

Analysis of Waqf Land Legalization

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Abstract—This study aims to determine the number and reasons for non-certified waqf assets in the city of Bandung and to find out the legal standing and legal consequences for land and buildings that are not certified. The research method used is a qualitative research method with a normative juridical approach using literature studies with related literature accompanied by interviews with waqf managers in the city of Bandung. The results of this study are various obstacles in managing certification, among others, because land ownership documents are lost, there is no certificate of waqf or waqf pledges that have passed away, making it difficult to access the heirs in handling the legality of waqf assets, so that the land and buildings have no legal certainty and loss of legal protection aspects in the event of various problems in the future.

Keywords—legal standing; waqf asset; Bandung City

I. INTRODUCTION

Waqf is a unique Islamic economic instrument that bases its function on the elements of virtue (*birr*), kindness (*ihsan*) and brotherhood (*ukhuwah*). The main characteristic of waqf that is very different from other Islamic voluntary sectors is that when waqf is fulfilled, there is a shift in private ownership towards the ownership of Allah SWT. which is expected to be eternal and provide sustainable benefits [1]. Waqf plays a pertinent role as an Islamic public finance instrument that has a great potential mechanism to play as a significant role in generating a prominent source of financing for the state and for the needs of the Muslim *ummah* who are complex and growing [2].

In Indonesia there are still a lot of waqf assets that have just been managed very much simple and even idle, so it doesn't have a significant impact for the wider community. This was stated by Juwaini citing the results of the survey conducted by the State Islamic University (UIN) which shows that in part Large waqf managers (*Nadzir*) have not been able to produce waqf assets [3].

The Potential of waqf in advancing the economy is increasingly enticing many parties, not only the private sector, but also recently the Indonesia government has targeted a number of potential such as waqf land o be used as underlying assets in waqf linked *sukuk* instruments. This is not without reason. Several sources indicate that there are many lands in Indonesia that have the potential to be developed even more [4]. In particular, for waqf lands located in the city of Bandung, the city has an area of 167.31 square kilometers and is the center of the administration of west java [5].

Given that public awareness in Indonesia is very high in representation, it can be seen from the data of the Indonesian Waqf Agency regarding the total area of waqf throughout Indonesia in 2016, amounting to 4, 35 billion square meters. And the special number of West Java provinces is 75 thousand square meters, including un-certified land of around 29 thousand square meters [6]. in the city of Bandung, waqf land that built a mosque of approximately 2000 mosques with different land area and not all certified [7]. In addition, the number of waqf land and buildings, such as Islamic boarding schools or public facilities that are still not yet certified as official waqf assets, have no legal force, which results in very vulnerable to waqf disputes and various other problems in the future.

Because the current condition of land use and value is increasing and expanding, the waqf land which is not legally clear has invited vulnerability and facilitated deviations from the legal nature and purpose of the representative, such as the existence of waqf land which is no longer known, waqf land which seems to have belonged to the wakif or *nadzir* heirs, a dispute and claim against waqf lands and various other cases of waqf land [8].

The land and building waqf certification program for the *nadzir* and *wakif* is an effort to increase public legal awareness about the importance of waqf recording as a preventive effort in avoiding waqf disputes later on. Recording and registration of waqf land and buildings has been regulated in Law No.41 of 2004 concerning Waqf, so that the procedure must be carried out by *Wakif* and *Nadzir* [9].

The formulation of the problem summarized in the purpose of this study was to find out the cause of the lack of certification of waqf buildings in the city of Bandung and to find out the legal position of waqf buildings that have not been certified in the city of Bandung.

II. METHOD

This study uses qualitative research methods, through a normative juridical approach and uses library research in collecting data, namely the type of qualitative research whose data is obtained from books, books, magazines, newspapers, journals and other records that have relevance to the issues to be discussed. As for the other supporting data in the field, especially related to waqf asset data that has not been certified, through purposive sampling techniques that deliberately take

samples, on the basis of consideration that the correspondent meets the requirements.

When collecting data, to facilitate the making of this paper and get the right conclusions, in the data collection the author uses the documentary method that is looking for data about things or variables in the form of writings, books, articles that are relevant to the writing theme this.

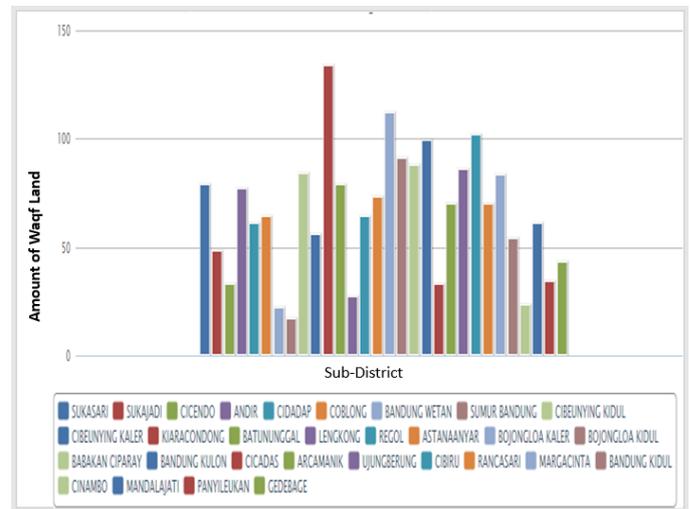
In this study, data processing is only aimed at qualitative descriptive data analysis, in which the material or materials will be studied and analyzed for the next content, so that it can know the level of synchronization, feasibility of norms, and the submission of new normative ideas. Qualitative means that the analysis is based on the effort to find the principle of monographic information and respondents, understand the truth obtained from the results of observations and questions to a number of respondents both verbally and in writing during the conduct of research activities.

III. RESULTS AND DISCUSSION

Waqf which success in the history of Islam proves that Islam is able to provide solutions to social security and welfare to its adherents. Waqf in Islamic history is not only a pillar of the welfare of society or individuals, more than that Waqf have become a pillar of the nation's economy in building the infrastructure, economy and durability [10].

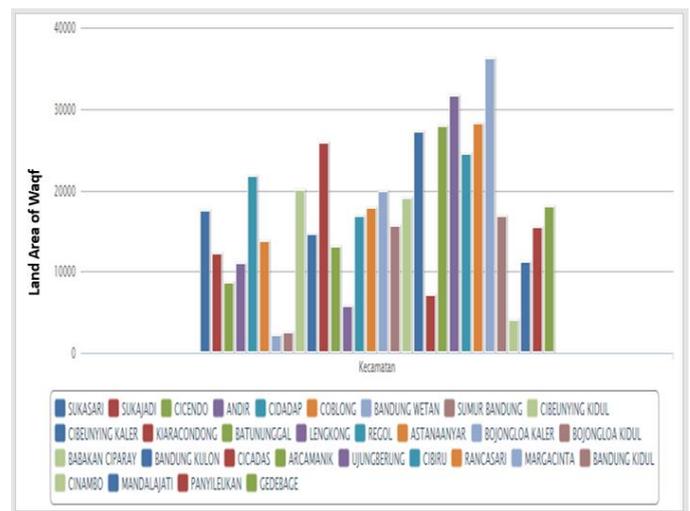
The waqf land is to perpetuate the benefits of land for public purposes such as the construction of religious infrastructure both for the construction of mosques, Islamic schools (madrasah), Islamic boarding schools (Pesantren), schools, college campuses, burial land, orphanage protection houses, etc. [11]. Therefore, based on the consideration of wakif intention, legal instruments are needed that can provide legal certainty over the implementation of waqf in Indonesia [12]. So that with the administration of waqf administration in the effort of endowments certification in order to maintain the value of the benefits of the waqf so that it has legal protection in the event of a dispute in the future. In order to ensure that the system is developed and will increase the waqf revenue, some of it the prominent aspects of waqf administration must be carefully looked into and improved [13].

The city of Bandung has a city area of around 167.31 km. based on the waqf information system of the Ministry of Religion of the Republic of Indonesia in 2017 there are waqf land totaling 1,967 locations with an area of 50.44 hectares spread over 30 sub-districts in the city of Bandung. This is illustrated in the figure 1.



(Source: waqf information system of the Indonesian Ministry of Religion 'Siwak').

Fig. 1. Graph of the number of waqf land in Bandung city.



(Source: waqf information system of the Indonesian Ministry of Religion 'Siwak').

Fig. 2. Graph of land area of waqf of Bandung city.

Based on figure 2 about waqf land area in Bandung city, Margacinta sub-district becomes the most extensive sub-district and the second largest widest sub-district of waqf land is Ujung Berung. With this huge amount of waqf assets, and the number is likely to continue to increase every year. In utilizing this waqf land, in fact more worship facilities or mosques are built, compared to utilization into buildings or other public facilities. Considering that the understanding of most Indonesian people is still limited to waqf only for religious facilities, even though in Law No.41 of 2004 concerning waqf, it is stated that the use of waqf assets is not only for worship facilities, but can be utilized in other buildings that have socio-economic value.

In the waqf registration process, waqf managers (*Nadzir*) must know the procedures and regulations for waqf registration. The Ministry of Agrarian and Spatial Planning / Head of the National Land Agency has issued a regulation on 13 February 2017 entitled Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 2 of 2017 concerning Procedures for

Land Wakaf Registration in the Ministry of Agrarian Affairs and Spatial Planning / Land Agency National.

In this regulation, the procedure for registering waqf land comes from Property and Customary Land that has not been registered; Business Use Rights, Building Use Rights, and Right to Use on State Land; Right to Build or Use Rights on the land of Management Rights or Ownership Rights; Ownership of Unit for Flats; and State Land.

In Article 2 of the regulation it is stated that the Right to Land that has been represented is erased from the date of the Pledge of Waqf and its status becomes an object of Waqf. Furthermore, PPAIW on behalf of Nazhir submitted AIW or APAIW and other documents needed for registration of the Land of Waqf in the name of *Nazhir* to the Land Office, within a maximum period of 30 (thirty) days from the signing of AIW or APAIW.

To register waqf land originating from property rights, there are several requirements that must be met. Article 6 explains that the application for waqf registration on the land area of ownership must be enclosed with a letter of application, a letter of measure, ownership certificate, AIW or APAIW, Nazhir's approval letter from the agency that administers religious affairs at the sub-district level, and a statement from Nazhir in disputes, cases, confiscations, and not guaranteed.

In Article 4 of Government Regulation Number 28 of 1977 expressly states that waqf objects are land owned, then in Article 215 Compilation of Islamic Law Article 4 and Law Number 41 of 2004 Article 15-16 are more general. This article states that waqf objects are property. This has implications for the expansion of 15 types of objects that can be represented, not limited to proprietary land, but can also be other objects, whether they are immovable moving objects. From the legislation concerning the waqf above, no one has regulated the waqf on state land. For waqf land that stands on state land if indeed the community and the local village government have acknowledged as waqf land, then a request can be submitted to the Head of the local Land Office to process the issuance of a Decree on Granting Rights to Land and then on behalf of Nadya. Thus, state land that has functioned as waqf land should still have waqf land certificates as authentic data and written documents to guarantee legal certainty over land including waqf land. This is intended to avoid disputes in the future that can reduce authority and Islamic law. Even if there is a waqf land dispute, with the existence of the waqf land certificate, the legal status is legally strong [14].

With the number of waqf land as many as 1,967 locations spread in various regions in the city of Bandung. Of this number consisted of 1,882 locations with an area of 48.29 hectares that have been certified and the remaining 85 locations with an area of 21.15 hectares that are not certified [15]. Waqf land in Indonesia is very much in quantity, but it is not maximized in terms of the quality of its empowerment. Considering that there are still many waqf lands that are neglected due to lack of funds and guidance to the managers. This causes many waqf lands that are unproductive and even left alone [16]. Some mosques in the city of Bandung, which have not been certified both land and buildings, including:

TABLE I. DATA ON SOME MOSQUES THAT HAVE NOT BEEN CERTIFIED AS WAQF

No	Mosque	Address	Information
1	Nurul Hikmah Mosque	Gagak Street. Coblong District, Bandung City	There is no certificate of land ownership, no waqf pledge deed.
2	Miftahul Ulum Mosque	Taman Sari Village, Bandung Wetan District, Bandung City	There is no certificate of land ownership, there is only a sale and purchase deed, there is a waqf pledge
3	Asy-Syafeiyah Mosque	Babakan Baru, Sukapada Sub-District, Cibeunying Kidul District, Bandung City.	Land ownership certificates exist, waqf pledges exist.
4	Al-Musyawaharah Mosque	Pasir Street. Bandung Kulon District, Bandung City	The waqf certificate is lost
5	Al-Falah Mosque	Dungus Cariang District, Bandung City.	There is no certificate of land ownership, no waqf pledge deed.

(Source: processed by the research team)

From the mosque's data after going through a process of confirmation and interview with the respective mosque management (DKM), it turns out that there are still many mosques that not only do not have waqf certificates, but also do not have legal proof of land ownership, which with the letter becomes a requirement in registering waqf certificates. From the data above about some mosques that stand on waqf land that have not been certified with various reasons and constraints. Among these constraints are:

- Not registering waqf correctly when the waqf is first handed over to the waqf manager (*Nadzir*).
- There is no certificate of ownership rights from the land represented, making it difficult for the waqf certification process, and,
- Lack of knowledge and attention between waqf (*wakif*) and waqf manager (*nadzir*) about the importance of the correct waqf administration process.

In addition, the priority of problems in the regulator relating to the management of waqf are:

- lack of state budget costs for waqf certification;
- the lack of socialization of the waqf law;
- the low coordination of BWI with related agencies to optimize waqf.

The lack of state budget fees for waqf certification, makes waqf managers less interested in legalizing their waqf assets, with regard to the costs required for certification of waqf is quite large. While waqf certification is very important as a report on waqf management from both regulators and *Nazhir*. This gives an impact on the accountability of waqf management to be low, because it does not have accurate data as reporting on waqf assets in Indonesia [17].

The Waqf institution needs to play its role because the benefits of Waqf are not only limited to the Muslim poor and needy recipients, but it is across the racial and economic background of the receiver [18]. So that the legal position of

land and buildings that are not certified is very vulnerable to misuse of waqf assets, evictions, and other forms of disputes due to legal aspects that are not legally proven. There needs to be awareness of both the waqf (wakif) and wakif heirs, waqf managers (nadzir), as well as various related parties such as the Office of Religious Affairs (KUA), Indonesian Waqf Agency (BWI) and related government elements in facilitating administrative aspects registration of waqf in order to have legal certainty.

IV. CONCLUSION

Land waqf in Indonesia is very large, especially in the city of Bandung. With the existence of waqf assets, especially land and building waqf, which number in the thousands and spread in every sub-district of Bandung city, making Bandung city has the potential to be able to develop these waqf assets to be more productive in terms of utilization.

With a large number of land and waqf buildings in the city of Bandung, there are still some land and building waqf that are not certified with various reasons and constraints, including: loss of certificates, not having a certificate of ownership of waqf land, or not registering waqf well on at the beginning of giving endowments to waqf managers. This results in waqf assets not having physical evidence and resulting in the absence of legal protection against various opportunities for disputes in the future, because there is no legal evidence of ownership or management of waqf so that there is no legal certainty due to non-fulfillment of administrative and legal aspects that should be fulfilled

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