Juridical Review of Waqf Land Disputes Due to Transition as Public Facilities (Disputes and solutions)
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Abstract
Waqf as an integral part of Islamic teachings is a guideline for social worship which requires the separation and/or handover of part of the assets belonging to the waqf to be utilized in accordance with sharia, as regulated in Law Number 41 of 2004. The main purpose of waqf is devotion to Allah SWT and devotion. However, waqf practices often do not run in an orderly and efficient manner, as evidenced by the lack of data collection which causes many waqf assets to be poorly maintained and even transferred to third parties unlawfully. This research uses a descriptive method with a juridical-sociological approach. The focus is to understand the procedures, situations and views of the community regarding waqf practices, as well as measuring the effectiveness of the law in handling waqf disputes. It is hoped that the research results can provide further understanding of the challenges and solutions in managing waqf in society, as well as support efforts to advance the goals of waqf, which are actually for worship and general welfare in accordance with Islamic sharia. The aim of this research is to find out how Agrarian law works in the case of Waqf Land Disputes resulting from the Transition as Public Facilities.
I. Introduction

For all Indonesian citizens who adhere to the teachings of Islam, of course they are very familiar with the term Waqf. Waqf is one of the Islamic teachings regarding social life in the context of ijtima’iyah (social worship). According to Law Number 41 of 2004, it is explained that Waqf is a legal act of wakif to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia. (Indonesia, 2004). Because waqf is worship, the main goal is devotion to Allah SWT and sincerity because it seeks His pleasure.” Even though waqf is a guide for social worship, in practice it must be carried out in accordance with Islamic sharia regulations and applicable laws and regulations, namely Law Number 41 of 2004 concerning Waqf (Munthe, Jamilah, & Hasibuan, 2020).

Since the birth of the Law establishing Waqf, of course it has had a purpose, this purpose is so that Waqf can become an economical alternative in utilizing Waqf assets for the purposes of worship and advancing public welfare, but the most urgent thing is that the formation of Law Number 41 of 2004 is due to the practice Waqf in society is not yet fully run in an orderly and efficient manner, one of the proofs is that waqf assets are not well maintained, neglected, and even transferred into the hands of third parties against the law. For this reason, due to the lack of order in data collection, many waqf objects, because the data is not known, are not managed and the waqf even enters the trading cycle. Such a situation is not in line with the true purpose of waqf and will also result in an unfavorable impression of Islam as an access to misappropriation of waqf, because it is not uncommon for waqf disputes to be resolved in Court (Hadi, 2020; Haryono & Mardiyanto, 2002).

Nowadays, various kinds of cases regarding land disputes are often encountered Waqf, Lots in between it’s on cause by change Meaning And the purpose of the Waqf Assets (Land) being donated. Like the case of Waqf Land on Jalan Tuasan, Sidorejo Hilir Subdistrict, Medan Tembung District, the change in the purpose of the Waqf property (Land) being donated has become a dispute which is still a hot issue in the area. waqf will raise issues regarding the accountability of the existence of the waqf both to the community, the Government, and to Allah SWT. It is very worrying that if the transfer of the function of waqf land into other facilities it will be used as a facility that will give rise to immorality, for example being used as a place for night entertainment, a place for drunkenness and the like, so that the purpose of the endowment, which was originally to hope for Allah’s reward and blessing, will actually become a source of sinful acts. will be accountable before God SWT.

2. Research Method

The research method used in this research is the Descriptive Method, this method studies problems in society, the procedures that apply in society as well as situations, attitudes, views, ongoing processes, the influence of a phenomenon and carries out careful measurements of phenomena in public. Researchers develop concepts, collect facts, but do not test hypotheses. (Purwati, 2020).
3. Results and Discussion

Waqf Concept and Related Parties in Tana Waqf

Waqf is a religious institution that can be used as a means to develop religious life, especially for the congregation. Which religious Islam, in frame reach well-being spiritual And material towards a just and prosperous society based on Pancasila. Meanwhile, according to sharia, waqf is holding assets that may be useful without spending or destroying the object (ainnya) and used for good. (Al-Alabij, 2002). The parties involved in land waqf are:

1. Wakif. A Wakif is a person who donates his assets in Islamic terms, called a wakif. Meanwhile, the definition of wakif according to Law Number 41 of 2004 Article 1 number 2 Wakif is the party who donates his property. In Article 7 of Law Number 41 of 2004, it is stated that wakif includes individuals, organizations and legal entities who can donate land they own. Not everyone can do this or the waqf that has been given can be considered valid, because to become a wakif you must fulfill the following requirements: condition.

2. Nazir. According to Law Number 41 of 2004 Article 1 number 4 nazhir is the party who receives waqf assets from the wakif to be managed and developed according to their intended use.

3. Official for Making the Waqf Pledge Deed (PPAIW). In Article 1 number 6 of Law Number 41 of 2004, it is stated that the Official for Making the Waqf Pledge Deed, hereinafter abbreviated as PPAIW, is the authorized official appointed by the Minister to make the Waqf Pledge Deed.

Discussion

Waqf in the Basic Agrarian Law

Land waqf is one of the social acts of worship in Islam which is closely related to agrarian affairs, meaning that the legal provisions that regulate legal relations with the earth, water and space as well as the natural resources contained therein, which in this case is land, likewise waqf land is included in part of the Agrarian Law (Anshori, 2005). Bearing in mind the importance of the issue of waqf, Law Number 5 of 1960 has included a special provision as stated in Article 49 paragraph 3 which states that "Waqf of owned land is protected and regulated by Government Regulation." Law Number 41 of 2004 concerning Waqf has been implemented in Indonesia (Indonesia, 1960). Waqf land assets have enormous potential and are very important for fulfilling various community needs, such as for religious purposes, social interests and economy.

The establishment of Law Number 41 of 2004 is the government's appreciation for Muslims in Indonesia and is also a matter of pride for the entire Muslim population in the archipelago, which is a predominantly Muslim community. As the basis for Law Number 41 of 2004, namely: because of the mandate from Article 49 of UUPA No. 5 of 1960 there
were regulations regarding waqf and the formation of a constitution by the state. The Waqf Law is a very special law because most of the sources of the contents of this law come from Islamic law, and this law includes positive law regarding waqf which applies in Indonesia and is intended for the Indonesian people, especially for Muslims. (Nurhayati, 2019).

In the Basic Agrarian Law, waqf is included in article 49 paragraphs (1), (2) and (3), which reads: "Article 49 (1) Land ownership rights of religious and social bodies as long as they are used for business in the religious sector and social are recognized and protected. These bodies are also guaranteed to obtain sufficient land for their buildings and businesses in the religious and social fields. (2) For the purposes of worship and other sacred purposes as intended in article 14, land may be given which is controlled directly by the State with use rights. (3) Waqf of owned land is protected and regulated by Government Regulation (Indonesia, 1960). The inclusion of waqf in the UUPA means that waqf is one of the urgent matters that must be protected in Indonesia with force Law.

**Juridical Review of Waqf Land Disputes Due to Transition as a Facility General**

Land registration is a series of activities carried out by the Government continuously, sustainably and regularly, including collecting, processing, bookkeeping and testing as well as maintaining physical and juridical data in the form of maps and lists regarding plots of land and apartment units, including the granting of certificates. proof of their rights to plots of land to which they already have rights and ownership rights to apartment units as well as certain rights burden him (Wahid, 2008).

Legal basis for land registration:

UUPA articles 19, 23, 32, and article 38. Apart from that, there is PP N0.10/1997, concerning land registration and it was replaced with PP Number 24/1997. Meanwhile, the aim of land registration as intended in article 3 of PP Number 24/1997, namely, to provide legal certainty regarding land rights includes:

1. Legal certainty regarding land objects, namely location, boundaries and wide

2. Legal certainty regarding the subject of the rights, namely who is the owner (individuals and legal entities).

3. Legal certainty regarding the type of land rights (Ownership, HGU, HGB) and also including land waqf.

Carrying out the registration of rights to waqf land is a series of activities, from submitting a rights application by the rights applicant who is accompanied by land ownership data, then administrative administration activities which covers researching the completeness of files, recording them in lists for determining officer assignments and field activity times. Operational activities in the field will continue, starting from setting
boundaries, carrying out measurements and signing minutes of boundary determination. At the same time, physical research is carried out including the condition of the location, use of the land, the presence of objects and interests of third parties in the land as well as the history of land ownership as outlined in the Land Inspection Minutes. After obtaining field data, administrative activities are continued including mapping and making measurement letters, issuing a Decree of Rights by an authorized State Administration Official. land as described above, applies in the context of granting property rights, ownership rights to waqf land, conversion of rights, and recognition of ownership rights, both according to the UUPA, the Waqf Law and based on Government Regulations.

**Waqf Land in Medan City, Disputes and The solution**

In the Medan City area itself there are 1,205 waqf lands and based on searching for information from relevant sources the author obtained information that there are 312 waqf lands or around 6,065.65 hectares of waqf land that have not been certified. Or if it is presented, it is around 25.89 % of the total waqf land in the city of Medan.

Based on information research by the author, a case was found related to a waqf land dispute in an area of waqf land belonging to the Muslim community in the Jalan Tuasan area, Sidorejo Hilir Village, Medan Tembung District in 2019. Based on the information obtained, chaos occurred which was triggered when the Chairman of the Waqf Land Administration Board, Yusuf Sutrisno, accompanied by his legal advisor, Ibrahim Nainggolan, tried to break through the community blockade to open the padlock on the entrance fence to the 2300 m wide waqf land. As a result, mutual repulsion and pushing occurs. Moreover, a number of residents and lawyers confronted Yusuf Sutrisno not to enter the waqf land area by destroying the gate lock. Yusuf also received insults from the residents so he gave up his plans (Susilo, 2019). According to the plaintiff's lawyer, M. Irsyad Lubis, Yusuf Sutrisno’s attitude who wanted to force their way into the waqf land area had violated the joint mediation agreement which was carried out at the local sub-district office on 31 May 2019 which was attended by both parties, representatives from the Percut Sei Tuan Police, Babinsa, the Head of Sidorejo Hilir Village, the Village Secretary, and a number of figures. other communities. In the minutes of the meeting, it was decided, among other things, that the community wanted the waqf land for public purposes and for the construction of a mosque, not for the construction of a school foundation. The community and the waqf land administrators also agreed not to carry out any activities in the waqf land area outside the applicable legal provisions.

The plaintiff’s lawyer, M. Irsyad Lubis, said that "The lawsuit to cancel the deed signed by the Chairman of the Darul Quran Foundation, Awaluddin Pane and the Chairman of the Waqf Land Trust, Yusuf Sutrisno, as defendants has been submitted to the Religious Court which will hold a trial on July 17 2019." Irsyad Lubis also regretted Yusuf Sutrisno’s attitude regarding the waqf land issue. Meanwhile, Percut Police Chief Sei Tuan Kompol Subroto asked the two parties to be reunited in mediation. Mediation is planned to be carried out at the local District Office by inviting the Head of Criminal Investigation Unit of the Medan Police, the Mayor of Medan, the Department of Perkim, KUA Medan Tembung, the Indonesian Waqf Board (BWI) of Medan City, the MUI of Medan City, and
Based on the author's analysis regarding this problem, there are disagreements or differences of opinion between the previous land owner (wakif) and the waqf land administrator (waqf nazir). It is alleged that in the initial agreement the Naziran body had agreed and signed an agreement or waqf deed with the land owner (wakif) which contained the use of than land Which will endowed the. Wakif request so that The waqf land is used and exploited for the common good or interests of the people, such as building mosques, etc. However, in reality the Nazarite body actually deviated from carrying out its duties, namely instead building a school on the waqf land. So this makes the wakif party and supported by the community angry with the Waqf Administration Board and wants to take this problem to the Religious Court to obtain a resolution after the initial resolution effort, namely mediation, obtains failure.

In the author's opinion, the Waqf Trust Board here has reneged, resulting in a deviation from what was agreed with the wakif when making the waqf pledge. The author agrees with the proposal from Percut Police Chief Sei Tuan Kompol Subroto, namely that it is necessary to carry out mediation again between the two parties. If this second mediation fails again, then this matter must be continued through a litigation process at the Religious Court which has authority over the case.

The author's analysis of this case, if linked to the Agrarian Law Law, is that in this case, when the function has been transferred to waqf land, this recording should have been carried out so that there is a Waqf pledge deed as evidence and a deed of transfer of rights which can explain the clear status of the waqf assets. (land), so that incidents such as the Waqf Land Dispute in Medan, Jalan Tuasan which have been around for a long time will not happen again.

4. Conclusion

Waqf land that is not administratively registered has no standing in positive law and has no evidentiary power in the event of a lawsuit against the waqf land. Administrative records are important in the implementation of waqf, waqf records are regulated in the provisions of Articles 28-39 of Government Regulation no. 42 of 2006 concerning Implementation of the Waqf Law as well as in Qs. al-Baqarah verse 282.. Registration of waqf is necessary to provide legal certainty regarding the land has endowed, as well as avoid exists deviation deviation which can cause problems in the future. Problems that arise due to the absence of waqf records can be resolved first through consensus deliberation, mediation, arbitration, and resolved through court. In practice, however, not all parties resolve disputes in accordance with the provisions regulated in Article 62 of the Waqf Law. Apart from that, related parties such as waqf nazir must understand the Basic Agrarian Law No. 5 of 1960 in the section that discusses waqf land so that this will not happen. various issues regarding land status and when there is a change in the purpose of the waqf land.
References


Indonesia, P. R. (1960). *Undang-undang Nomor 5 Tahun 1960 Tentang Peraturan Pokok-Pokok Agraria*.

Indonesia, P. R. (2004). *Undang-undang Nomor 41 Tahun 2004 Tentang Wakaf*.


