

IMPLEMENTATION OF WAQF LAND REGISTRATION AND LEGAL IMPLICATIONS (STUDY ON POTENTIAL AND UTILIZATION IN EAST LOMBOK)

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Abstract: *In East Lombok there are many transition and registration of land rights of waqf. Data on the Office of the Ministry of Religious Affairs of East Lombok Regency, the number of waqf land which is already certified area of 195,291 M2, then the land of endowment which already has the deed of pledge waqf but not certified 715.039 M2 and waqf land which has not AIW / APAIW of 28.258 M2. The purpose of this research is to know the implementation of registration and transfer of waqf land in East Lombok regency, due to law of registration and waqf land acquisition in East Lombok regency and to know the factors influencing the implementation of the registration and transition of waqf land in East Lombok regency. The results showed that the implementation of registration and transfer of waqf land in East Lombok Regency was guided by waqf regulation. The consequence of law of registration and transfer of waqf land in East Lombok Regency is to guarantee legal certainty and protection for the parties. Factors affecting the registration and transition of waqf land in East Lombok Regency consist of internal factors and external factors.*

Keywords: *registration, land waqf, legal implications*

I. INTRODUCTION

Land in human life has a very important role because the land is a source of prosperity, prosperity and life. In addition, the land has a close relationship with humans because the land has economic value for human life and is a natural resource for God's creation in the world. Land in the juridical sense is the surface of the earth. While the right to land is the right to a certain part of the earth's surface, which is bounded, two-dimensional with length and width.¹

Provisions on the obligation of the Government to carry out land registration throughout the territory of the Indonesian republic shall be regulated in Law No.5 of 1960 Article 19 of the Basic Agrarian Law namely:²

¹ Sahnan, *Indonesian Agrarian Law*, (Malang: Setara Press, 2016), p. 6

² Urip Santoso, *Registration and transfer of land rights*, (Jakarta : Kencana Prenada Media Group, 2010), p. 3.

1. To ensure legal certainty by the Government there is a registration of land throughout the territory of the Republic of Indonesia in accordance with the provisions stipulated by government regulations.
2. The registration referred to in paragraph 1 of this article includes:
 - a. Measurement, mapping, and land-keeping.
 - b. Registration of land rights and the transfer of such rights
 - c. The provision of letters of proof of rights, valid as a powerful evidentiary instrument.
3. Land registration shall be carried out in view of the state and society, the need for socio-economic traffic and the possibility of its operation, in consideration of the Minister of Agrarian Affairs.
4. The Government Regulation shall be subject to the costs associated with the registration referred to in paragraph 1 above, provided that the people unable to be exempted from payment of such fees.

In the provision of Article 9 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration mentioned object of land registration include:

- a. Plots of land with ownership rights, use rights, use rights and use rights;
- b. Land rights management;
- c. Waqf land;
- d. Property right of apartment unit;
- e. Mortgage right;
- f. State Land.

The transfer of land rights can also be obtained by way of Waqf based on Law No. 41 of 2004 on Waqf. In Article 1 of Law Number 41 Year 2004 regarding Waqf described Waqf is a wakif legal act to separate and/or hand over some of his property to be exploited forever or for a certain period in accordance with his interests for the purposes of worship and/or general welfare according to sharia. Representation of land owned by a person or a legal entity by separating some of his wealth for public purposes in accordance with Islamic religious teachings.³

Basically according to Islamic Law the existence of Waqf is considered valid if it has fulfilled 4 (four) pillars namely:⁴

1. The presence of *wakif* (the person who donates).
2. There is a treasure or something that is represented (*maukuf*).
3. There is a place where the treasure is represented (*mauqul alaihi*).
4. *Akad*/contract (statement of transfer of Waqf property).

Based on Article 37 of Government Regulation Number 42 Year 2006 concerning the Implementation of Law Number 41 Year 2004 regarding the endowment to mention the institution or anyone who is entitled to become the Officer of Pledge of Waqf Pledge (PPAIW):

1. PPAIW Waqf property is not moving in the form of land is Head of KUA.
2. PPAIW movable Waqf property other than money is the Head of KUA and/or other officials appointed by the Minister.
3. PPAIW Waqf property in the form of money is the lowest official of Sharia Financial Institutions at the level of Section Head of LKS appointed by the Minister.

³ Arba, *Indonesian Agrarian Law*, (First edition, Jakarta: Sinar Grafika: Jakarta, 2015), p. 146

⁴ Ministry of Religious Affairs, *Land Soil Potential and Problems*, (Jakarta,1980), p. 11

4. The provisions as referred to in paragraph (1), paragraph (2) and paragraph (3) do not close the opportunity for wakif (the person who donates) to make the deed of pledge of waqf before the Notary.
5. Notary Requirement as the Wrap Pledge Deed Maker is stipulated by the Minister of Religious Affairs of the Republic of Indonesia.

PPAIW is obliged to receive pledges from the *wakif* (the person who donates) and submit them to *nadzir* as well as to supervise the sustainability of representatives, who are appointed and dismissed by the Minister of Religious Affairs.⁵ When we observe the development of Islam especially in Indonesia, then one aspect that cannot be ignored is about the role of waqf. By separating part of his property in the form of land of property and institutionalizing it forever into the land of "social Waqf", the waqf devoted to the interests of worship or other public purposes in accordance with the teachings of Islamic law.⁶ The purpose and objective of representation is what has been stated in the deed of pledge of waqf.

Should there be any mistake or deviation from the intention of the representation itself upon the prior written approval of the Minister of Religious Affairs,⁷

1. Because it is no longer appropriate with the purpose of waqf.
2. Because of the public interest.

In East Lombok there are many transition and registration of land rights of waqf. Data on the Office of the Ministry of Religious Affairs of East Lombok Regency, the number of Waqf land which is already certified area of 195,291 M2, then the land of endowment which already has the deed of pledge Waqf but not certified 715.039 M2 and Waqf land which has not Ber AIW/APAIW of 28.258 M2.⁸ Thus, it does not gain extensive knowledge of rather detailed cases of waqf such as the transition of land rights and the registration of land rights until the issuance of land title certificates to ensure legal certainty of the land rights. So as not to cause a dispute related to the land rights and the allocation.

Based on the above description, it can be formulated the following problems, namely: 1) How the implementation process of registration and transfer of land rights of Waqf in East Lombok regency? 2) What is the legal effect on the implementation of registration and transfer of Waqf land rights in East Lombok Regency? 3) What factors affect the process of registration and transfer of land rights of Waqf in East Lombok?

The type of research used by the authors in conducting this study and research is the Normative Empirical legal research using the approach approaches legislation, Conceptual Approach, Sociological Approach. By using Qualitative Descriptive analysis and Quantitative analysis.

⁵ Rachmadi Usman, *Waqf Law in Indonesia*, (Jakarta: Sinar Grafika), 2013, p. 70

⁶ Boedi Harsono, *History of the Basic Agrarian Law, its contents and explanations*, Revised edition volume I, (Jakarta: Jambatan, 2008), p. 348

⁷ Soedharyo Soimin, *Status of Rights and Land Acquisition*, (Jakarta: Sinar Grafika, 2004), p. 66

⁸ Data of the Office of the Ministry of Religious Affairs of East Lombok on June 12, 2017

II. RESULTS AND DISCUSSION

2.1 Implementation of Registration and Transfer of Right to Waqf Land in East Lombok Regency

The existence of Waqf in Indonesia has become part of the Indonesian legal system which has been made a positive law. Specifically concerning the representation of the land, there are uniqueness in its implementation where in the implementation is not apart from the tasks of remembering the object of the object is the land.⁹

Waqf land registration in East Lombok regency still refers to Law no. 41 of 2004 on Waqf and its implementing regulation namely Government Regulation no. 42 of 2006. In Article 38 of Government Regulation no. 42 of 2006 mentioned registration of immovable property of Waqf in the form of land based on Deed of Waqf Pledge or Deed of Substitution Deed of Waqf Pledge.

The administrative requirements in the land registration of Waqf are mentioned in Article 38 paragraph (2) of Government Regulation no. 42 of 2006 as follows:

- a. Land titles certificate of title to the corresponding apartment units or other proof of land ownership.
- b. Statement from the concerned that the land is not in dispute, case, confiscation and not guaranteed known by the Village Head or *Lurah* or other equivalent designations reinforced by the local sub-district head.
- c. Permit from the competent authority in accordance with the laws and regulations in respect of its land obtained from government agencies, local governments, State-Owned Enterprises/BUMN and village governments and or other titles at the same level.
- d. License from the land official if in the certificate and the decision on the granting of his /her right is required the release/transition permit. Management licenses or property rights in case of rights are required for a disposal/transition permit. Management or ownership permit in the case of building rights or use rights which are represented above the right of management or property rights.
- e. License from the right holder of management or ownership rights in the case of building rights or use rights which are represented above the right of management or property rights.

In East Lombok regency, the registration of Waqf land shall be conducted by PPAIW on behalf of Nadzir concerned by applying for a Waqf land registration to the Head of the National Land Office of East Lombok Regency no later than 7 (seven) days after the Deed of Waqf's Accomplishment is conducted in the presence of PPAIW. In applying for the registration of Waqf land to the Head of the National Land Office of East Lombok regency. There are several things that should be included in the application include:

- a. Land certificate concerned
- b. Deed of Pledge of Waqf made
- c. Letters of approval from *Nadzir* Office of Religious Affairs

After the application letter for land awareness land submitted by the local PPAIW received by the Head of the National Land Office in this case the Head of the National Land

⁹ Muammar Alay Idrus, "Legitimacy, Legal Certainty and Legal Protection for Undocumented Representation (Case Study of Land Acquisition Practices in Kecamatan Sukamulia)". *Journal of IUS (Caian law and justice)* 5.1 (2017). p. 31. http://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/342/pdf_33, accessed November 13, 2017.

Office of East Lombok Regency and all letters that must be submitted in relation to the proposed petition is considered complete, the Head of the National Land Office East Lombok records the corresponding Waqf land on the land and certificate books.

However, if the land in question is not registered in the local Land Office of the Regency or there is no certificate yet, the recording of the Waqf land must be suspended. And the recording is only done after the recorded land is recorded in the land book and the certificate is issued on behalf of the *wakif* as the holder of the old right (before the land is represented).

Preparation process in the conduct of land ownership rights such as starting from the collection of materials administrative requirements that must always be taken as well as in the implementation of pledge of waqf. The materials of the administrative requirements are as follows:

1) Certificate of Property

If the certificate of ownership has not been owned then it may be replaced with other proof of ownership of the land. Such a requirement is necessary as evidence that the land to be reproduced is really his property. This provision recalls the nature of immortality and eternity attached to the waqf institution, because the nature of the rights to the land which is hereditary, fulfilled and wrestling is the right of property, the right to the land that can be represented. In addition, the above evidence of ownership is required as a firm affirmation of land rights. Given the assertiveness of this right, it is hoped that it will be able to deny claims from others claiming or claiming that the land is their due.

2) The certificate shall not be subject to dispute and imposition

This certificate is indispensable in order to provide clarity that the represented land is absolutely free for the transfer of title to the other party because it is not bound by a seizure (in dispute) and charges or is guaranteed. With the freedom of the land, the implementation of waqf is guaranteed its security from disturbances that can threaten its existence. Such certificate must be requested by the *wakif* candidate to the Village Head or *Lurah* who is in the area of land to be represented and also must be strengthened and known by the local sub-district head. Head of Village or Village Head is the head of the region where every problem of land is in the management.

In the transition of land rights of waqf there are some institutions that must be contacted by prospective *wakif*, in order to obtain administrative requirements that must be met namely:¹⁰

1. Head of Village or Village Head
2. Religious Affairs office
3. District Land Office
4. Witnesses (Minimum of 2 persons)
5. Candidate *Nadzir* (Waqf property manager)

Wakif includes individual *wakif*, organization and legal entity. Within the provisions of Article 7 of Law no. 1 year 2004 regarding endowments, individual *wakif* as referred to in Article 7 letter a can only perform a waqf if it meets the requirements:

1. Adult

¹⁰ Result of Interview with Mr. Makinuddin, ME as Employee of Religious Affairs Ministry Office of East Lombok Regency, Date 12 June 2017.

2. Sensible
3. Not hindered by legal action

Submission made before the Head of the Office of Religious Affairs (KUA) of the local Sub-District as the Officer of the Pledge of Pledge of Waqf (PPAIW) must be accompanied by the submission of various administrative requirements such as land title certificate or other land title proof and certificate from the Village Head or Local village chief.

2.2 *Due to the Law of Registration and Transition of Waqf Land in East Lombok Regency*

For Waqf land that has not been AIW or not yet certified means the transfer of land rights Waqf is still done under the hands but already in the data by the Office of the Ministry of Religious Affairs East Lombok.¹¹

According to information from one of the Respondents in Tojang Hamlet, Lendang Nangka Village, Kec. Masbagik, Kab. East Lombok is that the land that was represented by his parents for the construction of the Mosque with Area of 1000 M2 (1 acre) is right in front of his home gardening. In acceding to his land his parents sought the consent of his sons as the heirs of the land. At the time of donation the land was attended by the Head of RT, Head of Village and Head of the local Village so get a Certificate from the Village Head.

The land that is represented has not been registered to the local Religious Affairs Office (KUA) on the grounds that the heirs of the wakif do not yet know that the land they represent should be registered to the Office of Religious Affairs (KUA) to obtain the Waqf Deed of Auction.

According to the interview with Mr. Makinuddin, ME as an employee of the Office of the Ministry of Religious Affairs of East Lombok Regency that Waqf land that has AIW same status with Waqf land that has been certified, meaning that Waqf land is not that easy to be withdrawn or changed its use because in Deed of Waqf Deed has been loaded Waqf land status. As for the Waqf land that has not been AIW or not certified so easily dictated by other parties or previous land owners or could be the land is converted without the knowledge of the Office of Religious Affairs and the land remains a land of waqf.

The transfer of rights to land whether or not AIW has not been certified or that has been AIW or not certified is considered valid as a Waqf land, because the *wakif* concerned already intends and surrender the land as Waqf land.¹²

The purpose of land registration is anything to be achieved in the implementation of land registration. Muhammad Yamin Lubis and Abd. Rahim Lubis, argued that the purpose of land registration referred to Government Regulation no. 10 of 1961 is for the legal certainty of "*Rechtscadaster*" and its land includes: customary law ex-land, conversion land and land born due to government decree.¹³

The transfer of land rights of Waqf in East Lombok regency has done registration of land title certificate. Prior to registering land rights at the Land Office of East Lombok Regency,

¹¹ Result of Interview with Mr. Makinuddin, ME as Employee of Religious Affairs Ministry Office of East Lombok Regency, Date 12 June 2017.

¹² Interview with Mr. Makinuddin, ME as an Employee at the Office of the Ministry of Religious Affairs of East Lombok, on 12 June 2017.

¹³ Moh. Yamin Lubis dan Abd. Rahim Lubis, *Law of Land Registry*, (Bandung: Mandar Maju,, 2008), p. 167

Wakif and *Nadzir* first registered the transfer of land rights to the local Religious Affairs Office (KUA). After that the parties' *yaiti Wakif* and *Nadzir* convey the purpose and utilization of Waqf land in the Deed of Pledge Waqf in front of the Head Office of Religious Affairs (KUA) local as Official Pledge Deed Achievement (PPAIW).

Although Government Regulation no. 24 of 1997 has affirmed that the right to protected land and guaranteed legal certainty is the right to land that has been registered in the Land Office, but land rights that have not been registered under the provisions of Law no. 5 of 1960 Jo Government Regulation no. 24 Year 1997 can still be recognized, to the extent that it can be proven its ownership and control without any claim by / from other parties.

Based on the interview with Mr. Ruslan as Head of Land Registration Land Office of East Lombok Regency stated that the implementation of registration of transfer of land rights of waqf, the applicant can be represented by PPAIW not later than 7 (seven) days since the signing of the deed of the Waqf pledge.¹⁴

2.3 Factors Affecting Registration and Transfer of Waqf Land In East Lombok

2.3.1 Internal factors

In the implementation of registration and transfer of Waqf land conducted by the Office of the Ministry of Religious Affairs of East Lombok Regency there are several factors that support the implementation of the transition and registration of Waqf land. As follows:¹⁵

- 1) The Office of the Ministry of Religious Affairs provides services and information on the transition and registration of Waqf land to the community through the Office of Religious Affairs (KUA) of each District Office.
- 2) In the event of a dispute in its implementation, it can be handled by an employee of the Ministry of Religious Affairs and the local National Land Office appointed by the consensus deliberation, in case the parties to the dispute cannot be resolved through the deliberation process, it is not possible to settle through the court proceedings.
- 3) In the case of an incomplete rights base, officials at the local National Land Office shall furnish it with blanks of rights and unilateral declarations applicable as a substitute for the lesser basis of the right to be filled by the applicant and reinforced by witnesses and Village Heads for the support of the completeness its rights.

2.3.2 External Factors

As for some positive opinions from respondents to the transition and registration of land rights of Waqf namely:

- 1) Because people are aware in accordance with the provisions of Islamic religion in charity for the welfare of the people. Such a way is one of them done with waqf especially land waqf.
- 2) The community also agrees to follow the provision for Waqf in front of the Head of KUA as PPAIW in accordance with the Laws and Regulations. They consider the importance of the wisdom and registration of Waqf land to obtain legal certainty of the land rights.

¹⁴ Results of Interview with Mr. H. Ruslan as Head of Sub Section of Land Registration at the National Land Office of Kab. East Lombok, on 19 June 2017.

¹⁵ Result of Interview with Mr. Makinuddin, ME as Employee of Religious Affairs Ministry Office of East Lombok Regency, Date 12 June 2017.

- 3) In the endowment of the land belongs also given freedom to *Wakif* to determine who *Nadzir* will manage the Waqf land.
- 4) From this study also, some respondents agreed or did not object to the change of Waqf land empowerment to the more useful if the waqf is not working anymore or not used in accordance with the original purpose in the agreement Waqf in the presence of PPAIW.
- 5) Some respondents also agreed to supervise Waqf land. The goal is that the Waqf land is used according to the original purpose in the Deed of Waqf Achievement to ensure the utilization of Waqf land and prevent deviations in the utilization of Waqf land.

III. CONCLUSION

Based on the results of research and discussion above, the author can draw conclusions as follows:

1. In the registration and transition of Waqf land in East Lombok Regency is guided by Law no. 41 of 2004 on Waqf and its implementing regulation is Government Regulation No.42 of 2006. Although in field research there are still people who have not registered the Waqf land to the authorized institution based on legislation on Waqf and only done in front of the Village Head.
2. The legal effect of the registration and transfer of Waqf land in East Lombok is to ensure legal certainty and protection for the subject and object in the transfer of land rights of the Waqf.
3. Factors affecting the registration and transition of Waqf land in East Lombok Regency consist of supporting factors and constraints faced by the authorized institution as well as by the society it.

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