
The Legal Certainty of Wakaf Without The Existence of A Wakaf Power Deed Made by The Officer Making The Wakaf Power Deed

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Abstrak

Donating property in Islam is good teaching, and it is even recommended for every capable Muslim individual to do it. This is because waqf is an act that has good characteristics and motivation, namely taqarrub to Allah SWT. This terminology means that a wakif must express his will (to donate his property) to the nazir, namely the waqf expressed orally and in writing. The meaning of the words "spoken orally and in writing" is uncertain or ambiguous regarding the interpretation of these words. This research aims to determine the legal certainty of waqf implementation without a waqf pledge deed made by the official who made the waqf pledge deed. The writing method used is normative juridical with a problem approach using a statutory approach, a conceptual approach, and a historical approach, and data collection techniques using library research. Based on the research results, it can be concluded that the implementation of waqf which is carried out orally without a Waqf Pledge Deed is valid according to sharia and statutory regulations because it fulfills the elements of waqf, but its legal force is weak compared to waqf which is carried out with a written waqf pledge. form of Waqf Pledge Deed. In the future form of regulation, in order to guarantee legal certainty, the meaning or meaning of the waqf pledge must be further clarified the waqf pledge, namely the Waqf Pledge is a statement of the wakif's will which is stated and set out in written form, namely the Waqf Pledge Deed made by PPAIW.

Keywords: legal certainty, waqf, waqf pledge deed.

INTRODUCTION

Waqf is one of the most recommended forms of worship in Islam because besides waqf having a religious function, waqf also has a function and role for economic balance which has no small share in the progress of nation and state development (Samsidar, 2016). Donating property in Islam is good teaching, and it is even recommended for every capable Muslim individual to do it. This is because waqf is an act that has good characteristics and motivation, namely taarab to Allah SWT (Zuhri & Simanjuntak, 2019).

Waqf requires a Wakaf Power of Attorney Deed to ensure legal certainty and validity of the waqf process. The Waqf Power Deed provides legal certainty over the intentions and actions of the waqif (the person who endows the property) so that all provisions related to the endowed property are clearly recorded and legally valid (Sujanti, 2021). This official document also serves as strong legal evidence in the event of a dispute over the ownership or use of waqf assets, preventing potential disputes in the future. This

deed, drawn up by the Waqf Power of Attorney (PPAIW), has a state-recognized legal force, ensuring that the waqf process is carried out by applicable procedures and recognized as legitimate by law (Ramadhan, 2022).

The Wakaf Power of Attorney Deed ensures the use of waqf assets by the waqif's intentions and objectives, preventing misuse or inappropriate use of the assets. This deed also protects the waqf assets from the risk of being lost or transferred to unauthorized parties. The creation of a Waqf Deed of Authorization is part of compliance with Law No. 41/2004 on Waqf and related government regulations, demonstrating that the Waqf process is conducted by Indonesian law. With an official deed, the waqf process becomes more transparent and accountable, strengthening public trust in the waqf management institution (Nuridin & Hidayat, 2024). This encourages more people to participate in waqf activities, as they are confident that the waqf assets will be managed properly and by the objectives. Therefore, all parties involved in the waqf process must ensure that the Waqf Deed of Authorization is validly created and recognized (Nadia et al., 2021).

In addition to the Wakaf Power of Attorney Deed, the waqf pledge also plays an important role in the waqf process. The waqf pledge is an official statement from the waqif (the person who endows the property) stating his intention and action of waqf clearly and unequivocally in the presence of an authorized official. Waqf Law concerning Waqf also explains the Waqf Pledge. The terminology of the Waqf Pledge is regulated in Article 1 point 3 of the Waqf Law, namely: The Waqf Pledge is: "the will of the wakif expressed verbally and/or in writing to the Nazhir to donate his property." The meaning of this terminology means that a wakif must express his will (in terms of donating his property) to the nazir, namely the waqf expressed orally and/or in writing. The meaning of the words "spoken orally and/or in writing" there is uncertainty or ambiguity regarding the interpretation of these words (Kusumohamidjojo, 2016); (Huda, 2015).

What is meant by the sentence "orally and/or in writing" is unclear, whether what is meant by this sentence is that waqf can be expressed verbally or only in writing or both, namely that it must be expressed orally and expressed in written form. In relation to this, there is legal uncertainty regarding whether the waqf pledge in question can be made verbally or can be stated only in writing or whether it is even required to have both, namely stated verbally and put into written form (Mardani, 2015).

The Waqf Pledge Deed can be found in the implementing regulations of the Waqf Law, namely Government Regulation Number 42 of 2006 and Government Regulation Number 25 of 2018, that the Waqf Pledge Deed is proof of the Wakif's statement of will to donate his property to be managed by Nazhir in accordance with the designation of the property. waqf which is stated in the form of a deed. Basically, the waqf pledge referred to from the start is a pledge expressed in the form of a deed where it should be stated that the waqf pledge in question is stated in "written" form. Deeds expressed in written form here can be divided into two (2), namely private deeds or notarial deeds. In the case of making the waqf pledge deed, the notarial deed used is a notarial deed where there must be an official who has the authority to make the deed, namely PPAIW or the Waqf Pledge Deed Making Officer is an "authorized official appointed by the Minister to make the waqf pledge deed".

In Article 37 of Government Regulation Number 42 of 2006 concerning the Implementation of Law no. 41 of 2004 concerning Waqf, it has been stated that the Official for Making the Waqf Pledge Deed is the Head of the KUA and/or the official who administers waqf affairs, a Sharia Financial Institution Official at least at the level of Head of LKS Selection appointed by the Minister, and in the presence of a Notary. Problems related to waqf still occur frequently, in fact, there are many factors that cause problems related to waqf. Some people still do not clearly understand the process or flow of waqf, so this is where various problems related to waqf arise. One example of a case related to waqf without a Waqf Pledge Deed is in Decision No. 464/Pdt.G/2010/PA.Bgr (Agung, 2019)

Previous research conducted by Hardianti et al., (2021) states that the legal certainty of waqf with copyright objects requires compliance with the provisions of waqf law, despite the many obstacles faced. The current Waqf Law is considered to no longer fulfill the need to ensure legal certainty. Therefore, the government needs to revise the Waqf Law, which was last enacted in 2004, by involving MUI, BWI, Nazir Institution, and other stakeholders. To facilitate its implementation, it is necessary to establish integrated implementing regulations. In addition to regulatory changes, the government's role is needed to improve the quality of human resources of Nazir, PPAIW, and law enforcement officers, as well as to increase public legal awareness so that waqf can prosper the community.

The novelty of this research is to ensure the law of waqf without a waqf mortgage deed made by an official who makes a waqf mortgage deed, and how to organize the future so that waqf law can be implemented. Indonesia has more legal certainty. Thus, the purpose of this study is to identify and overcome the various obstacles faced in the process of making a waqf pawn deed, as well as to assess the roles and responsibilities of authorized officials in making this deed. It is also to develop recommendations that can organize the future of waqf law so that it can be better implemented.

RESEARCH METHODS

The research method used in writing this is Normative Juridical, by examining various kinds of formal legal rules such as laws, and literature containing theoretical concepts which are then connected to the problems that are the subject of discussion, related to the legal issues faced by obtain a conclusion that is by scientific truth and can be justified scientifically and objectively. The problem approach used by the author in writing this research is the statute approach, conceptual approach, and historical research approach. In addition, with a legal, conceptual, and historical approach, as well as data collection techniques through literature studies and qualitative data analysis. Data analysis was carried out qualitatively. Data obtained from various literature sources are analyzed and interpreted to answer research problems related to the legal certainty of the implementation of waqf without the existence of a waqf pledge deed made by PPAIW.

RESULTS AND DISCUSSION

According to the International and Indonesian Law Dictionary, a waqf is an organization that has the status of a legal entity to manage an object, usually a mosque, langar, or hut, which the owner forever leaves to God to be used for religious purposes. The waqf is usually managed by a person or a management body appointed by the waqf maker himself. But if he does not appoint him, then the penghulu as the local religious leader manages the waqf. With this legal action in the form of waqf, it is hoped that the community will get goodness and the results of the waqf can benefit the community and can bring benefits to those who endow it (rewards that continue to flow even though the waqf has died) and society in general (MD Ali, 2007);(HZ Ali, 2022).

Regulations regarding waqf are formed in several laws and regulations, one of which is the Waqf Law, but the regulations regarding waqf that currently exist in Indonesia are still not in accordance with the development of society which is currently increasingly sophisticated and sophisticated, modern and changes that occur in society (Susanto, 2017). Oral culture has changed into a society that uses written culture, so with these developments in the future, better regulations are needed so that waqf has more potential and legal certainty (Idrus, 2017). In this case, to create better future regulations, it is necessary to review the current waqf regulations with legal political theory. The development of waqf law in Indonesia is regulated in several laws and regulations, including:

1. In accordance with Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.
2. In accordance with Government Regulation Number 28 of 1977 concerning Waqfation of Owned Land.
3. According to Law Number 41 of 2004 concerning Waqf.
4. In accordance with Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf.
5. In accordance with Government Regulation Number 25 of 2018 concerning Amendments to Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf.

A waqf will be said to be valid according to sharia and laws and regulations if it fulfills the elements of waqf listed in article 6 of the waqf law, namely waqif, nazir, waqf assets, waqf pledge, allocation of waqf assets, waqf period (Harahab, 2020) . Thus, a waqf can be said to be valid if it fulfills these 6 (six) elements, so it can also be said that the waqf made with a waqf promise made orally (without a Waqf Pledge Deed) made by the Officer who makes the Waqf Pledge Deed) has fulfilled the elements of waqf and the waqf can be said to be valid according to sharia (Islamic religion) and valid according to statutory regulations. As for the requirements of the waqf pledge, as stipulated in Article 6 of Law Number 41 of 2004, the waqf pledge is one of the elements of waqf. 14 As for what is meant by a waqf pledge, "A waqf pledge is a statement of the waqif's will expressed orally and/or in writing to the Nazhir to endow his property." (Suhairi, 2017).

The Waqf Pledge in Article 1 point 3 of the Waqf Law, the Waqf Pledge is a statement of the wakif's will expressed orally and/or in writing to the nazir to endow his property. The inclusion of the waqf pledge as one of the elements of waqf in Article 6 indicates the need for the implementation of the waqf pledge. The provisions for the implementation of the waqf pledge as specified in Article 17 of Law No. 41 of 2004:

1. The waqf pledge is made by the Waqif to the Nazir in front of the PPAIW witnessed by 2 (two) witnesses.
2. The Waqf Pledge as referred to in paragraph (1) is stated orally and/or in writing and is stated in the waqf pledge deed by the PPAIW.

Article 30 of Government Regulation No. 42/2006 states that "The statement of the Wakif's will is stated in the form of AIW by the type of property donated, which is held at the Waqf Pledge Council attended by the Nazir, Mauquf Alaih, and at least 2 (two) witnesses" (Christianto, 2022). It is further explained in Article 32 of Government Regulation Number 42 of 2006:

1. The waqif states a waqf pledge to the Nazir in the presence of the PPAIW in the Waqf Pledge Assembly as referred to in Article 30 paragraph (1).
2. The waqf pledge as referred to in paragraph (1) is accepted by Mauquf alaih and the waqf assets are accepted by the Nazir for the benefit of Mauquf alaih.
3. The waqf pledge made by the Wakif and accepted by the Nazir is stated in the AIW by the PPAIW.
4. AIW as referred to in paragraph (2) contains at least:
 - a. the name and identity of the Wakif;
 - b. the name and identity of the Nazir;
 - c. name and identity of witnesses
 - d. waqf asset data and information;
 - e. allocation of waqf assets; and
 - f. waqf period.
5. In the event that the Wakif is in the form of an organization or legal entity, the name, and identity of the Wakif as referred to in paragraph (4) letter and included in the deed is the name of the management of the organization or the board of directors of the legal entity concerned by the provisions of their respective articles of association.
6. If the Nazir is in the form of an organization or legal entity, then the name and identity of the Nazir as referred to in paragraph (4) letter b included in the deed is the name determined by the management of the organization or legal entity concerned by the applicable provisions of their respective articles of association.

Regarding waqf that is carried out with an orally pronounced waqf pledge, it will have more disadvantages in the future because this relates to the spiritual dimension of a person who endows his property, where the waqif only expects a reward (a thing). If the waqif has passed away, but with the possibility of being disputed in the future due to the absence of evidence of the waqf legal action, the property may be transferred unlawfully (Taibu & Novrianti, 2023).

Waqf is carried out using a waqf pledge made orally (without a Waqf Pledge Deed made by a Waqf Pledge Deed Official) pronounced by the wakif to the nazir is considered valid according to sharia (Islamic law) but its legal strength is weak compared to waqf
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carried out with a waqf promise stated in writing in the form of a Waqf Pledge Deed (as a means of proof). Waqf that is carried out with a waqf pledge that is done orally will potentially have a negative impact in the future because there is still the possibility of a lawsuit related to the waqf.

Waqf carried out without a waqf pledge deed or spoken orally by the wakif to the nazir does not fulfill the principle of legal certainty as stated by Lon L. Fuller about the 8 (eight) principles of Legal Certainty, namely that a rule must be prepared in a formula that is understandable or easy to understand. The waqf pledge as referred to above is felt to still have several formulations that have legal gaps that can provide interpretation. To realize legal certainty in waqf, waqf in Indonesia must be done in writing. This requirement is carried out in writing as a stipulation for the waqif or his representative to pledge his will into waqf which is then outlined in the waqf pledge deed (Nur, 2023).

A deed is a proof letter, a writing that is signed and intended to prove the truth of what is stated in it (Nazhir, 2025). A waqf pledge deed is an official document drawn up by an authorized official, which sets out the conditions for granting a lien on waqf assets. This document regulates the terms and conditions governing the use of waqf assets as collateral in certain transactions while maintaining the religious and legal principles associated with waqf. The importance of a waqf lien deed is to ensure legal clarity, protect the interests of the waqif, and maintain the integrity and proper use of the waqf assets used as collateral.

Legal certainty in waqf in the absence of a Waqf Power of Attorney Deed made by the Waqf Power of Attorney (PPAIW) is unclear and vulnerable to various legal problems. Without this deed, there is no official evidence to validate the intentions and actions of the waqif (the person who endows the property), and no records that specifically regulate the assets being endowed. This can lead to uncertainty regarding the ownership, management, and use of waqf assets, which in turn can lead to legal disputes in the future. The existence of a Waqf Deed of Authorization not only provides legal validity to the waqf but also establishes a transparent and orderly framework to ensure that the waqf is carried out according to applicable regulations and by the waqf's original intention. For this reason, the legal certainty of waqf is ensured through the following important steps.

1. Deed of Waqf Power of Attorney

The creation of a Waqf Power Deed by the Waqf Power Deed Official (PPAIW) is a crucial step. This document officially records the waqif's intentions, as well as the provisions governing the waqf property. This deed provides legally strong evidence of the validity of the waqf process.

2. Official Recording

After the creation of the Wakaf Power of Attorney Deed, this document must be officially recorded at the Land Office or authorized agency. This recording ensures that the waqf is legally recognized and clearly traceable.

3. Regulatory Compliance

Waqf is regulated by Law No. 41/2004 on Waqf and its implementing regulations. The existence of these regulations is important to ensure that the waqf process is conducted in accordance with the applicable legal principles.

4. Transparency and Accountability

In addition to the Waqf Deed of Authorization, the management of waqf assets by the Nazir Institution must also be transparent and accountable. The Nazir is responsible for ensuring that waqf assets are used in accordance with the waqif's intentions and objectives, as well as reporting their use periodically to the authorities and the public.

The laws and regulations on waqf have undergone significant improvements, promising great potential for the welfare and empowerment of the ummah if implemented properly in accordance with applicable regulations. However, the increasingly complex development of waqf also raises new challenges that need to be addressed immediately. One crucial aspect that needs to be regulated is the use of the Waqf Pawn Deed. The existence of a Waqf Pawn Deed is important to ensure legal certainty in the practice of waqf pawning, ensuring that the process of pawning waqf assets is transparent, legal, and in accordance with Sharia principles and applicable laws. Therefore, future regulations need to consider the improvement of more detailed regulations related to the Waqf Pawn Deed, as well as the strengthening of effective supervision and implementation mechanisms to maintain the integrity and purpose of each mortgaged waqf. Thus, waqf law in Indonesia can be more robust in providing benefits to society and strengthening trust in waqf institutions.

CONCLUSION

The implementation of waqf which is carried out verbally without a Waqf Pledge Deed is valid according to sharia and statutory regulations because it fulfills the elements of waqf, but its legal force is weak compared to waqf which is carried out with a written waqf pledge in the form of a Waqf Pledge Deed. Then the implementation of waqf verbally also does not fulfill the principle of legal certainty as proposed by Lon L. Fuller, namely that it is felt that there are still several formulations that have legal loopholes (not easy to understand) that can provide interpretations, there is no match between the regulations promulgated and their daily implementation. -day or its enforcement in real cases (there are still waqfs without a waqf pledge deed), and there are regulations that contradict each other, namely Article 1 number 3, namely that the waqf pledge can be made verbally, with Article 21 paragraph (1) of the Law Waqf which states that the waqf pledge is stated in the waqf pledge deed (writing).

Future arrangements regarding waqf regulations so that waqf in Indonesia has more legal certainty are linked to legal political theory, namely by examining the waqf legal regulations currently in force, namely the Waqf Law (*ius constitutum*) with the laws that are aspired to or hoped for. future (*ius constituendum*) as a result of the cultural change in Indonesia which originates from an oral culture to a written culture, regarding the Waqf pledge, the meaning or significance must be clearer than what is meant by the Waqf Pledge a statement of the will of the wakif which is spoken orally or as a statement. The will of the wakif is expressed in writing and stated in written form (Akta Pledge of Waqf) made by an authorized official (PPAIW); waqf is declared valid if it is implemented according to Islamic Sharia and the Laws and Regulations of the Republic of Indonesia; regarding the elements of waqf, namely wakif, nazir, waqf assets, waqf pledge, allocation of waqf assets,

waqf period, it would be advisable to add a deed of waqf pledge (for the sake of legal certainty) to the waqf elements because it is an important substance in the waqf; it is necessary to add the nazir's rights, obligations, authority and prohibitions in the waqf laws and regulations as guidelines for the nazir in carrying out his duties; providing training and selection for Nazirs and waqf-related institutions; order is needed regarding the administration of waqf assets.

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