

LEGALIZATION OF WAQF FORESTS IN INDONESIA: THE REGISTRATION PROCESS

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Abstract

Waqf (Islamic endowment) is considered one of the alternative solutions to environmental problems in Indonesia. One of the examples is through the establishment of a waqf forest, a conservation initiative in the form of developing forests on waqf land. The development of waqf forests needs to pay attention to the legal side in accordance with the laws and regulations of Indonesia. Previous studies discussed the process of legalizing waqf land in Indonesia, but research about the legalization of waqf forest land is still scarce. This study aims to determine the process of legalizing waqf forests on the basis of Indonesian laws and regulations. On the basis of the results of literature studies and expert interviews that were analyzed descriptively, the process of legalizing waqf forest is one of the main tasks of a nazir (waqf manager). The process involves at least three government agencies: the Ministry of Religion, the Ministry of Agrarian Affairs and Spatial Planning (National Land Agency), and the Ministry of Environment and Forestry. The waqf forest legalization process begins with making a waqf pledge deed at the local Office of Religious Affairs, followed by creating a waqf land certificate at the local Land Offices. A crucial step is to clarify that the represented land must be located outside the forest area through a statement from the Ministry of Environment and Forestry. The legalization of waqf forests will guarantee the sustainability of the forest because this process makes waqf forest legal under Islamic law and the law of the Republic of Indonesia.

Keywords: land waqf, legalization, registration process, waqf, waqf forest

Abstrak

Dewasa ini, wakaf mulai dipertimbangkan sebagai salah satu alternatif solusi dari permasalahan lingkungan di Indonesia. Salah satu contoh aplikasi wakaf untuk hal tersebut adalah 'hutan wakaf', sebuah inisiatif konservasi berupa pengembangan hutan di atas tanah wakaf. Pengembangan hutan wakaf, sebagai bagian dari tanah wakaf, perlu memperhatikan sisi legal sesuai dengan peraturan perundang-undangan yang berlaku di Indonesia. Telah banyak penelitian sebelumnya yang membahas proses legalisasi tanah wakaf, namun belum ada penelitian yang membahas proses legalisasi hutan wakaf di Indonesia. Penelitian ini bertujuan untuk mengetahui proses legalisasi hutan wakaf sesuai peraturan perundang-undangan Indonesia. Berdasarkan hasil studi literatur dan wawancara pakar yang dianalisis secara deskriptif, proses legalisasi hutan wakaf dinilai sebagai salah satu tugas nazir (pengelola wakaf) yang utama. Proses ini melibatkan setidaknya tiga instansi pemerintah, yaitu Kementerian Agama, Kementerian Agraria dan Tata Ruang (Badan Pertanahan Nasional), serta Kementerian Lingkungan Hidup dan Kehutanan. Alur legalisasi hutan wakaf bermula dari pembuatan akta ikrar wakaf di Kantor Urusan Agama setempat, dilanjutkan dengan pembuatan sertifikat tanah wakaf di Badan Pertanahan Nasional setempat. Adapun salah satu syarat yang harus dipenuhi adalah, tanah yang diwakafkan tidak boleh merupakan bagian dari Kawasan Hutan, hal ini dibuktikan melalui surat keterangan dari Kementerian Lingkungan Hidup dan Kehutanan. Legalisasi hutan wakaf akan menjamin kelestarian hutan, sebab proses ini menjadikan hutan wakaf telah sah di bawah dua payung hukum, yaitu hukum Islam dan hukum negara Republik Indonesia.

Kata kunci: hutan wakaf, legalisasi, proses registrasi, tanah wakaf, wakaf

I. INTRODUCTION

Waqf, which is also known as Islamic endowment, is one of the original Islamic social finance instruments. Its system is unique, has proven its sustainability, and has a tremendous socioeconomic impact. In the history of Islam, one of the hadiths that mentioned waqf is when the Muhammad SAW (PBUH.) ordered Umar bin Khattab to consecrate (endow) his land in Khaibar, with the note, "*Hold the assets and donate the profits.*"

The practice of waqf has become common in Indonesia, the country with the largest number of Muslim believers: Indonesia has also been nominated as the most generous country, as mentioned in the Charities Aid Foundation survey in 2018. These two factors, along with the vast territory of Indonesia, are the main drivers of the high potential and development of waqf in Indonesia. Along with this situation, the applicable laws and regulations continue to undergo revisions and progress.

According to the Law of the Republic of Indonesia No. 41 of 2004 regarding waqf, Article 16, waqf assets include immovable and movable objects: One example of prevalent fixed waqf assets in Indonesia is a land waqf. In this case, the represented land will change ownership from the waqif to Allah. Therefore, the area may not be sold, gifted, inherited, or transferred by the previous owner to another party.

The practice of waqf in Indonesia continues to develop. Today, along with the development of environmental problems in Indonesia, waqf is predicted to be a good alternative to overcome these problems: One of the waqf initiatives in mastering the latest ecological issues is in the form of a waqf-based forest or waqf forest. A waqf forest is a forest that is built on waqf land, with the primary function of a forest.

In Indonesia, the practice of waqf forest started in 2012. Gathering waqf funds from the community, a group of volunteers from the Waqf Forest Community purchased around 4.4 hectares of degraded land for reforestation in Jantho, Aceh Besar Regency. Waqf forests are developed on critical land in Bandung Regency. This project is an initiative of the Bandung District government through the *Leuweung Sabilulungan* Foundation, which began in 2013. In Bogor Regency, a waqf forest has been developed by several academics from IPB University, located in Cibunian Village, since 2018. In relation to waqf forests, a study by Ali and Kassim states that waqf forests play an important role in forest protection and achievement of the SDGs.

The administrative process to obtain a waqf land certificate is still in the process of being completed for Aceh Waqf Forest and Bogor Waqf Forest. This situation means that, on the one hand, the existing waqf forest land has a legal contract according to religious law, but on the other hand, it is not yet legally secure because it has not been officially recorded. A waqf certificate is vital both in terms of legal order and in terms of land administration under agrarian law. One of the benefits of waqf certification is to ensure that the function of the waqf land will remain forever.

Many previous studies, such as those by Ahmad Dwirukmana and Setiawati discussed the importance and process of legalizing waqf land in Indonesia. Unfortunately, research about the legalization of waqf forest land in Indonesia is still scarce. Some of the fundamental questions on this research are as follows: (1) How important is the legalization of the waqf forest?; (2) Who are the stakeholders involved, and how does the waqf forest registration flow to the related stakeholders?; (3) Do we need to register the waqf forest with the Ministry of Environment and Forestry?

Therefore, the objective of this study is to discuss the administrative flow in registering a waqf-based conservation forest under Indonesian laws and regulations. To our knowledge, this is the first study that provides the registration process of legalizing a waqf forest in Indonesia. To fulfill the objectives of this study, an in-depth interview with nine experts divided into three groups (academics, practitioners and regulators) was conducted in November 2019 - March 2020.

This study is divided into several sections. The first section is the introduction, which focuses on the background of the problem. The second section is about the history of land waqf certification regulations in Indonesia, followed by the third section about waqf for environmental preservation in the perspective of Indonesian law. The next sections presented the results and discussion section, which will discuss the importance of waqf forest legalization and the role of every relevant stakeholder in more detail. This discussion is based on the results of literature studies and concept validation with experts, along with the administrative flow that must be conducted. The final section contains the conclusion.

II. HISTORY OF WAQF CERTIFICATION REGULATIONS AND ITS CURRENT CONDITION IN INDONESIA

History records show that the practice of waqf in Indonesia began before the colonial era. It was extended in the 12th century, known generally in the form of mosques, boarding schools, and educational facilities. During the colonial period, several regulations regarding waqf property were implemented, such as *Staatsblad No. 152 of 1882*, regarding *Priesterraad* (Religious Courts), with one of its authorized actions being to resolve waqf issues; and *Staatsblad No. 605, jo. Besluit General Van Ned Indie Government ddp. 12 August 1896 No. 43, jo ddo. 6 November 1912 No. 22 (Bijblad, 7760)* which regulates the use of a portion of profits from the lease of the mosque's waqf land for the maintenance and repair of mosques, courtyards, and graves in the mosque area.

The colonial government issued several circular letters ordering regional heads to register places of worship on the basis of their ownership, whether they are classified as endowments or not. Such orders caused opposition in society; the colonial government was considered to have interfered in the private sphere. The Governor's Circular Letter dated May 27, 1935 No. 1237/A, as contained in *Bijblad 1935 No. 13480* regarding *Toericht Van-de Regeering Muhammedaansche bedehuizen en Wakafs* became the forerunner to state involvement in the regulation of waqf assets. According to this letter, the government has the right to know the registration of waqf land, to synchronize the land data with the applicable laws and thus avoid conflicts of interest.

After Indonesia achieved its independence, government regulations regarding waqf continued to develop. Government Regulation No. 33 of 1949 stated that the Office of Religious Affairs at the regional level should investigate, determine, register, supervise, and hold waqf elections. In 1953, through the Department of Religion, endowments became the authority of Part D (social worship). Then, on October 8, 1956, the Department of Religion, through the Office of Religious Affairs, issued Circular Letter No. 3/D/1956 regarding waqf that did not belong to the mosque. In 1959, the official endorsement of the waqf land was transferred to the head of the Agrarian Supervisory based on the Joint Decree of the Minister of Domestic Affairs and the Minister of Agrarian on March 5, 1959 No. Pem. 19/22/23/7; SK 62 /Ka/59P.

Religious elements began to be included in the agrarian problem through Law No. 05 of 1960 regarding Basic Agrarian Principles, mentioned in Article 49. This law states that the ownership land rights of religious and social organizations are recognized and protected. The state can also give land use rights for religious/social purposes. The endowments will be regulated further through government regulations. Seventeen years later, on May 17, 1977, Government Regulation No. 28 of 1977 regarding Property Rights Representatives was implemented, which discusses the ownership of land or immovable property (*al-'aqqar*).

As a follow-up to the latest regulation, the Ministry of Religious Affairs, the Ministry of Domestic Affairs, and other relevant agencies issued at least 20 related regulations. However, all these regulations, including Presidential Instruction No. 1 of 1991, still have deficiencies in various aspects. For example, it does not specify the endowments of movable property and nazir rights and obligations.

After several discussions and preparations, Law No. 41 of 2004 regarding waqf was issued on October 24, 2004. Some of the new details in the Indonesian waqf regulations listed are about nazir, represented assets (*mauquf*), and allocation of waqf property (*mauquf'alah*). On the basis of Law No. 41 of 2004 Chapter VI, the Indonesian Waqf Board (BWI) was formed. The presence of the Indonesian Waqf Board is essential in advancing and developing waqf in the country. Many programs have been initiated by the representatives of the Indonesian Waqf Board in almost all provinces. The formation of the Indonesian Waqf Board was followed by a discussion of the planned law regarding waqf.

Then, Government Regulation No. 42 of 2006 regarding the implementation of Law No. 41 of 2004 about endowments was ratified on December 15, 2006. Several regulations were issued later with regard to land waqf. For example, the Ministry of Religious Affairs Regulation No. 73 of 2013 regarding procedures for immovable and movable objects other than money was approved in 2013. The Ministry of Agrarian Affairs and Spatial Planning issued the Ministry of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 2 of 2017 regarding the procedure to register waqf land with the National Land Agency.

However, data regarding certified waqf land in Indonesia are still not integrated. One problem is the incomplete documentation of the represented property owned by a nazir because a waqif has died, and his heirs' whereabouts are unknown. The lack of understanding of some nazirs causes them to consider that waqf land does not need to be registered because there are relatively no problems in its ownership and management. The high administrative costs and the inability of the waqif to show their land rights are other obstacles in the process of waqf land certification. Problems also come from the government, such as the lack of a state budget for certification, which makes this process difficult.

On the basis of data from the Ministry of Religious Affairs of the Republic of Indonesia, Indonesia had 382,319 waqf land locations, with a total area of 51,261 hectares, in 2016. Of the whole waqf land, 61.1% (233,654 sites with a total area of 19,622 hectares) were declared certified. As for the rest, some 38.9% (148,665 locations with a total area of 31,639 hectares) are still uncertified. In 2019, the Ministry of Religious Affairs stated that the entire waqf land in Indonesia had reached 161,579 hectares.

In 2019, the Indonesian Waqf Board released data on certified waqf land according

to the National Land Agency of the Ministry of Agrarian Affairs and Spatial Planning. According to the data, 134,237 waqf land locations are registered at the National Land Agency, with a total area of 11,148 hectares. This data difference shows three waqf land conditions in Indonesia: not yet certified, recorded at the Ministry of Religious Affairs (has a waqf pledge deed), and recorded up to the National Land Agency (has a waqf land certificate).

III. WAQF FOR ENVIRONMENTAL CONSERVATION IN THE PERSPECTIVE OF LEGISLATION IN INDONESIA

In general, two types of waqf utilization exist: waqf for religious and worship purposes, and waqf for public (philanthropic) interests. One of the most legendary examples of the philanthropic waqf is the well endowment of Uthman bin Affan in Medina. This waqf asset still exists today. Its waqf profit is managed by the government of Saudi Arabia to meet the needs of pilgrims. The waqf for Uthman bin Affan's well not only has economic and social benefits but also has benefits for protecting the environment. Being used as a waqf, the well is maintained continuously. Therefore, the water continues to flow and benefit all its *mauquf 'alaihi*. This example confirms that the environment can indeed be one of the priorities of waqf.

In Indonesia, the practice of waqf to overcome environmental problems was started a long time ago. In 2010, PP Muhammadiyah initiated the "Waqf Movement and Tree Planting of Muhammadiyah Citizens" to overcome the increase in greenhouse gases. The "Sengon Waqf" program was launched by the Indonesian Waqf Tube in 2012 and was realized in 2013 in Sentul and Jonggol. In terms of forestry, as already stated, at least three waqf forest locations exist in Indonesia, namely, in Aceh Besar Regency, Bandung Regency, and Bogor Regency.

On the basis of Law No. 41 of 2004 regarding waqf, Article 22 regarding the allotment of waqf property states that waqf property can be used for the advancement of public welfare that is not in conflict with sharia and statutory regulations. The law does not explicitly mention the environment as the purpose of utilizing waqf assets. However, with the inclusion of waqf property in the form of land or plants and other related objects, then the benefits are for the general welfare. Another interpretation is that waqfs can be beneficial for environmental sustainability.

The Regulation of the Ministry of Religious Affairs No. 73 of 2013 regarding waqf procedures for immovable and movable objects other than money states that the waqf property must have long-term durability and or long-term benefits, and have Islamic economic value. Forest land managed with waqf is believed to have tangible and intangible benefits. Intangible benefits in the form of environmental services include spring protection, air quality, and biodiversity. The measured benefits include the benefits of da'wah/religious, economic, social, health, and others. Thus, waqf forests are assumed to have long-term benefits and are suitable for the criteria of waqf assets.

IV. THE IMPORTANCE OF WAQF FOREST LAND LEGALIZATION

All experts do not have different opinions regarding the importance of the registration of waqf forest land to the relevant government agencies according to the laws and regulations of the Republic of Indonesia. The expert stresses that the registration of waqf forest land to obtain a waqf land certificate from the National Land

Agency is one of a nazir's most essential tasks that must be performed immediately. Registration is not only based on data collection efforts by the relevant government agencies but is also primarily conducted to secure the status of the waqf forest land as waqf land. Waqf land must continue to be managed productively by the nazir and cannot be transferred to another party. The purpose of using waqf land as a forest must also be stated from the beginning in the waqf pledge deed so that it is listed in the document and can be the basis of legal and nazir responsibilities in the future. It is in line with the results of the literature study and in-depth interviews with experts on the importance of waqf land certification per Indonesian law. The following are some underlying reasons, among others:

1. to provide protection and legal certainty for the waqif, the nazir, and the represented assets
2. for the nazir (waqf manager), to receive supervision and guidance from the Indonesian Waqf Board, on behalf of the Ministry of Religious Affairs
3. to ensure the sustainability and productivity of waqf forests because the nazir will be required to provide reports to the Indonesian Waqf Board regularly
4. to prevent future disputes over waqf forest land assets and
5. to support the issuance of fatwas and regulations regarding waqf forest from the relevant agencies

V. RELEVANT STAKEHOLDERS IN THE WAQF FOREST LEGALIZATION PROCESS

At least three related ministries need to be considered in the waqf forest registration process: the Ministry of Religious Affairs, the Ministry of Agrarian Affairs and Spatial Planning, and the Ministry of Environment and Forestry. In the opinion of experts, these three ministries have their respective portions.

A. Ministry of Religious Affairs and the Indonesian Waqf Board

The role of the Ministry of Religious Affairs is crucial because basically, waqf forest is a waqf land. On the basis of the prevailing laws and regulations in Indonesia, the first institution that must be involved in the recording of waqf land is the Local Office of Religious Affairs (village level). The waqf pledge deed is conducted between the waqif and the nazir in the Local Office of Religious Affairs by including relevant documents. The waqf pledge deed is then recorded by a waqf pledge deed official (PPAIW) in the presence of two witnesses. After the pledge is made, the waqf pledge deed official will prepare a waqf pledge deed document and submit a copy of the material to the Ministry of Religious Affairs and the Indonesian Waqf Board.

All experts believe that the first step of registering waqf land with the Ministry of Religious Affairs is essential and must be completed. The registration process is generally listed in relevant government regulations, namely, the Ministry of Religious Affairs Regulation No. 73 of 2013 regarding procedures for immovable and movable objects other than money.

However, some critical things have been added with regard to the flow of waqf forest registration with the Ministry of Religious Affairs. NH, one of the experts, emphasized that the *mauquf 'alaihi* (beneficiaries) of waqf assets (including from waqf forests) needs to be mentioned in detail during the waqf pledge process. If it

is not stated, then the determination of *mauquf 'alaih* becomes the right of the nazir, who manages the waqf assets:

Meanwhile, MFN placed more emphasis on the role of the nazir as waqf manager. Along with the process of registering waqf forests to the Ministry of Religious Affairs, the nazir must improve their capability and literacy regarding endowments, specifically regarding the assets of the waqf, which they manage. This step is important because many cases of changing ownership or conversion of waqf land have occurred due to the lack of the nazir's prior knowledge about their duties and the legality of the managed waqf land. It is also consistent with research conducted by Ali et al. in 2018, which highlights improving nazir competence as one of the priority aspects of waqf management in Indonesia:

Another expert, HT, stressed the same thing. One of the tasks of the Indonesian Waqf Board is to handle nazir registration and guidance. Waqf forests registered with the Ministry of Religious Affairs, in collaboration with the Indonesian Waqf Board, will be more easily controlled for development and sustainability. Once officially registered, the waqf forest will be under the supervision of the Indonesian Waqf Board. This controlling function secures the productivity and sustainability of the waqf forest.

B. Ministry of Agrarian Affairs and Spatial Planning (National Land Agency)

On the basis of legislation in the Republic of Indonesia, all land ownership data must be centered on the National Land Agency as part of the Ministry of Agrarian Affairs and Spatial Planning. Land registration, under the government regulations, aims to provide guarantees and legal protection for landowners and land users. Thus, waqf land must also be registered at the National Land Agency. The Joint Decision of the Minister of Religious Affairs and the Head of National Land Agency No. 422 of 2004 or 3/SKB/BPN/2004 regarding Land Waqf Certification mentions that the head of the National Land Agency and its staff, both at the central and regional levels, have a duty and responsibility to complete the waqf land certificates that have been previously recorded and inventoried.

All experts agree that the legal status of waqf forests must be protected until they are registered with the National Land Agency. This step is imperative because it is related to the sustainability of the waqf forest in the future. Today, the majority of waqf land disputes occur because nazirs have not registered the waqf land under their management with the National Land Agency. Therefore, the old owner is still registered as the current owner of the area. Waqf disputes often occur among the third generation who do not know that the land has been represented, and the nazir has proof of his ownership to the area (land certificate). In the trial process, if the nazir cannot prove that the land has been represented, then ownership of the land may eventually be transferred to the issuing party.

C. Ministry of Environment and Forestry

On the basis of the Ministry of Environment and Forestry Regulation No. P.21/MenLHK/Kum.1/4/2019 regarding Customary Forest and Private Forest, three types of forest ownership exist in Indonesia. The first one is state forest, which is woodland owned by the state and can be located inside the forest area or outside the forest area (in the form of an urban forest). The second one is the customary forest, and the last is the private forest. Related to those classifications, AK, as the expert from the forestry field, mentioned that a waqf forest could not be classified as a state or customary

forest, so it should belong to the private forest category

However, the majority of experts agree that currently, waqf forests do not need to be officially registered with the Ministry of Environment and Forestry as private forests because of several major reasons. One of the experts, HT, said that obtaining a permit to the Ministry of Environment and Forestry was not yet needed because no regulations required it. The current management of waqf forests should focus on completing the administrative obligations (waqf pledges and waqf certificates) and the development of managed waqf forests

HSA believes that the advantages and disadvantages of registration of waqf forests with the Ministry of Environment and Forestry need to be considered. If registration takes much time, cost, and energy (for measurement, document management, etc.), then it can be skipped as long as it is not required. A similar opinion was expressed by KMA, as the nazir of Cibunian Waqf Forest

ISB highlighted another side of the consideration of registering waqf forests to the Ministry of Environment and Forestry. He highlighted the side of Islamic *da'wah* that a nazir could inform the Ministry of Environment and Forestry about the existence of waqf forests as an initiative of the public and the private sector to preserve forests. According to him, Islamic *da'wah* has excellent value and should be considered

In line with this concept, another expert, ACH, underlined that the registration of waqf forest with the Ministry of Environment and Forestry is essential as a form of compliance with state law if it is already required. According to him, this registration will further strengthen the legal status of a waqf forest because it is recorded in three related ministries (Ministry of Religious Affairs, Ministry of Agrarian Affairs and Spatial Planning, and Ministry of Environment and Forestry)

However, even though registering a waqf forest with the Ministry of Environment and Forestry is still not necessary, doing so still has a significant role in the land status that will be administered as a waqf. On the basis of the interview with BN, during the process of obtaining the certification of waqf land from the National Land Agency, a certified letter from the Ministry of Environment and Forestry is needed. This letter relates to the status of the land to be represented; if the land status is a forest area (which means that the state owns it), then the waqf land certificate cannot be processed

VI. FLOW ADMINISTRATION PROCESS OF REGISTERING A WAQF FOREST

Two significant phases must be taken to legally register the waqf forests according to the applicable laws and regulations in Indonesia. The process of legalizing a waqf forest is relatively the same as legalizing waqf land in general. The flow of the whole process is presented in Figure 1.

A. Phase 1: Registering the Waqf Forest with the Ministry of Religious Affairs

The steps detailed in this part are based on the Law of the Republic of Indonesia No. 41 of 2004 regarding Waqf and Ministry of Religious Affairs Regulation No. 73 of 2013 about procedures for immovable and movable objects other than money

A waqf can be implemented by fulfilling the elements of waqf, namely, waqif, nazir, waqf assets, waqf pledge (*ikrar wakaf*), allotment of the waqf assets including *mauquf 'alaih* or waqf beneficiaries), and waqf period. The first is the waqif, who can be categorized as an individual, organization, or a legal entity/corporation. The next is

nazir, who can be classified as an individual, organization, or a legal entity/corporation registered in the Ministry of Religious Affairs and Indonesian Waqf Board. The third element is the waqf asset itself, which should be owned legally by the waqif. A waqf asset should have long-term benefits and economic value, according to sharia.

Another essential element is the waqf pledge. It is delivered by the waqif to the nazir in the presence of the waqf pledge deed official and two witnesses. The waqf pledge can be made after fulfilling the following administrative documents: (1) the waqif's name and identity, (2) the nazir's name and identity, or a person in charge of nazir's identity, if the nazir is an organization/legal entity, (4) the witnesses' name and identity, and (5) the waqf asset's data and explanation. If the waqif is absent due to reasons justified by law, then the waqf can appoint a representative using a power of attorney. The waqf pledge is stated on the waqf pledge deed, which contains the name and identity of the waqif and nazir, data and explanation of the waqf asset, allotment of the waqf asset, and period of waqf.

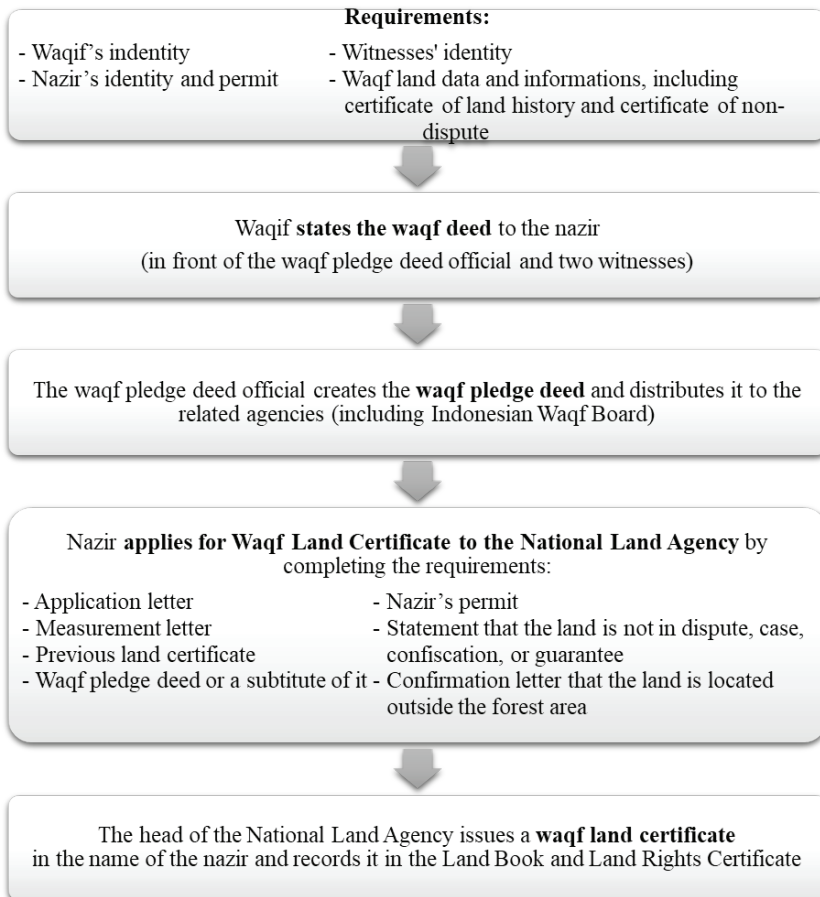


Figure 1. Flow administration process of registering a waqf forest

Source: Author (2020)

The fifth element is the allotment of the waqf assets. As stated in Article 22 of Law of the Republic of Indonesia No. 41 of 2004, waqf assets may have some benefits in the field of (1) religious facility and activity, (2) education and health facility and activity, (3) scholarships and assistance to poor, neglected children, and orphans, (4) progress and improvement of the ummah economy, and (5) the advancement and development of other public welfare that is not in conflict with Islamic law and regulations.¹ The last element is the waqf period, which could be a lifetime or within a specified period by their interests.

Three general steps are followed when registering a waqf forest with the Ministry of Religious Affairs. First, the waqif makes the waqf pledge to the nazir in front of the waqf pledge deed official and two witnesses. This event should take place in the Local Office of Religious Affairs, if possible. Second, the waqf pledge is written on the waqf pledge deed. A copy of the waqf pledge deed should be given to the waqif, nazir, *mauquf 'alaih*, the head of the Religious Affairs Ministry office (city or regency level), the Indonesian Waqf Board, the Land Office, and other related institutions.

Finally, the nazir should register the waqf asset with the appropriate agencies within seven business days after the waqf pledge deed. For a land waqf, the documents should be submitted to the National Land Agency on behalf of the Ministry of Agrarian Affairs and Spatial Planning.

B. Phase 2: Registering the Waqf Forest with the Ministry of Agrarian Affairs and Spatial Planning (National Land Agency)

The steps detailed in this part are based on the Ministry of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 2 of 2017 regarding the procedure to register waqf land with the Ministry of Agrarian Affairs and Spatial Planning (National Land Agency)².

The nazir and waqif should understand that the rights to the represented land are removed because on the date of the waqf pledge, the status of the area will change to waqf asset. The nazir must submit the waqf pledge deed and other required documents to the Land Office within 30 days after the waqf pledge deed is signed.

According to the applied law, the waqf land can be in the form of (1) private land or customary land that has not been registered, (2) cultivation rights title, building rights title, and usage rights on state land, (3) building rights title or usage of land on the property with management rights or private land, (4) ownership rights over the unit of flats, and (5) state/government land. If the waqf land is only part of the total land area, then measurements must be taken to separate the land certificate.

On the basis of the Ministry of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 2 of 2017, Chapter II Article 6³, and Ministry of Religious

¹ Indonesia, Undang-undang tentang Wakaf (Law regarding Waqf) UU No. 41 Tahun 2004, LN No. 159 Tahun 2004 (Law Number 41 Year 2004, SG No. 159 Year 2004), art 22.

² Indonesia, Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia tentang Tata Cara Pendaftaran Tanah Wakaf di Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional (Ministrial of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation regarding the procedure to register a waqf land to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency) Permen No. 2 Tahun 2017, BN No. 319 Tahun 2017 (Min. Reg. No. 2 Year 2017, SN No. 319 Year 2017).

³ Indonesia, *ibid.*

Affairs Regulation No. 73 of 2013 about procedures for immovable and movable objects other than money⁴, also based on the in-depth interview with B as the National Land Agency officer, some crucial points are raised with regard to the administration process of waqf forest in the National Land Agency.

First, the waqf land, which was previously private land, will be registered as waqf land in the name of the nazir. Second, the following documents should be attached to the application form for waqf land registration: (1) application letter, (2) measurement letter, (3) freehold title of the land, (4) waqf pledge deed or subtitle deed of waqf deed, (5) nazir endorsement letter from the Religious Affairs Institution at the district level, (6) statement from the nazir that the land is not in dispute, case, or confiscated, and is not being mortgaged, as recognized by the local village head or equivalent and supported by the regional subdistrict head, and (7) certification letter from the Ministry of Environment of Forestry about the status of the land, which should be located outside the forest area in a particular condition, (8) letter of approval from the husband/wife if the waqf land was previously stated as shared property, and (9) approval letter from the heirs if the waqf land is inheritance property.

The head of the Land Office will issue the waqf land certificate on behalf of the nazir. He then records it in the Land Book and Land Rights certificate in the correct column with the sentence, "This land right has been deleted based on the Waqf Pledge Deed/Substitute Waqf Pledge Deed dated ... Number ... and issued the Waqf Land Certificate Number ... / ... according to the Letter of Measurement date ... Number ... area ... area ... m²."

VII. POTENTIAL LEGAL ISSUES IN THE WAQF FOREST LEGALIZATION PROCESS

On the basis of the current laws and regulations in Indonesia, no single regulation explicitly states the legal status of the waqf forest, as mentioned by AK⁵. However, even though this detail is not stated explicitly in the current waqf law, MFN believed that basically, waqf forest practices are not against the spirit of waqf itself⁶. Nevertheless, some potential legal issues need to be anticipated in this legalization process.

1. The waqf forest land legalization can be canceled if, in the process, the land donated by the waqif is found to be problematic, for example, in dispute/guarantee⁷. Also, if the land is a part of state-owned land (for example, located inside the forest area), then the waqf forest land legalization cannot continue because it does not meet the legal requirements for waqf (the waqf assets should legally belong to the waqf donors)⁸.
2. If the legalization process is not conducted thoroughly, then waqf land disputes may occur in the future. When a conflict occurs, the waqf land legal documents, until they are recorded in the National Land Agency, will be used as a piece of conclusive evidence⁹. However, if the documents do not exist, then the National

⁴ Indonesia, Peraturan Menteri Agama Republik Indonesia tentang Tata Cara Perwakafan Benda Tidak Bergerak dan Benda Bergerak Selain Uang (Ministerial of Religious Affairs Regulation regarding Waqf Procedures for the Immovable Objects and Movable Objects Other than Mon.

⁵ Based on in-depth interview with Mr. Augustijana Kartasasmita, MSc.

⁶ Based on in-depth interview with Mr. M. Fuad Nasar, MSc.

⁷ Based on in depth interview with Mr. Burhanuddin.

⁸ Based on in-depth interview with Mr. Hendri Tanjung, PhD.

⁹ Saiful Anwar, "Urgency of Waqf Land Registration in The Context of Indonesian Land Reform,"

Land Agency will not recognize the land as waqf. Therefore, if a third party (for example, an heir) challenges the status of the land, then the conclusive evidence is the last registered land status (as a private land). This situation could lead to the nazir's defeat in court and the waqf assets to become untenable¹⁰.

On the basis of those two points, the nazir needs to be selective and careful in checking the status of the land that will be donated by the waqif and in choosing the land to be freed as waqf from the collective waqf funds. Afterwards, the nazir must also complete the entire waqf forest legalization process to ensure that no legal issues will arise in the future.

VIII. CONCLUSION

The legalization of waqf forest on the basis of the laws and regulations in Indonesia is crucial and has become the main task of the nazir (waqf forest managers). It is related to the strength of the law, security from disputes, and the sustainability of waqf forests in the future. Relatively the same as the management of other waqf land certificates, the legalization process begins with the drafting of a waqf pledge at the Local Religious Affairs office. Then, the nazir will register the waqf forest land with the National Land Agency to obtain a waqf land certificate. However, in the process of legalizing the waqf forest, even though it does not need to be registered with the Ministry of Environment and Forestry, information is needed to provide proof that the forest is located outside the forest area (state forest).

Some suggestions can be given with regard to the legalization of waqf forests. The nazir needs to complete this process immediately to guarantee the preservation of waqf forest in the future. For related institutions, such as the Ministry of Religious Affairs and the National Land Agency, assistance in the form of counseling, funding, and ease of the process of legalizing waqf forest will be influential.

Journal of Law and Legal Reform 1, no. 3 (2020): 479–92, <https://doi.org/https://doi.org/10.15294/jllr.v1i3.36702>.

¹⁰ Based on in-depth interview with Mr. Irfan Syauqi Beik, PhD.

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