome existing obstacles in the implementation of issuing waqf land certificates based on Letter C title.

3. Research methods

1) Types of research

This research is a type of empirical legal research, also known as field research, which examines applicable legal provisions and what actually occurs in society. Empirical legal research is legal research concerning the application or implementation of normative legal provisions in action in each specific legal event that occurs in society.⁴

2) Approach Method

The approach method is formulated with possibilities as a type of thinking used in research and assessment and a technique that is common to science and a certain way to carry out a procedure. The approach method used by the author is a qualitative approach, namely a way of analyzing research results that produces analytical descriptive data, namely data stated by respondents in writing or verbally as well as real behavior, which is researched and studied as something whole.⁵, and by emphasizing the behavior of individuals or society in relation to the law⁶.

⁴Muhammad Abdulkadir, 2004, Law and Legal Research, Bandung, PT. Citra Aditya Bakti, p. 134.

⁵Mukti Fajar and Yulianto Achmad, 2010, Dualism of Normative and Empirical Legal Research, Yogyakarta, Pustaka Pelajar, p. 192.

3) Data Types and Sources

a. Primary Legal Materials

Binding legal materials such as statutory regulations and jurisprudence and are of an authoritative nature or statutory regulations with valid legal force, including:

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Law Number 5 of 1960 concerning Basic Agrarian Regulations
- 3) Law Number 41 of 2004 concerning Waqf
- 4) Government Regulation Number 40 of 1996 concerning Land Use Rights, Building Use Rights, and Land Use Rights
- 5) Government Regulation Number 24 of 1997 concerning Land Registration
- 6) Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf
- 7) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 2 of 2017 concerning Procedures for Registration of Waqf Land

b. Secondary Legal Materials

Secondary data sources do not have binding power like primary legal materials, but function to strengthen legal analysis and arguments in research which includes Legal Literature, Scientific Journals, Scientific Writings, Opinions of Legal Experts taken from books, articles, as well as the results of interviews or seminars, which provide conceptual views regarding the validity and evidentiary power of the data.

c. Non-Legal Materials

Material that is not legally binding, but can be used to provide guidance, illustrations, or additional context in understanding the problem being researched.

4) Method of collecting data

Data collection methods are the methods researchers use to gather the data needed to solve research problems and obtain the information needed to achieve research objectives. In this study, the data collection methods used were interviews and library research. Library research involves collecting data by reviewing literature or secondary data, including primary legal materials, secondary legal materials, and tertiary legal materials. Written or graphic data

sources include official documents, books, journals, legal literature, and documents related to the research problem.⁷

5) Data Analysis Methods

Data analysis methods are ways to analyze data collected in research to answer research questions. Data analysis in this study was conducted using descriptive qualitative analysis, a method used to systematically, factually, and accurately describe and analyze data regarding the facts and relationships between the topics being studied. Data obtained from interviews, observations, and documentation studies will be selected, classified, and interpreted according to the research focus.

3. Results and Discussion

3.1. Mechanism for Issuing Waqf Land Certificates Based on Village Letter C Rights

To ensure legal certainty regarding waqf land, the state, through Law Number 41 of 2004 concerning Waqf, mandates that all waqf assets be registered and issued with a Waqf Land Certificate by the National Land Agency. This certificate serves as authentic proof of the status and position of the waqf land in accordance with positive law, thereby preventing future disputes, misuse, or unauthorized transfer of rights.

However, in practice, much waqf land in Indonesia still lacks a certificate, particularly land whose title is still a Village Letter C. A Letter C is a village land administration document that essentially only records historical land ownership and tax data and does not guarantee full title security. In other words, the status of the data in a Letter C still requires further verification and proof through the land registration mechanism at the Land Office.

Letter C is a land administration document that was under the authority of the Village/Sub-district Government during the colonial period until before the modern land registration system was implemented nationally in Indonesia. Letter C functions as a land tax record book and initial legal data related to land ownership and use by village residents from generation to generation. In Indonesia, there are 2 (two) largest Islamic Community Organizations (Ormas Islam) that can act as legal entities Nazhir in waqf management and community empowerment, namely NU (Nahdlatul Ulama) and Muhammadiyah. Both Islamic organizations are in the form of community organizations engaged in religious, social, educational, and humanitarian fields based on Islamic teachings and aiming to foster the community. Between the registration of waqf land certificates (NU) Nahdlatul Ulama NU and Muhammadiyah are the same in principle, the only difference is in the Institution and there are additional files for the

⁷Soerjono Soekanto, 2006, Introduction to Legal Research, Jakarta, UI Press, p. 51.

Muhammadiyah Legal Entity, namely attaching the Deed of Establishment, Articles of Association, Decree authorized by the Ministry of Law and Human Rights (Kemenkumham), and the Decree on the Appointment of Nazhir.

The following is the process flow in implementing the mechanism for issuing waqf land certificates based on Village Letter C rights:

a. Stage I (Initial preparation by Wakif and Nazhir)

1) The waqif owns the land being donated and has proof of ownership in the form of a Letter C and documents obtained from the village or supporting documents for land ownership. Ensure the land is not disputed, pledged, or confiscated.

2) The waqif meets with the PPAIW at the KUA (Office of Religious Affairs) with land ownership documents. At this stage, a Nazhir is appointed, which can be an individual, a mosque/boarding school administrator, or a legal entity. If the Nazhir is an entity/organization, a Nazhir Approval Decree or institutional approval document must be attached.

3) The waqif declares the waqf before the authorized official, in this case the Waqf Pledge Deed Making Officer and Nazhir, at the local Religious Affairs Office (KUA) according to the location of the land, witnessed by 2 (two) witnesses from the village apparatus/Religious Affairs Office. All parties are included in the Waqf Pledge Deed (AIW). This document must be made in duplicate according to the provisions.

4) The PPAIW will issue a Deed of Waqf Pledge (AIW). This AIW is one of the main documents for registration with the National Land Agency (BPN). The Deed of Waqf Pledge is signed, recorded (number and date), and a copy is given to the Waqf/Nazhir.

b. Stage II (Submission to BPN)

After the Waqf Pledge is pronounced by the Waqf and all documents related to the waqf land at the KUA have been signed by all parties involved, the applicant, whether from the Waqf/Nazhir and/or the authorized party, brings all the completed documents to the Land Office to submit an application for registration of the issuance of a waqf land certificate.

Before registering for the issuance of a waqf certificate, the Land Office must first conduct a cadastral survey, a measurement and mapping activity carried out to accurately determine the boundaries, area, and position of a plot of land for land registration purposes. The objectives of the cadastral survey are:

- 1) Providing legal certainty over land through valid and accurate physical data.
- 2) Officially define land boundaries.
- 3) Determining the land area for issuing certificates.

- 4) Prepare a basic map of land registration.
- 5) Minimize the occurrence of boundary disputes by including neighboring boundary neighbors when measurements are carried out.

The application files for cadastral measurement registration are:

- 1) Registration application form.
- 2) Photocopy of the Wakif's KTP and KK.
- 3) Photocopy of all Nazhir's ID cards, if the Nazhir is in the form of a Legal Entity/Foundation, it is mandatory to attach the Deed of Establishment and Decree of the Ministry of Law and Human Rights.
- 4) Power of attorney if the application is submitted by a proxy (other than the wakif and Nazhir).
- 5) Current year's Land and Building Tax (PBB).
- 6) Village Letter C accompanied by a Land History Certificate, Ownership Statement Letter, Land Area Physical Control Statement Letter (SPORADIK), Land Boundary Mark Statement Letter.
- 7) Deed of Waqf Pledge, Deed of Replacement for Deed of Waqf Pledge, Land Waqf Pledge, and Nazhir Confirmation issued by the Waqf Pledge Deed Making Officer in this case the Office of Religious Affairs according to the location of the land.
- 8) Proof of Nazhir Registration which is authorized by the Indonesian Waqf Board and issued by the Ministry of Religion.
- 9) Measurement Statement, Physical Control Statement, Boundary Sign Installation Statement, Approval of the Border Owner, and No Dispute Statement.

The cost of applying for cadastral measurement in accordance with PNBP and the cost of applying for the issuance of a certificate for waqf land, whether already certified or not, is 0 rupiah and the cost of making a Waqf Pledge Deed at the KUA is also free, only the stamp duty and the fee charged for services if the registration is authorized to the PPAT/Notary.

c. Stage III (Process of checking, measuring and publishing Land Plot Maps by BPN)

After the documents have been reviewed by the counter staff and all requirements have been met, the documents will be entered, and the applicant will receive a Document Receipt. The applicant can then schedule an appointment with a designated Land Surveyor from the National Land Agency (BPN) to measure the land. Once the Surveyor has completed the measurements, the BPN will

immediately process the issuance of a Land Plot Map, which is one of the requirements for applying for a waqf land certificate.

d. Stage IV (Issuance of Waqf Land Certificates)

1) After the Land Plot Map is issued, the applicant re-registers their documents for the issuance of a waqf land certificate at a fee of 0 rupiah. The counter officer will immediately review the attached documents. Once the review is complete and all requirements are met, the documents will be re-entered as a different application: an application for the issuance of a waqf land certificate with a Letter C title.

2) The land office will form Task Force Committee A which will conduct examination of legal data and physical data in the field and carry out identification such as matching land boundaries, checking evidence of ownership (Letter C title, Deed of Waqf Pledge, Waqf Pledge, and Nazhir approval), interviewing village officials and witnesses.

3) To allow third parties to object, a notice period (objection period) is typically passed, as per land registration regulations. If objections arise, the National Land Agency (BPN) will delay issuance until they are resolved. This step is taken to protect any aggrieved parties.

4) Once there are no objections or after the objections have been resolved, the National Land Agency (BPN) officers will conduct a final inspection of the documents, measurement certificate, plot map, and legal status. If complete and valid, the BPN will process the issuance of a Waqf Land Certificate with a checklist in accordance with the application documents.

5) The certificate is handed over to the Nazhir or waqif according to procedure. The Nazhir manages the waqf in accordance with the waqf pledge and the provisions of waqf legislation.

3.2. Obstacles and Solutions in Issuing Waqf Land Certificates Based on Village Letter C Land Title

Based on the research results, in the practice of issuing waqf land certificates based on Village Letter C rights, several obstacles remain, both administrative, technical, and social. These obstacles come from government agencies, Waqf Deed Officials, and the community. One reason is that Letter C waqf land is generally not registered at the Land Office and is still recorded in the village administration. The following are some of the obstacles and efforts to overcome them:

a. Unclear Legal Status of Land

The main obstacle often encountered in issuing waqf land certificates based on Letter C rights is the unclear legal status of the land to be donated. Letter C land is

only recorded in village administration books, not in the official land registration system at the Land Office. This situation results in the ownership status lacking legal force, necessitating re-verification of the land's origin and control.

b. Unclear Land Boundaries

In many cases, land to be donated lacks clear boundaries. Changes in natural boundaries, such as rivers or village roads, and the lack of permanent markers often lead to disputes with adjacent landowners. These obstacles prevent surveyors from the Land Office from conducting measurements until boundary issues are resolved.

On certain plots of land, it's common to encounter neighbors whose boundaries are unknown or not present at the site. Some residents work or live outside the city, making it difficult for applicants seeking land surveys to determine their boundaries, even though the National Land Agency (BPN) requires neighbors to be present to witness and approve the results.

1) Community Barriers

In every waqf certificate issuance, obstacles that frequently arise are those from the community whose land is being donated. The following are some of the obstacles posed by the community:

a) The lack of awareness among the heirs of the waqif (the one who made the waqf) to promptly register the documents and completeness of the waqf land with the relevant agencies, such as the Waqf Deed Official and the National Land Agency. The heirs merely acknowledge and assume that the waqf is solely between the waqif and Allah SWT, so they feel there is no need to register its validity.

b) One of the Nazhirs who died was then replaced by another party/his heir but the replacement of the Nazhir was not immediately changed.

c) Community and Nazhir understanding of the importance of waqf land certificates. Many people assume that a Waqf Pledge Deed drawn up by a Waqf Pledge Deed Making Officer (PPAIW) is sufficient to guarantee the legal status of waqf land. However, a waqf certificate is valid proof of title and has permanent legal force.

d) The public still believes that the process of certifying waqf land requires very expensive costs. Based on Government Regulation Number 13 of 2010 concerning Types and Tariffs for Types of Non-Tax State Revenue Applicable to the National Land Agency, Article 22 paragraph (1) states that "The tariff for Land Registration Services in the form of Waqf Land Registration Services is set at IDR 0 (zero rupiah)."

2) Administrative Barriers

Most land with Letter C title is not accompanied by supporting documents and files such as Letter C, which contains the history and origin of the land ownership, a land history certificate, a statement of ownership, a statement of physical control of the land (SPORADIK), a statement of land boundaries, and a statement of no dispute. All of these are proof of transfer that clarifies that the ownership status is in accordance with the waqf who will donate the land and serves as the basis for registering the waqf land certificate. As a result, application files are often returned because they do not meet formal requirements.

3) Agency Barriers

Regarding the Agency in this case the National Land Agency as the authorized party to issue certificates for waqf land, there are relatively no obstacles because the mechanism for issuing certificates for waqf land has been running as it should in accordance with the Regulation of the Head of the National Land Agency Number 1 of 2010 concerning Service Standards and Land Regulations, the processing time for the waqf land certification process is 98 (ninety-eight) working days, starting from when the file has been deemed complete and suitable for processing by the officer and the applicant who registers receives a Document Receipt and in it is listed the application file number which can be monitored through the Sentuh Tanahku application.

From the various obstacles that occur in the implementation of issuing waqf land certificates, several solutions that can be implemented to overcome the obstacles in implementing the issuance of waqf land certificates based on Letter C rights are:

- a) Proof of land history is obtained through a statement from the village head and witnesses familiar with the land ownership. In addition, a cadastral measurement is conducted by officers from the Land Office to ensure the physical data on the land plot matches. This step forms the basis for initial land registration before issuing a waqf land certificate.
- b) The solution to land boundaries was reached through deliberation between the adjacent landowners, witnessed by village officials. The resulting agreement was documented in a Land Boundary Agreement Minutes, signed by all parties and acknowledged by the village head. With these minutes, the Surveyor could proceed with the measurement and mapping of the donated land.
- c) The Land Office, in collaboration with the Ministry of Religious Affairs, through the Office of Religious Affairs (KUA) and Village Officials, needs to conduct outreach and mentoring activities for the community and Nazhir (Islamic trustees) regarding the importance of registering waqf land. The goal is to foster an understanding that waqf certificates are a crucial instrument for providing legal certainty for endowed land.

These obstacles are largely due to a lack of public understanding of the mechanisms and principles of waqf land registration. This lack of understanding

leads to the ineffectiveness of the land registration mechanism, which is actually regulated by the laws and regulations concerning the registration of waqf land certificates.

4. Conclusion

Based on the results of the study on the mechanism for issuing waqf land certificates based on Village Letter C rights at the Land Office, the following conclusions can be drawn:

1. The process of issuing waqf land certificates at the Land Office has been carried out in accordance with statutory provisions, with the following stages:
 - a. The waqif or the waqif's heirs (if the waqif has died) collect documents related to land ownership such as the Village Letter C accompanied by a Land History Certificate, Ownership Statement, Land Area Physical Control Statement (SPORADIK), Land Boundary Mark Statement and other data that show that the waqif is indeed the legal owner of the land.
 - b. The pronouncement of the waqf oath by the Wakif and/or the heirs of the Wakif and the ratification of the Waqf Oath Deed (AIW) by the PPAIW witnessed by 2 (two) witnesses and the appointed Nazhir.
 - c. Submission of application for registration of waqf land to the Land Office.
 - d. Physical and legal field inspection by Task Force Committee A from the Land Office.
 - e. Issuance of a waqf certificate in the name of Nazhir and used as intended.
2. The main obstacles found were administrative and legal aspects, including:
 - a. There are still obstacles in determining land boundaries and confusion regarding the history of land ownership due to previous administrative negligence.
 - b. Land boundaries that are unclear or do not match measurement results.
 - c. Lack of awareness and active role from the community in registering their land at the Land Office.
 - d. Limited human resources and technical facilities in the field.

With the issuance of a waqf land certificate, the waqf land has full legal value, is not easily sued, and guarantees its use according to the waqf designation for social interests, worship, and the welfare of the community.

To overcome the obstacles in implementing the issuance of waqf land certificates based on Letter C rights, several suggestions and solutions can be provided, namely:

1. Improving Land Administration Order at the Village Level

To minimize obstacles related to boundary certainty and clarity of land history based on Village Letter Cs, land administration improvements at the village level are necessary. Village governments should digitize Letter Cs, update maps, and systematically and integratedly compile land history archives. Furthermore, training village officials on land administration can improve data accuracy and reduce future confusion.

2. Optimizing the Role of PPAIW and the Office of Religious Affairs (KUA)

PPAIW needs to be more proactive in verifying and providing guidance to Wakifs and heirs regarding the completeness of documents prior to the waqf declaration. A pre-waqf declaration administrative assistance program can help ensure Wakifs understand the required documents, making the waqf registration process more efficient.

3. Improving Public Education and Counseling

The lack of public awareness regarding land registration, particularly waqf land, needs to be addressed through regular outreach. The Ministry of Religious Affairs, the Land Office, and village governments can collaborate to provide education on the urgency of waqf land certification to ensure legal certainty and protect community assets. This education can be conducted through religious activities, regular village meetings, and village social media platforms.

4. Strengthening the Capacity of Land Office Apparatus and Technical Facilities

The Land Office needs to increase human resource capacity through technical training and the addition of surveyors. This strengthening is expected to expedite the inspection process and ensure more accurate measurement results.

If all parties involved strengthen cooperation and complete administration from the start, then the issuance of Letter C-based waqf land certificates can run more quickly, accurately and fulfill legal certainty for waqf land as a religious and social asset of the people.

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