

Legal Protection for Holders of Rights to Wakaf Land in the Transfer of Wakaf Land Unlawfully in the City of Klaten

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Abstract. *The purpose of waqf is to provide a place of worship and improve public welfare. This goal is often hampered by the unlawful transfer of waqf rights to properties not intended for waqf purposes. This frequently occurs when waqf assets are land, primarily in the city of Klaten. The approach method used in this paper is a sociological juridical approach. Based on the research conducted, it is known that legal regulations related to the protection of waqf land rights in cases of waqf land transfer rights in Klaten City in the form of threats of criminal sanctions, administrative sanctions, supervision, and prohibitions on unlawful transfer of waqf land have been regulated in the Republic of Indonesia Law Number 41 of 2004 concerning Waqf, Government Regulation Number 28 of 1977 concerning Waqf of Land Ownership, Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law, and Government Regulation of the Republic of Indonesia Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf. The obstacles that cause the unlawful transfer of waqf land rights consist of substantive obstacles in the form of not yet clearly regulated elements of the transfer of waqf land rights, the absence of a system of supervision of parties with bad intentions who are the perpetrators of the unlawful transfer of waqf land rights, supervision is only carried out on waqf management bureaucrats. Legal structural constraints in the form of a waqf supervisory structure involving BWI and the Ministry of Religion (KUA) often do not function optimally due to limited resources and authority.*

Keywords: Land; Law; Protection; Waqf.

1. Introduction

The importance of land makes it a state asset that must be managed appropriately. This mandate is implicitly seen in Article 33 of the 1945 Constitution of the Republic of Indonesia. The existence of land and the wealth contained therein, according to the provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia, is then controlled by the government in order to realize social welfare through the utilization of land and wealth contained in the land appropriately. This suggests that the dictum "controlled" in Article 33 does not mean "owned", but the meaning of the dictum "controlled" is control in the context of regulatory arrangements regarding land management and the wealth contained in the land in order to realize the social welfare of the Indonesian people, the meaning of the diction "controlled" is not interpreted specifically in its explanation.

The consequences of interpreting Article 33 of the 1945 Constitution of the Republic of Indonesia as explained above, make the interpretation of the meaning and scope of the diction of owning and controlling, to understand the meaning of "controlled by the state", it is necessary to first do it epistemologically. "Controlled by the state" (passive sentence) has the view of meaning the state controls or control of the state (active sentence). The meaning of the word to control is to have power over (something), to hold power over (something), while the meaning of the word control means the process, method, act of controlling or attempting.¹

The meaning of the term "controlled" above differs when it is associated with the concept of rights. The "right to control" refers to the state as a legal subject (having rights and obligations). In this context, the state's right to control can be understood to encompass a number of public obligations and responsibilities.² According to Jimly Asshiddiqie, what is meant by "controlled by the state" is control in a broad sense, namely including the concept of ownership in a public and civil sense, including the power to control and manage these business sectors directly by the government or government officials who are entrusted with special duties.³ The concept of "control" is in accordance with the provisions of Article 2 paragraph (1) of the Republic of Indonesia Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), in the provisions of Article 2 paragraph (2) of the Republic of Indonesia Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) the meaning of "right to control from the State" is to give authority to the State as the power organization of the Indonesian Nation at the highest level to:⁴

1. Regulating and organizing the allocation, use, supply and maintenance of land and the various resources contained therein.

¹Department of Education and Culture & Balai Pustaka, Big Indonesian Dictionary (second edition), Department of Education and Culture & Balai Pustaka, Jakarta, 1995, p. 553.

²Abrar Saleng, Mining Law, First Edition, UII Press, Yogyakarta, 2004, p. 12.

³Jimly Asshiddiqie, Economic Constitution, PT. Mompas Media Nusantara, Jakarta, 2010, p. 273.

⁴Afifah Kusumadara, Development of State Rights to Land: Right to Control or Right to Own?, Jurnal Media Hukum, Vol. 20, No. 2, 2013, p. 265.

2. Determine and regulate the rights that can be owned over (parts of) the earth, water and space.⁵
3. Determine and regulate legal relationships between people and legal actions concerning earth, water and space.

Based on the explanation regarding the meaning of "state control over the public interest" above, it is clearly seen that land and the wealth contained therein are important assets of the Indonesian nation, so that land management needs to be regulated by authorized formal authorities, in order to prevent monopolies on land control in Indonesia. The state's efforts to realize appropriate land management regulations can be seen in the realization or not of community welfare through the use of land, including plantation or agricultural land, this is clearly emphasized in the concept of protection for agricultural land regulated in UUPA Article 7, Article 10 paragraph (1), and Article 17. One form of agrarian reform in reality is also carried out through the recognition of customary customary land.⁶The importance of the position of the land also includes the importance of the existence of waqf land. Waqf as a social act of worship (ijtima'iyah) which is sunnah in nature is a form of charity whose rewards will continue to flow until the end of the day, even though the person who donated the waqf has died. Indonesia, where the majority of people are Muslim, means that waqf has its own position. The importance of waqf ultimately encouraged the government to enact Law Number 41 of 2004 concerning Waqf. This Waqf Law was created to regulate legal actions carried out through waqf.

The implementation of waqf in Indonesia was initially very simple, based solely on trust between the waqif and the nazhir, with the waqf only being carried out verbally and without any administrative procedures for registering the waqf land. This naturally led to problems such as abandoned waqf land, the inability to use it for its intended purpose, and the potential for future disputes. Without strong evidence of this implementation, it would be difficult to guarantee its protection in the future. Therefore, waqf land could be used inappropriately, and could even be sold. Selling waqf land is unlawful. If it is carried out, it is void by law, as the object of the sale and purchase is waqf property. According to Articles 1335 and 1337 of the Civil Code, an agreement will not create a contract if the object is contrary to public order or morality, or if it is prohibited by law.

2. Research Methods

The approach method used in this qualitative legal research is the sociological juridical approach method, namely an approach by seeking information through

⁵Agustianto and Actika, "Legal Review Regarding the Imposition of Annual Compulsory Fees on Owners of Ownership Certificates Located Above Management Rights in Batam City", Journal of Judicial Review, Vol. 22, No. 1, 2020, pp. 113-114.

direct interviews with informants empirically first and then continuing by conducting secondary data research found in literature studies through theoretical steps.⁷

3. Results and Discussion

3.1. Implementation of Legal Regulations Regarding Guarantees of Legal Protection for Rights to Waqf Land in Unlawful Transfers in Klaten City

Based on the previous explanation, it is clear that the provisions regarding guarantees of legal protection for waqf land rights in cases of unlawful transfers in Klaten City have been stipulated in several legal regulations. The following table relates to the provisions regarding guarantees of legal protection for waqf land rights in cases of unlawful transfers in Klaten City to date:

Table: Regulations Regarding Guarantees of Legal Protection for Rights to Waqf Land in Cases of Unlawful Transfers in Klaten City

Regulations Regarding Guarantees of Legal Protection for Rights to Waqf Land in Cases of Unlawful Transfers in Klaten City			
Legal Protection of Ownership Rights to Waqf Land According to Law of the Republic of Indonesia Number 41 of 2004 Concerning Waqf	Legal Protection of Ownership Rights to Waqf Land According to Presidential Instruction Number 1 of 1991 Concerning the Compilation of Islamic Law	Legal Protection of Ownership Rights to Waqf Land According to Government Regulation of the Republic of Indonesia Number 25 of 2018 Concerning Amendments to Government Regulation Number 42 of 2006 Concerning the Implementation of Law Number 41 of 2004 Concerning Waqf	Legal Protection of Ownership Rights to Waqf Land According to Government Regulation Number 28 of 1977 Concerning Waqf of Land Ownership
1) prohibition against acts of using waqf objects as collateral, confiscating waqf objects illegally, donating waqf objects, selling waqf objects, inheriting waqf objects, exchanging waqf objects illegally, transferring rights to waqf objects with other rights. 2) There is a threat of imprisonment of up to 5 (five) years and/or a maximum fine of Rp. 500,000,000 (five hundred million rupiah) for acts that include using waqf objects as collateral, confiscating	1) Prohibition of transferring waqf objects for purposes other than waqf; 2) Supervision system for waqf governance bureaucracy which includes the responsibility of Nazir.	1) Prohibition of unlawful changes to the status of waqf assets 2) Administrative sanctions in the form of written warnings to LKS-Wakf Recipients as well as temporary suspension or revocation of permits for LKS-Wakf Recipients who do not carry out their responsibilities.	1) Prohibition on changes to the designation or use other than that intended in the Waqf Pledge. 2) Criminal threats against individuals and legal entities who commit: a) a party who donates his land but does not declare his will clearly and firmly, b) Nadzir who is not registered with the local District Religious Affairs Office to obtain approval but carries out duties and authorities like a registered Nadzir, c) Nadzir who does not manage and supervise waqf assets and their results according to the provisions further regulated by the Minister of Religion in accordance with the objectives of the waqf,

⁶Anto Kustanto, "Disharmony Due to Dualism of the Legal System in Indonesia (A Study from an Economic Perspective)", QISTIE Scientific Journal of Legal Studies, Vol. 7, No. 1, 2014, pp. 1-2.

⁷Lexi J. Moleong, *Qualitative Research Methods*, Rosdakarya Youth, Bandung, 2007, p. 2.

waqf objects unlawfully, donating waqf objects, selling waqf objects, inheriting waqf objects, exchanging waqf objects unlawfully, transferring rights to waqf objects with other rights. 3) There are administrative sanctions in the form of written warnings, temporary suspension or revocation of activity permits in the waqf sector for Islamic financial institutions, and temporary suspension from office or termination from office of PPAIW for Islamic financial institutions and PPAIW if they do not register waqf assets that are donated correctly. Correctly means registered in accordance with the objectives, functions, allocations, and requirements for waqf objects as regulated in Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf. 4) There is guidance and supervision of the bureaucratic system for managing waqf objects as regulated in Article 63 of Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf.			d) the party who wishes to donate his land but does not appear before the Official who made the Waqf Pledge Deed to carry out the Waqf Pledge, e) The Official who makes the Deed of Waqf Pledge on behalf of the Nadzir concerned, who does not submit an application to the Regent/Mayor/Regional Head cq. Head of the local Agrarian Sub-Directorate to register the waqf of the land owned by the person concerned according to the provisions of Government Regulation Number 10 of 1961, f) any party who changes the designation or use other than that intended in the Waqf Pledge in an unlawful manner.
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Even though the legal protection of waqf land ownership rights has been regulated in various regulations above, in its implementation, in cases of unlawful transfer of waqf land rights in Klaten City, it often results in the party who has the rights to the waqf land. One of these problems can be seen in the case with Case Number 109 / Pdt.G / 2022 / PN Kln. Siti Marfuati alias Siti Marpuati who was later referred to as the plaintiff was the waqf of the yard land, covering an area of + 170 M2 known locally in Kahuman village, Ngawen District, Klaten Regency, obtained by the Plaintiff from a gift / grant from the Plaintiff's grandfather and Defendant I, namely the late Kromowirejo alias Marjan, the Certificate of Ownership No. 0756 / Kauman Village, in the name of Mrs. Sri Marpuati Supardiman's wife (Plaintiff), then the plaintiff donated her land to build a mosque, in its management it was

handed over to Defendant I, because Defendant I, apart from being the Plaintiff's sibling, at that time Defendant I served as Secretary of Kahuman Village, where the disputed land object was located, then the plaintiff asked for legal evidence related to her waqf land to Defendant I, Defendant I was willing to hand over on condition, namely asking for the return of the Plaintiff's debt to Defendant I, which consisted of a principal debt of Rp. 3,020,000,- (three million twenty thousand rupiah) in 1996, plus a margin/profit so that the total amounted to Rp. 50,000,000,- (fifty million rupiah). In reality, the Plaintiff never had a debt to Defendant I, in November 2021 the Plaintiff met Defendant I to hand over money amounting to Rp. 30,000,000,- (thirty million rupiah), but the Defendant refused to hand over the certificate of the land belonging to the Plaintiff which was donated by stating that Defendant I would not hand over the certificate of the disputed object to the Plaintiff, before being paid Rp. 50,000,000,- (fifty million rupiah). Then on the Plaintiff's initiative, the Plaintiff reported the actions of Defendant I to law enforcement, after a series of summonses and examinations were carried out it was discovered that the Plaintiff's land had been donated but without the Plaintiff's knowledge, the waqf land whose management was authorized to Defendant I had been sold without the Plaintiff's knowledge. In carrying out his plan, Defendant I was assisted by Defendant II who was a Notary/PPAT by falsifying information about the ownership status of the waqf land.⁸

Another case of unlawful transfer of waqf land status occurred in Sambong Jaya Village, Mangkubumi District, Tasikmalaya City. The nazhir obtained the waqf land solely through a pledge from the waqif, without providing a certificate. The nazhir then sold the waqf land to a third party with the aim of expanding it. The proceeds from the sale were then used to purchase land larger than the original waqf land. However, there was no transparency regarding the proceeds of the waqf land sale, leading to widespread speculation among the local community as to whether the waqf land was actually used for its intended purpose.⁹ These cases clearly demonstrate that, although legal protection for waqf land owners is guaranteed in several regulations, as explained above, the reality is that the transfer of waqf land ownership often conflicts with existing legal regulations and is often carried out illegally. This situation clearly results in uncertainty regarding legal protection for waqf land owners.

⁸Case Number 109/Pdt.G/2022/PN Kln,,<https://www.mahkamahagung.go.id/id>, May 12, 2025.

⁹Utami Rifatunnisa, "Legal Protection of Waqf Land Upon Transfer to a Third Party in Violation of the Law According to Islamic Law and in Relation to Law Number 41 of 2004 Concerning Waqf", Garuda, Volume 11 No. 2, 2018, p. 180.

3.2. Obstacles in the Issue of Guaranteeing Legal Protection for Rights to Waqf Land in Unlawful Transfers in Klaten City

a. Legal Regulatory Constraints (Legal Substance)

The constraints of legal regulations or legal substance can be seen from the fact that, although the Republic of Indonesia Law Number 41 of 2004 concerning Waqf and Government Regulation Number 28 of 1977 concerning Waqf of Land Ownership have provided criminal threats against perpetrators of unlawful transfer of waqf land rights, however, the criminal provisions in the Republic of Indonesia Law Number 41 of 2004 concerning Waqf and Government Regulation Number 28 of 1977 concerning Waqf of Land Ownership do not specifically regulate the criminal elements against perpetrators of criminal acts of unlawful transfer of waqf property rights in the form of land. In addition, neither the Republic of Indonesia Law Number 41 of 2004 concerning Waqf nor Government Regulation Number 28 of 1977 concerning Waqf of Land Ownership regulates a system of supervision of parties with bad intentions who are perpetrators of unlawful transfer of waqf land rights, supervision is only carried out on waqf management bureaucrats. In addition, the regional monitoring system also has a complicated mechanism, this is evident in that the party who can take administrative action is only the relevant Minister.

The next legal substance obstacle is the fact that both Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law and Government Regulation of the Republic of Indonesia Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf do not regulate the threat of criminal penalties for parties who carry out the transfer of rights to waqf land unlawfully, the efforts made are only in the form of efforts to regulate the prohibition of the transfer of rights to waqf land, however the absence of criminal sanctions results in the prohibition being frequently violated due to the lack of a deterrent effect on the perpetrators. In addition, administrative sanctions in Government Regulation of the Republic of Indonesia Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf also do not regulate the supervision system for parties with bad intentions who are perpetrators of the transfer of rights to waqf land unlawfully, supervision is only carried out on waqf management bureaucrats. In addition, the regional monitoring system also has a complicated mechanism, this is evident in that the party who can take administrative action is only the relevant Minister.

b. Bureaucratic Obstacles in Waqf Land Management (Legal Structure)

According to Ahmad Syamsudin as the Waqf Deed Making Officer in Klaten Tengah District, the legal structural obstacles that cause the transfer of waqf land rights to occur frequently are:¹⁰

1) Weak Administration and Proof of Ownership (Law on Title)

Many waqf lands in Indonesia are oral waqfs or inherited traditions that lack a Waqf Pledge Deed (AIW) and official certificate. This lack of authentic proof creates a significant legal loophole for the waqf's heirs or Nadzir (waqf administrators) to repossess, sell, or repurpose the land.

2) Limitations of Special Criminal Sanctions

Although Law Number 41 of 2004 concerning Waqf prohibits the transfer or embezzlement of waqf assets, this law places greater emphasis on administrative and civil sanctions. To prosecute perpetrators (for example, using Article 372 of the Criminal Code on Embezzlement or Article 385 of the Criminal Code on Land Grabbing), law enforcement officials often face obstacles in proving the "unlawful" element and the absolute ownership status of the waqf object.

3) Weak Supervisory Role and Capacity of Nazir

The waqf oversight structure, which involves the Indonesian Waqf Board (BWI) and the Ministry of Religious Affairs (KUA), often fails to operate optimally due to limited resources and executive authority. Furthermore, the Nadzirs' legal understanding of waqf asset management remains limited, often leading to negligence or deliberate abuse of authority for personal gain.

c. Obstacles to Community Legal Culture (Legal Culture)

According to Moh. Nashir, the Waqf Deed Making Officer in East Klaten District, the cultural obstacles that result in the illegal transfer of waqf land rights in Klaten City are:¹¹

1) Oral Pledge Culture and Lack of Administration: Many people still make waqf donations based solely on faith and verbal statements made to religious figures without registering the pledge with the Waqf Pledge Deed Official

¹⁰Interview with Ahmad Syamsudin as the Waqf Deed Making Officer in Klaten Tengah District, on February 20, 2026.

¹¹Interview with Moh. Nashir as the Waqf Deed Making Officer in East Klaten District, on February 20, 2026.

(PPAIW) or creating a Waqf Pledge Deed (AIW). This makes it easier for heirs or irresponsible parties to reclaim the land.

- 2) The Mentality of Heirs and Heirs (Family Centric): There is a culture where heirs feel entitled to cancel their ancestors' waqf due to economic demands, change the status of waqf assets into personal inheritance, or sue the nazhir (waqf manager) because they feel their family's rights have been taken away.
- 3) Reluctance to Involve Positive Law: The practice of "ewuh pekewuh" (reticence) and feudal views often discourage communities from resolving embezzlement disputes through the courts or reporting them to the police. They prefer customary deliberation, which often leads to a deadlock when one party intends to cheat.
- 4) Stigma Against Waqf Assets: There is a mistaken belief among some members of society that religious assets are "no-man's-land" or the property of a particular group that can be freely controlled through generations. This fosters a low level of legal awareness, suggesting that controlling waqf land is an unlawful act (a criminal offense).

4. Conclusion

Legal regulations related to the protection of waqf land rights in cases of waqf land transfer rights in Klaten City in the form of threats of criminal sanctions, administrative sanctions, supervision, and prohibitions on unlawful transfer of waqf land have been regulated in the Republic of Indonesia Law Number 41 of 2004 concerning Waqf, Government Regulation Number 28 of 1977 concerning Waqf of Land Ownership, Presidential Instruction Number 1 of 1991 concerning Compilation of Islamic Law, and Government Regulation of the Republic of Indonesia Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf. The obstacles that cause the unlawful transfer of waqf land rights consist of substantive obstacles in the form of not yet clearly regulated elements of the transfer of waqf land rights, the absence of a system of supervision of parties with bad intentions who are the perpetrators of the unlawful transfer of waqf land rights, supervision is only carried out on waqf management bureaucrats. The legal structure constraints include the waqf oversight structure involving the Indonesian Waqf Board (BWI) and the Ministry of Religious Affairs (KUA), which often does not function optimally due to limited resources and executive authority. The legal culture constraints include the fact that many people still make waqf donations based solely on trust and verbal statements to religious figures without registering a pledge before the Waqf Pledge Deed Making Officer (PPAIW) or creating a Waqf Pledge Deed (AIW).

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