

Analysis of Public Cemetery Waqf Land Handover (Ruilslag) With Third Parties (Case Study Of Decision Number 279/Pdt.G/2017/ Pa.Clg)

Hanafi Tanawijaya^{1,2,*} Deviana Agustin³

¹*Faculty of Law, Tarumanagara University, DKI Jakarta 11440, Indonesia*

²*Master Degree, Tarumanagara University of Law, DKI Jakarta 11440, Indonesia*

³*Undergraduate, Tarumanagara University of Law, DKI Jakarta 11440, Indonesia*

Email: devdeviana@gmail.com

**Corresponding author. Email: hanafitanawijaya@fh.untar.ac.id*

ABSTRACT

In wakaf legislation on objects that have been represented cannot be made a transition / change. Prohibition of transition or change in the transition of waqf is very strictly regulated in Article 40 of Law Number 41 of 2004, the provisions referred to in Article 40 letter f are excluded if the waqf property that has been represented is used for public use in accordance with the General Spatial Plan (RUTR) based on the provisions of the applicable laws and regulations and are not in conflict with sharia. Changes in the status of owned land that has been represented on public cemetery waqf land located in Citangkil District over ruilslag with PT Krakatau Steel raises a problem found in the making of AIW by appointing a new Wakif and Nadzir. The purpose of this study is to find out how the ruilslag process is regulated in the laws and regulations on waqf land, as well as the judges' consideration in the decision of the case. Types of legal writing use normative juridical, using descriptive nature, types and data collection techniques with secondary data consisting of primary, secondary and tertiary legal materials. The approach taken with the law approach. The data analysis technique used is deductive technique. Ruilslag that occurred on public cemetery waqf land with PT Kratau Steel which functioned as a factory expansion project, in the process there was a lack of care in its implementation. The waqf is still valid in the eyes of Allah S.W.T because of the fulfillment of the pillars of waqf. However, the registration process of the Waqf Pledge Deed was not in accordance with the applicable laws and regulations, and Nadzir's misappropriation of his management. Judge's decision to reject the claim for; Cancel the Pledge of Endowment Pledge; Revoke the Endowment Certificate, and revoke the management of the Wakif and Nadzir in the Balung Grave Foundation, as well as the appeal decision that reinforces the previous decision, not in accordance with the procedures for implementing the waqf ruilslag and the making of AIW before PPAIW in the regulation of Law Number 41 of 2004 concerning Waqf jo. implementation of Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Endowments. Suggestions for writing are expected to be used as deeper knowledge for those who read them.

Keywords: *Waqf, waqf land handoverd, ruilslag*

1. INTRODUCTION

The Islamic legal system in Indonesia has been recognized for decades. Before existence European Law, Islamic law had a special position for the community. Islamic law regulates between a human being and his God called worship, while humans and humans are called muamalah, and humans with their environment are called the rules of natural law or the rules of sunatullah. [1] In Al-Qur'an it's not mentioned clearly about the law of waqf, but in general Allah S.W.T has ordered us to spend property for good in the way of Allah S.W.T. or *infaq fi sabilliah*, in Surah Ali-Imran (QS 3:92).

Waqf according to Imam Malik waqf is to designate the benefits of possessions owned by someone who is in the form of a lease or the proceeds to be handed over to the person entitled to a form of time submission in accordance with what is desired by the person who represents it. [2]

Article 1 of Law Number 41 of 2004 concerning Endowments; Waqf is a legal act of endowment to separate and/or surrender a part of his property to be used forever or for a certain period in accordance with the interests of worship/welfare needs according to sharia.

Transfers can not be made of changes. It is also regulated in Article 225 of Presidential Instruction Number 1 of 1991 concerning KHI. The prohibition of transition or amendment to the change in waqf is

strictly regulated in Article 40 of Law Number 41 Year 2004 concerning Waqf, which states that waqf objects that have been represented are prohibited to be used as collateral, confiscated, granted on sale, bequeathed, handoverable, and; transferred, in the form of transfer of other matters: Provisions as referred to in Article 40 letter f are excluded if the waqf property that has been represented is used for public purposes in accordance with the general site plan (RUTR).

Another important thing is that the management of waqf is based on professionalism and responsibility by Nadzir, both individuals and legal entities will increase public trust and also the awareness of the community to represent. [3] The requirements for objects or goods given are; Halal property and its benefits can be taken; Endowment's full ownership, not shared or other people's property; Assets that have value; Assets that can be known levels and limits; Property can be either movable or immovable property. [4]

Object of waqf is not spared from the existing requirements, for example in Article 15 of Law Number 41 Year 2004 concerning Waqf, namely waqf property can only be represented if it is legally owned and controlled by the Waqif. If the object of the waqf is land then a valid proof of ownership of the land must be attached when making the endowment pledge in front of the Wakaf Deed Acting Officer (PPAIW) as stated in Article 19 of Law Number 41 Year 2004 concerning Waqf: "To be able to carry out the pledge endowments, endowments, or proxies submit letters and/or proof of ownership of waqf property to PPAIW. "

Nadzir's role was very influential on this endowment, for example in the case of land endowments that occurred in Citangkil District Cilegon Banten, which initially constituted a replacement for the liberation of the public cemetery land for local communities by PT Krakatau Steel (Persero) Tbk. which will expand its plant in the land, but PT Krakatau Steel (Persero) Tbk. has submitted a parcel of land for the replacement of public cemetery waqf and its management and management to Nadzir, namely the Government of the City of Cilegon, Citangkil Subdistrict from the replacement land based on the Decree of Mayor of West Java Region Number: 336/A.1/2/SK/73 of 1973.

Citangkil Sub-District Head then made the Waqf Pledge Deed by appointing a new Waqif and Nadzir

in the deed, as if the Waqif was a landowner who wanted to endow and Nadzir formed the Balung Grave Foundation, based on that Citangkil community felt disadvantaged, because the cemetery ground was previously handover by PT Krakatau Steel is a waqf land that is not known to the heirs of its owner and has been managed and known by the local community. And there is a misuse of the management carried out by Nadzir by setting the cost of the funeral once in a while and transferring the function of waqf land to other parties. Then they filed a lawsuit with the Banten Cilegon Religious Court and then it was decided that the verdict was rejected. Upon the description above, the title of this writing was raised "Analysis Of Public Cemetery Waqf Land Handover (Ruilsrag) With Third Parties (Case Study Of Decision Number 279/Pdt.G/2017/ PA.Clg)

2. ISSUE

2.1. What are the procedures for exchanging waqf land (ruilsrag) with third parties?

2.2 How is the judge's consideration of the decision of the Religious Court No 279/Pdt.G/2017/PA.Clg regarding the handover of waqf land handover process of the implementation of handover/ruilsrag on waqf land?

3. ANALYSIS

The public cemetery ground was originally a land for giving waqf in several Citangkil Subdistrict Villages, Cilegon City Banten with Waqif and heirs that are no longer known, and functioned as a public cemetery. According to residents it is estimated that cemetery waqf land affected by ruilsrag has existed since the 1950s and was given by several Kiai / Ulama who spread Islam at the time, and residents who owned large tracts of land. One of them is the cemetery waqf land located in Ex Kampung Lembang which at present the village has become an industrial area of PT Krakatau Steel and Ex other villages that no longer exist, namely the funeral of waqf owned by H. Asfari which covers ± 1000 m², the cemetery Aren ± 700 m², cemetery Jaro Asyary ± 2000 m²; Ex Kampung Kubang Batang, cemetery Jer ± 1500 m²; Ex Kampung Kedung Kemiri, Lor

cemetery 3 ± 6000 m², Burri H. Manaf cemetery ± 5000 m², and many more.

In 1974, PT Krakatau Steel conducted land acquisition, and the public cemetery waqf land was not spared. For land acquisition, and replacement of funeral waqf land by rui slag, public cemetery waqf land is now better known as Balung Tombs, and has a foundation called Yayasan Makam Balung with an area of 9.7 ha or 97,000 m², located on Jalan Piranha Number 94, Taman Baru, Citangkil Subdistrict, Cilegon City, Banten 42441. Because public land of cemetery waqf used to be in some Ex villages, including; Lembang, Kedung Kemiri, Kubang Batang, Ramanuju, and other villages then the rui slag of PT Krakatau Steel was made into a cemetery area consisting of a Kavling Block of residents whose land and graves were affected by the development project.

The resettlement of residents from Ex villages and small villages affected by land acquisition which now no longer exists and becomes an industrial area, was at that time moved to the area provided in the Cilegon Authority, which consisted of Cilegon District, Bojonegara District and Pulomerak District. There are obstacles so that the community reject the area before the leveling and structuring is held, and there are also people who decide to leave Cilegon.

In resolving this case, in 2015 the community had lodged a protest with the management of the Balung Grave Foundation, but the deliberations held did not meet any bright spot. The peace process through mediation has been passed, with the mediating Judge in accordance with the provisions of the Supreme Court Regulation (Perma) Number 1 of 2016, but these efforts did not reach an agreement. In the Cilegon Religious Court, the Defendants' perception violated the entire claim submitted by the Plaintiffs. And on April 4, 2019, the Judge of the Cilegon Religious Court decided to;

1. Refused the Plaintiff's claim to the full;
2. Charge the Plaintiffs to pay the court fee in the amount of Rp. 13,491,000 (thirteen million four hundred and ninety-one thousand rupiah).

The Plaintiffs felt they did not get justice in the decision, and made an appeal to get justice and a re-examination of the Banten High Court. So on April 29, 2019 the Plaintiffs filed an appeal memorandum

to the Banten High Court with the case register number 081/Pdt.G/2019/PTA.Btn, and on October 16, 2019 the Banten High Court Judge decided to corroborate the previous decision of the Court The religion of Cilegon, and imposes on the Comparator to pay a case fee of Rp. 150,000 (one hundred fifty thousand rupiah).

3.1. Procedures for the handover of waqf land (rui slag) with third parties.

In the process of exchanging waqf property or rui slag the main purpose of holding a rui slag must be clear, if it is used for public interest in accordance with the RUTR and waqf property is more useful in worship, then rui slag can be done. And get written permission from the Minister of Agama based on the approval of the Indonesian Waqf Board. The rui slag permit was submitted by Nadzir to the Minister of Religion or the Head of the Regional Office of the Ministry of Religion, Prvoinsi, as well as other supporting documents that Nadzir had to prepare. [5]

Rui slag covering an area of ≥ 5000 m² must obtain approval from the Minister of Religion, while waqf land of cukup 5000 m² has enough approval from the Head of the Provincial Ministry of Religion Office on behalf of the Ministry of Religion. In this waqf land rui slag in the form of public cemetery waqf the local community received written permission from the Ministry of Religion because of its size of ≥ 5000 m².

Written permission issued by the Minister of Religion with approval from the Indonesian Waqf Board of West Java Province, and the handoverd property has a certificate or proof of legal ownership in accordance with statutory provisions, and the value and benefits of the handoverd property are at least the same as the pre-owned endowment property .

Before the rui slag permit is granted, there is a valuation process for the handoverd assets which is sealed with the recommendation of the designation team. The parties involved in this assessment consist of;

- 1) Regional Government of Banten;
- 2) Land Office of Banten;
- 3) Ulama Council of Indonesia;

- 4) Office of the Ministry of Religion Regency / City of Banten;
- 5) Citangkil District Religious Affairs Office;
- 6) Nadzir.

The determination team must submit the ruihsag recommendation no later than 5 (five) days after the assessment was carried out by the Provincial Religion Office designation team. Then send the results of the assessment to the Minister of Religion and the Indonesian Waqf Board for consideration, for 4 (four) working days. The Indonesian Waqf Board stipulates agreement to the Minister of Religion within 5 (five) working days of the poem to receive the results of the evaluation. After the Minister of Religion has received approval/approval from the Indonesian Waqf Board, the Minister of Religion issues permits for tetulis ruihsag for a maximum of 15 (fifteen) working days.

Before making a written request to the Head of the Banten Provision Regional Religious Office through the Head of the Citangkil District Religious Affairs Office, Nadzir submitted a document in the form of Deed of Waqf Pledge/Deed of Submission of Waqf/certificate as well as legal proof of legality of Waqf property. As well as certificates/proof of ownership of valid waqf handover assets, results of the study of previous waqf assets, and Nadzir Identity Card.

However, it is known after the ruihsag agreement was reached between the people affected by the land acquisition project and the house, especially on the land of public use with PT Krakatau Steel, and was arrested by the Citangkil District Office as the local government.

The final cemetery waqf land which is spread out in Citangkil District is a waqf land that has existed since decades ago, before the enactment of waqf laws and regulations. So that there are still many waqf lands that are officially not yet fully registered, and do not have a Waqf Pledge Certificate and Waqf Pledge Act. But that is not a big problem. Because in Article 35 of Government Regulation No. 42/2006 concerning the Implementation of Law No. 41/2004 concerning Waqf, Nadzir/the local community/heirs/witnesses who know the waqf can submit an application for the Deed of Substitution of the Waqf Pledge Deed.

If no one submits a Substitute Deed Pledge Act Deed, the local village head of the Waqf property is obliged to make a Substitute Deed Pledge Act Deed to the local Waqf Pledge Act Deed with the approval of parties whose status is still known.

In Islamic Law there are pillars of waqf consisting of Waqif (people who give endowments); Mauquf 'alaih (one who received waqf); Mauquf (represented property); Sighat (pledge/contract/statement of time as a will to give alms);

When the endowment has been announced by the Waqif to Nadzir with at least 2 (two) witnesses, the endowment is still valid in the eyes of Allah S.W.T. and the need for recording the endowment pledge in the Endowment Pledge Deed in order to have permanent legal force. In this waqf land is a legal waqf land in accordance with the provisions of Islamic Law, because the community has known and received benefits since decades ago.

After the ruihsag process is carried out, the party who will use the waqf land must submit an application for a waqf certificate in the name of Nadzir to the replacement land to the local Land Office within a maximum of 10 (ten) working days of obtaining written permission from the Minister of Religion / Head of the Religion Regional Office of Banten Province. After receiving the application for a waqf certificate, the local Land Office issues a waqf certificate in accordance with statutory provisions.

But in this case, after the ruihsag, the Head of the Office / Subdistrict of the Citangkil District made the Endowment Pledge Deed before the Waqaf Pledge Acting Official, namely the Head of the Citangkil KUA Subdistrict by appointing a new Waqif and Nadzir. This is an act against the law (onrechtmatige overheidsdaad) and causes harm to society.

3.2 The consideration of the Panel of Judges in examining, deciding, and adjudicating the case is as follows:

3.2.1 Considering, that the Plaintiffs postulated that PT. Krakatau Steel (Defendant VI) has surrendered management authority while waiting for Nadzir to the Regional Government of the City of Cilegon cq Subdistrict Citangkil District (Defendant IV) as an

incomplete act, the argument which has been disputed by the Defendants. With regard to the aforementioned argument the Plaintiffs cannot prove it either with witness evidence or letter evidence, therefore the Plaintiff's claim must be rejected;

In Vide-P2 evidence, it is a Statement of the Director of HR & GENERAL PT Krakatau Steel (Persero), Tbk., Number: Hk.01.00 / 424/2012 dated December 20, 2012, said to hand over management of the displaced land to the Government of the City of Cilegon while waiting for Nadzir new. Not to appoint a new Waqif to party with Nadzir who was appointed by the Waqif. The abuse of authority by the Regional Government of the City of Cilegon cq Subdistrict Citangkil in the process of making the Waqf Pledge Act before PPAIW after the completion of the ruilslag process.

Defendant VI's acknowledgment of the objection / exception in the aforementioned argument, states that Defendant VI has never ordered ownership change and / or to be clicked by someone because since the handover of the management of the December 20, 2012 date from Defendant VI to the Cilegon City Government cq Sub-District Citangkil Subdistrict is authorized by the Defendant VI has handover with the Government of the City of Cilegon cq Citangkil District Sub-district.

Based on the acknowledgment contained in the argument of Defendant VI, the existence of Supreme Court Jurisprudence Regulation Number:3901K/Pdt/1985 dated November 29, 1988 states:

"Declarations which are mere statements from those who give statements without being examined at the hearing, do not have the strength of any evidence cannot be equated with testimony."

In this case the party that made the statement as the Director of HR & Business Development of PT Krakatau Steel can be presented before the trial and provide information that the letter was made and the contents are according to and true, then the statement letter has valid proof power.

3.2.2 The Panel of Judges is of the opinion that as long as the two Deeds refer to the same object, the two Akats, namely the Endowment Pledge Deed

Number W5 / 238/02 of 2013 and land certificate number 43 covering 79,070 M2, 2014 and Certificate number 44 covering 6,256 M2, The year 2014 is not legally flawed, so the Plaintiff's claim is not based on law and must be challenged;

According to Mr. Amirruddin, SH, MH, as a Judge in the Bireuen Syar'iyah Court located in Nanggroh Aceh Darusalam, he argued in the judge's judgment on the decision, referring to the provisions of Article 3 and 5 of the Regulation of the Order No. 28 of 1977 concerning the Representation of Owned Land, jo. Article 21 paragraph (1) of Law Number 41 of 2004 concerning Endowments, jo. Article 30 Government Regulation No. 42/2006 concerning the implementation of the Wakav Law, the registrants are the Village Officials who are legally valid to face PPAIW and pledge their abruptness/endowment to Nadzir/Imam of the village for the purpose of a clear endowment, and after fulfilling the requirements as stipulations Article 9 paragraph 5 Government Regulation No. 28 of 1977, the registration can be done at the PPAIW/Local Office of Religious Affairs.

As for the case of waqf land certification there are 2 (two) categories, namely waqf land certification which occurred after the enactment Government Regulation No. 28 Year 1977 and waqf land certification which occurred prior to the enactment of Government Regulation No. 28 Year 1977 Against the registration of the public cemetery waqf which has occurred since the 1950s, and the existence of ruilslag in 1973-1974, and surrender was carried out in 2012. With this, the certification of waqf land was carried out with regulations after Government Regulation No. 28 Year 1977.

Regarding land owned by PT Krakatu Steel, represented as a ruilslag and there is no certificate yet, Article 4 of the Minister of Domestic Affairs Regulation No. 6 of 1977, application for registration of land representation which has not been registered at the local Land Office / does not yet have a certificate, is carried out together with the registration of rights in Government Regulation No. 10 of 1961 as amended and perfected Government Regulation 24 of 1997. Based on AIW made by PPAIW, the Head of the local Land Office conducts; Delineation of the name of the old right-holder, namely waif; Contains the words "Waqf" in

capital letters at the end of the relevant land title number in the land book and certificate; Saving sentences are represented for XXXX based on the Endowment Pledge Deed Acting Official Subdistrict Endowment Pledge XXXX dated XXXX Number XXXX, and the third page in the column is written because there are changes to the land book and its certificate.

3.2.3. Considering, that the Plaintiffs argue that Drs. H. Sahwandi bin Damiri, MM. as the Management of the Balung Grave Foundation, illegally manages the Balung grave, so it must be stated that the Plaintiffs' argument is legal and unproven;

The Defendants denied the existence of the argument in their exception. There are conditions and pillars of waqf to be fulfilled in implementing waqf, and in the implementation of waqf pledge, Article 19 of Law Number 41 Year 2004; To be able to carry out the pledge of endowment, endowment or proxy to submit a letter and / or proof of ownership of endowment property to PPAIW. Defendant I was unable to submit proof of ownership of land at the time of the endowment pledge. Due to the fact that the waqf land represents replacement land for the PT Krakatau Steel expansion project. Therefore, the management carried out by Defendant I is not legal, and the appointment of Defendant II who has carried out the functions / benefits of waqf land can be removed from his position. Because allotment of land for leased as access to a shop / workshop.

3.2.4. Considering, that the Plaintiffs postulated that Drs. H. Sahwandi bin Damiri, MM. as the Management of Balung Grave Foundation, illegally manages Balung grave and carries out misappropriation of public cemetery waqf land, therefore the Plaintiff's arguments must be stated based on law and are not proven;

The appointment of Defendant II who has misappropriated the functions / benefits of waqf land can be removed from his position by the Head of the Sub-District / Sub-District Religious Affairs Office in accordance with Article 221 KHI with the reason that he cannot perform his obligations as a Nazir anymore. Because allotment of land for

leasing to third parties, as access to the entrance of a shop / workshop, and set a rate at the time of the funeral. This is very contradictory in function and purpose, as the eternal use of property and for public welfare.

Obligations and Rights of Nadzir Article 220 paragraph (1) Compilation of Islamic Law (KHI); Nadzir is obliged to administer and be responsible for the wealth of waqf as well as its results, and the implementation of the bounty in accordance with its objectives according to the provisions stipulated by the Minister of Religion. Obviously the things done by Defendant II were out of line with the duties and obligations of an Nadzir.

In Article 67 of Law Number 41 Year 2004 concerning Waqf; Any person who intentionally guarantees, gives away, sells, bequeaths, bills in the form of transfer of other rights of waqf property which has been represented as referred to in Article 40 or without permission to handover waqf property that has been represented as referred to in Article 41, is sentenced to imprisonment a maximum of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

4. CONCLUSION

Ruilslag that occurs on public cemetery waqf land with PT Kratau Steel which is used as a project to expand the factory, in the process there is a dispute over the registration of the Waqf Pledge Deed that is not in accordance with applicable laws and regulations. As well as the misuse of the function / purpose of waqf by Nadzir may be subject to criminal or administrative sanctions. The waqf is still valid in the eyes of Allah S.W.T because of the fulfillment of the pillars of waqf.

Decision of the Judge on Decision Number 279/Pdt.G/2017/PA.Clg, concerning refusing a lawsuit; Cancel the Pledge of Endowment Pledge; Revoke the Endowment Certificate, and revoke the management of the Waqf and Nadzir in the Balung Grave Foundation, and the decision No. 81/Pdt.G/2019/PTA.Btn. which corroborated the previous decision, and in its consideration was not in accordance with the procedures for implementing the ruilslag in accordance with Law

Number 41 of 2004 concerning Waqf jo. implementation of Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006

concerning Implementation of Law Number 41 of 2004 concerning Endowments, and Compilation of Islamic Law.

REFERENCES

- [1] Abdul Manan, *Reformasi Hukum Islam di Indonesia*, Raja Grafindo Persada, Jakarta, 2006, pp. 40-44.
- [2] Direktorat Pemberdayaan Wakaf, *Fiqih Wakaf*, vol.7, Departemen RI, Jakarta, 2006.
- [3] Direktorat Pemberdayaan Wakaf, *Fiqih Wakaf*, vol.7, Departemen RI, Jakarta, 2006.
- [4] M. Habibi, *Fiqih Wakaf*, Santri Salaf Press, Kediri, pp 25, 2010.
- [5] Mas'ut. *Hukum Wakaf Tanah dan Pensertifikatannya di Indonesia*, Diponegoro Private Law Review, Vol. 1 No. 1, Semarang, 2017.