

Legal Protection Against Nazir on Control of Ownership Objects by Wakif's Description

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ABSTRACT

Waqf is a legal act both individuals and institutions that have the value of social worship carried out by Muslims to get rewards and blessings from Allah SWT. In the implementation of waqf, it is very necessary to have a waqf pledge deed as authentic evidence to register and legalize the act with the National Land Agency as a guarantee of protection and legal certainty for waqf rights. However, in reality, there are still waqf deeds carried out according to the Shari'ah without being followed by the making of the waqf pledge which is not known to the heirs from generation to generation as happened in Katulampa Bogor as stated in the decision of the Bogor Religious Court Number 1031/Pdt.G /2015 /PA.Bgr. The formulation of the problem in this study is: how is the legal protection for nadzir over waqf land controlled by wakif heirs and how is legal certainty in waqf management in the control of wakif heirs according to positive law in Indonesia. The legal theory used in this study is the theory of legal protection and the theory of legal certainty.

Keywords

Legal Protection, Nadzir, Waqf Object

INTRODUCTION

Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, or better known as the Basic Agrarian Law (hereinafter abbreviated as UUPA) stipulates that on the basis of the right to control the state, various types of land are determined. rights to land on the surface of the earth, called land, which can be given to and owned by people either alone or together with other people and legal entities. Based on the provisions of Article 4 paragraph (1) of the UUPA, the state has the authority to determine various rights to the surface of the earth or rights to land, which can be granted to and owned by individuals or legal entities. The National Land Law contained in the LoGA regulates land tenure rights. Boedi Harsono stated that the right of control over land contains a series of powers, obligations, and or prohibitions for the holder of the right to do something about the land being entitled. Something that is allowed, obligated or prohibited to be done, which is the content of the right of control, is the criteria or benchmark for distinguishing between the rights of control over land regulated in the Land Law.

Waqf land is one of the land tenure rights. Based on this, land for the Indonesian people, land has a very close and eternal relationship, so that the position of land for the Indonesian people is a unified whole that cannot be separated from one another. Land is a natural resource which is regulated in the constitution as regulated in article 33 paragraph (3) of the 1945 Constitution, this article in principle provides the basis that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit of the people.

METHOD

Method is a procedure or way to find out or run something through systematic steps. While legal research is a scientific activity, which is based on certain methods, systematics and thoughts, which aims to study one or several certain legal phenomena, by analyzing them. The research methods used in this study are as follows: The type of research carried out is normative legal research, which is legal research carried out by examining library materials or secondary data. This research is also called library law research.

In conducting this research, the writer takes the following approach:

a. Legislative Approach (Statute Approach)

The statutory approach is an approach taken by reviewing all laws and regulations that are relevant to the legal issues being handled. In the method of approach to legislation researchers need to understand the hierarchy, and the principles in the legislation.

b. Conceptual Approach

Conceptual approach (Conceptual Approach) is an approach in problem solving research in legal research seen from the aspects of the legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used.

c. Analytical Approach

The analytical approach is an analysis of legal materials to find out the meanings contained in the terms used in the laws and regulations conceptually, as well as to know the laws and regulations conceptually, as well as to know their application in legal practices and decisions. .

d. Case Approach

Case Approach is an approach in normative legal research in which researchers try to build legal arguments in the perspective of concrete cases that occur in the field.

RESULTS

Indonesia is a constitutional state as stated in the 1945 Constitution of the Republic of Indonesia, the Indonesian state is a democratic and constitutional state of law, these three things are interrelated and support each other. With 'democracy, people's participation goes well in all fields, both' in 'the process of filling positions in the organizational structure and' in 'the process of determining policies taken by these various organizations. Therefore 'democracy requires openness of information', guarantees of freedom, and 'civil rights', mutual respect and respect and 'obedience to mutually agreed rules and mechanisms'. (Ak'hdhiat 2011)

In relation to waqf which is managed and developed by an institution or organization, it is obligatory to have a legal basis, to discipline and provide legal certainty and legal protection for the waqf. According to Jeremy Bentham, a law that brings happiness to the greatest part of society will be considered a good law. Based on 'Utilitarianism Theory', 'an analysis was carried out on article 37' of Government Regulation Number 42 of 2006' Concerning the Implementation of Law Number 41 of 2004 concerning Waqf which allows a Notary as a state official to make a waqf pledge deed associated' with the provisions which applies to the Official Making the Waqf Pledge Deed.

The legal basis for implementing waqf in Indonesia has been regulated' in Law Number 5 Year 1960 concerning Basic Regulations 'Agrarian Principles, Government Regulation of the Republic of Indonesia Number 28 of 1977 concerning Waqf of 'Property Land', Law of the Republic of Indonesia Number 41 of 2004 concerning 'Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 concerning waqf and its implementing regulations.

Waqf assets that are carried out orally and only witnessed by two witnesses have the potential for 'the waqf property,' to be reclaimed by the wakif heirs or to change ownership of 'waqf to be the property of nadzir from generation to generation, to be transferred' for personal interests or to group. Waqf is a public asset that must be protected so that there is no deviation, legal means are needed to protect waqf property from all forms of deviation. ' Such as the 'waqf land dispute that occurred' in Katulampa 'Bogor with the decision Number 1031/P'dt.g/2015/PAB'gr, according to the analysis of the 'authors regarding this dispute as follows:

Legal Protection of Waqf Land 'As a 'Social Function Transferred to' Nadzir's heirs

This research is based on the background of the waqf dispute case between the heirs of the wakif expert ndzir that occurred in 'Bogor City which has been in dispute for years in the Court,' both the dispute on Unlawful Acts filed in the 'Bogor State Court', as well as with the 'postulate of the disputed waqf. file' at the Bogor Religious Court. In this regard, of course, this conflict is due to the issue of legal protection between 'Nadzir and the heirs of the wakif'

According to Satjipto Raharjo (2000) legal protection is to provide protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law. In the case of waqf, the existence of a waqf pledge and registration of waqf land to the National Land Agency is a legal protection for the waqf property.

In relation to the above, 'where this registration matter' is one that so far has not been 'regulated and carried out carefully in the 'registration' of lands registered according to the provisions of the LoGA. In fact, the registration of waqf land is very important, both in terms of legal order and in terms of administration, control and use of land in accordance with agrarian legislation. As for the obligation to register waqf land, it is regulated in Article 10 of Government Regulation Number 28 of 1977 concerning Ownership of Land Waqf, which was later described in the Regulation of the Minister of Home Affairs Number 6 of 1977 and has been partially amended by Ministerial Regulation Number 2 of 2017 concerning Procedures for Land Registration Regarding Land Waqf.

With regard to waqf property, one of the functions of land registration is essentially to 'obtain guarantees' and legal certainty regarding waqf land, with the issuance of land certificates, as for this certificate as strong evidence. ' In article 32 paragraph (1) of the UUPA, an official explanation is given regarding the meaning and requirements to apply as a strong means of proof. It is explained that the certificate is a certificate of proof of rights that applies as a 'strong evidence' tool regarding the physical data and juridical data contained therein, as long as the data is in accordance with the data 'existing' in the letter of measurement and the land book. ' concerned. As a continuation of the provision of legal protection for the holders of these rights certificates, it is stated in article 32 paragraph (2) of the UUUP'A, which explains that the 'certificate' is a means of 'strong evidence' and that the purpose of the registration carried out is 'to provide a guarantee of legal certainty'. in the land sector. With land registration, the land registration system in Indonesia has been fulfilled.

As in Government Regulation Number 28 of 1977 and followed by Law Number 41 of 2004 it is explained that, after the wakif declares the waqf pledge in the presence of at least 2 (two) witnesses, it is followed by the making of the 'Deed of The Waqf Pledge ('AIW) made by PPAIW, Legally AIW issued by PPAIW is the only valid evidence that can 'prove that a legal act' waqf, AIW' is legally recognized as valid 'by the State, so that it can be used as evidence of the provision of waqf'.

The provision of waqf which is carried out verbally or 'under' the hand without being followed by the making of AIW issued by PPAIW is not legal according to the law. The making of AIW should be carried out after the wakif has made a pledge and "handed over the property" which is waqf. Even if the waqf pledge is made in writing, it must still be made in the form of AIW which proves the validity of the legal act of the waqf.

The same statement was also 'made' by 'Mrs. N which is a research and development division of BWI in the East Jakarta area, he said that the legal act of wakif in waqf of his property should be carried out in accordance with the applicable procedures according to the law and general provisions, namely in accordance 'with Government Regulation Number 42 Year' 20'06 Regarding the Implementation of Law Number '41 Years' 2'004 Regarding 'Waqf, which describes the procedure for waqf 'in detail, namely the party 'who' wants to waqf their assets is required to come 'to the 'PPAIW' to carry out the waqf pledge, which is witnessed by 2 (two) witnesses, which can be done orally and in writing.

Then it is stated 'in the deed' of the waqf pledge by PPAIW to be registered with the National Land Office, so that the waqf property which has a social function gets legal protection and legal certainty. As for the property that has been waqf, it is not allowed to be transferred, handed over, inherited, donated, sold and transferred in any other form of transfer except for the general interest in accordance with the General Spatial Plan. (RUTR) based on the provisions of the applicable laws and regulations and does not conflict with sharia.

In addition to 'AIW there is also APAIW In the organ of waqf, where the difference lies in the time of waqf implementation and the making of the deed, the making of the A'IW deed for waqf lands after the enactment of Government Regulation Number 28 Year 19'77 Regarding Land Perwaqaf, where at the time the deed was made, the wakif who was waqf of his assets was still alive, while APAIW was made 'for land objects that were waqf before the enactment of Government Regulation No. 28' of 1977 and 'when the deed of the wakif was made waqf of property. is already 'dead d'unia. While AIW and A'PAIW are made by P'PAIW, namely the head of the local KUA, the position of the Head of K'UA as the maker of AIW or AP'AIW is the same as the position of the sub-district head and notary who are serving as officials. Maker of Land Deed (PP'AT). 'The role of PPAIW in the implementation of waqf is very important based on Law Number 41 of 200'4 concerning Waqf' and Government Regulation Number 42 of 20'04 in 'implementing waqf.

Based on the above provisions in carrying out waqf, the wakif must make a clear and 'firm pledge to Nadzir' before PPAIW, witnessed by at least 2 (two) witnesses and set forth in the form of A'IW. The pledge submitted by the wakif contains a statement of the will of the wakif to endow his land. Waqf under the hands 'is a practice of 'waqf' which is carried out by the parties themselves orally or in writing, without being accompanied by the making of AIW' by 'PPAI'W not relevant 'with' the sound of article '1847 Kitab' Law Civil Law, where in article 1847 the 'Book of Civil Law Laws' it is explained that, 'underhand deeds' are 'deeds' made 'by the parties' which are 'conducted not before a public official.

Public officials in the act of 'law' waqf is PPAIW/Head of K'UA. The implementation of waqf under the 'hand' can cause problems in the future which are related to the status of land ownership. In connection with the dispute that the author discusses, it is clear that there is no legal protection of rights against land that has been 'waqfed' by waqf. 'kif', in order to 'overcome' that, as a legal guarantee for the protection of waqf property so that it does not harm its social function, mak'a hart'a ben'da The waqf must be registered with the National Land Agency for the issuance of a waqf land certificate, as a manifestation of the government's concern for land certificates of waqf land since its stipulation. Government Regulation No. 28 of 1977 concerning the representation of Ta'nah Mil'ik fans, then the government issued a joint decision with the Minister of Religion and Head of the National Land Agency Number 422' Year 200'4 and Number 3/ SKB'/BPN'/2004 concerning Certificate of Wa'kaf Land. This decision was taken because there are still many waqf lands that have not been certified, so it is necessary to "improve services" for the sake of maintaining order in administration. and certainty of rights. Even though the certificate program for land waqf has been carried out by the government through the creation of AIW/APAIW which is 'wrong' or must, but it is still not effective.

According to Satjipto Raharjo (2010) Legal Protection is an 'effort to protect one's interests' by means of allocating a power to him to act in his 'interests'. At the same time, the purpose of the law is to provide legal protection to the community, it must be realized in the form of legal certainty.

This means that in order to protect the interests of a person or society there are compelling provisions that must be carried out, it can be carried out by individuals or 'legal' entities that are in power and have the authority to do so.

Legal protection is a protection that is given to legal subjects and legal objects in the form of devices, both preventive and repressive, both verbal and written. In the preamble to the 1945 Constitution of the Republic of Indonesia, it has been 'formulated that one of the objectives of the 'formation of' this country is to 'protect the entire nation and the entire homeland of Indonesia.

With regard to this problem, the steps that must be taken to protect the 'waqf land' located in Kat'ulampa Bogor are by means, If the wa'kif is still 'live then, make it' an A'IW 'by PPAIW and, A'if the wakif has died, the form of observation is made 'APAIW' by PPAIW. Reporting of the existence of 'waqf property' so that AP'AIW can be' made by the um'um community, community leaders, or village/kelu'rahan heads, After the AIW'/A' 'PAIW' was made by PPAIW, it was continued by registering it with the National Land Agency, in order to change the certificate. 'Certificate' in the name of w'akif is replaced by 'in the name of nadzir' in making waqf certificates. The certificate of 'land' is evidence of 'ownership' of a 'plot of land and the holder of a certificate of title to land has received legal protection and is guaranteed by law on the land he owns. If in the future there is a land dispute, the owner of the land certificate has a very strong position. The National Land Law adheres to the rule of law that every 'person or body' and the law 'performs a legal act' in the form of the transfer of land rights, 'must be carried out at had' What are the competent authorities for that, in order to obtain a deed as evidence or guarantee, all of these are 'to obtain legal certainty and certainty' over the land that has been transferred.

Article 19 paragraph (1) of Law Number 5 of 1960 concerning the UUPA explains that "'to guarantee' legal certainty by the government, a land registration is held throughout the territory of the Republic of I'. Indonesia, according to provisions which are 'regulated' by government regulations". The purpose of these provisions is to 'provide' legal certainty for holders of land rights. This is a 'good intention' from the 'law' maker, in which the holder of the 'land rights' will be given legal certainty over the 'land that is owned' possess it with the obligation to register the land rights it owns.

In addition, in 'article 49' paragraph (3) of the 'PA' Law it is also explained that "the endowment of 'owned land' is protected and regulated by government regulations". Based on the provisions above, the 'Government Regulation' Number 28 of 1977 concerning Land Registration is issued, which regulates the procedures for land registration, supervision over waqf objects, dispute resolution to criminal provisions relating to waqf. In 'Islamic law' it does not 'require that the land w'aqf has a waqf

certificate, but there is a recommendation' to make a record' as a 'form' of efforts to 'protect the law' and provide 'pass' tian to the status of the wakaf 'object'.

To protect the 'wa'kaf property, there are 'regulations' and 'containers' which the government has prepared to accommodate all of them through the provision of waqf with , make a 'statement of waqf pledge both verbally' and in writing' and witnessed 'by a minimum of two witnesses and recorded in the AIW by PPAIW, as initial evidence to legalize the act of 'Arafan, to the National Land Agency so that it is registered in the 'land book' and is in the form of a land certificate, 'which will take the form of a land certificate,' clarify the 'rights and stat'us ta'nah wa'kaf', so that it doesn't harm its social function and is protected and guaranteed kum perwa'kafan 'it.

DISCUSSION

Procedures for Waqf of Owned Land

In order for the waqf of 'owned' land to be carried out in an orderly manner, it is necessary to regulate the procedures for waqf of 'owned' land, according to Government Regulation No. 28/1977 concerning Perwa'kafan of 'owned land' which will be declared as 'owned'. follow :

1. A person or legal entity who wants to donate his land (as a candidate for wakif) comes personally to PPAIW to 'execute' his will. 'as follows:
 - a. Certificate of 'ownership' or proof of land ownership such as: 'girik, ketitir and so on';
 - b. A letter from the village head which is strengthened by the local sub-district head regarding the truth of the ownership of the land and an explanation that the land is not in dispute;
 - c. Land registration certificate
 - d. B'upati/Waliko'tamadya permit in this case the Head of the Sub-directorate of the local agrarian torate.
2. The letters brought by the candidate wakif are checked first by PPAIW, to ensure that the letter has complied with the rules stipulated by law. -Invite. Then PPAIW examined the witnesses and validated the nadz'ir composition;
3. In front of the PP'AIW and the two witnesses, the wakif makes his waqf pledge to the n'adzir' who has been ratified with a clear speech. jela's and teg'as. PPAIW as an 'official' appointed by the Minister of Religion (who has been delegated this authority to the Head of the Head of the Department of emmen Ag'ama) to make a ak'ta' pledge of wak'af. The official is the head of the fourth Uru'san Religious Office, if there is no 'Religious Uru'san Office in one sub-district, then that 'becomes PPAIW for the sub-district concerned is the head of the local religious affairs. The position of the head of the sub-district religious affairs office as the maker of the waqf pledge deed is the same as the position of the district head or notary who is the land deed maker official (PPAT).

The deed of 'Pledge of Waqf' made by PP'AIW is an authentic deed, according to Article 1868 of the 'Book of Laws' Law on Civil Law, which states that the 'a auten'tik i'alah sua'tu 'deed in the form of which is determined by 'Ud'ang-U'ndang d' made by or 'in front of Pegaw'ai-Pegaw' In general, the person who has the power for that is at the place where the deed was made. So the elements contained in the said article are: (Nar'sudin 2018)

- a. That the deed is made and 'certified' in a 'form' according to the law;
- b. That the deed was made by 'or before a public official;
- c. That the deed was 'made' before the 'authority' to make it at the place where it was made.

The deed made by the PPAIW is a 'legitimate' evidence of the wa'kaf act, where the 'deed will be used as material for the registration of t'an'ah wa'kaf at the office. Sub-directorate of local Agrarian Affairs, the provisions concerning this Deed of I'krar Wak'af, according to Government Regulation Number 10 of 1961 concerning Land Registration is to fulfill the principle of publicity, namely the principle that requires a name, status rights and obligations which are 'above a certain area'. 'list in the general list, that is, a list that is open to the public, and a' principle of speciality is' etak, lua's, d'an ba'tas-ba'tas tan'ah seem' clear. Therefore, a large area of land must be measured, mapped and calculated as large as possible. Before issuing a circular letter, Secretary 'retaris G'ubernem'en dated 31 'January 1905', legally there is no 'rule' on ta'ta c'ara m'ewakafa'fkan land. What prevails in society are 'very simple' habits, namely if someone wants to 'waqf' his land, according to 'traditional fiqh', it is enough to state his 'willing to waqf' for certain purposes to other people. which is believed. An example' is' waqf of Sultan Notokusu'mo I R'aja Sum'enep, in the year '12'00 H or '1786 AD, according to the charter found

'in' the museum of Kab. 'Upaten S'umen'ep, which is written in Arabic script 'on the p'apa'n kay'u yes' it is: "Sultan' Notok'usumo one day meman' call his son, as his bride, when he dies as Sultan, he says that he has donated the land of Sume'nep City and its buildings. which is above it for the poor".

CONCLUSION

Waqf that is carried out orally is legal according to the Shari'ah, but in the 'statutory regulations, waqf does not have legal force. carried out in front of the PPAI'W in this case Notars or KU'A and witnessed by two witnesses and must be recorded in the form of A'IW. Land registration and legal protection of land is a causal relationship, meaning that one of the purposes of waqf land registration is to obtain legal certainty and legal protection for the land so that it does not harm the land. its social function, since the transfer from wakif to nadzir, the wakif and its descendants on the object of 'waqf, along' the function of waqf land does not change its function.

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