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Legal Provisions on Unregistered Waqf Pledge Deeds that Exceed the Registration Period

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Abstract: The Waqf Pledge Deed (AIW) must be registered immediately after its issuance by the Waqf Pledge Deed Official (PPAIW), delays in registering AIW to the Land Office can trigger conflicts between the heirs of the wakif and the nazir or other interested parties. The purpose of this research is to find out the legal provisions of the unregistered waqf pledge deed exceeding the registration period as stated in PERMEN ATR/BPN Number 2 of 2017 and to find out the legal protection of nazir for the unregistered waqf pledge deed to the Land Office. The method in this research is Normative Law, using a statutory approach, with data sources in the form of primary legal materials and secondary legal materials, collected through literature studies, then analysed qualitatively. The result of this research is that with the knowledge of the legal provisions of the waqf pledge deed and the existence of better legal protection for Nazir, the management of waqf land can run optimally, ensure the benefits of waqf remain sustainable for the benefit of the people, and prevent the loss of waqf assets due to legality issues.

Keyword: Waqf Pledge Deed, Land Registration, Law

INTRODUCTION

The Waqf Pledge Deed (AIW) is an official document that serves as legal evidence of the wakif's statement in handing over his property as waqf. This deed is made before a Waqf Pledge Deed Official (PPAIW) and must be registered with the Land Office as part of the legalisation and administrative process (Fahmi & Sugiarto, 2018). This registration is important to ensure that the status of waqf land has legal certainty and avoid disputes in the future. However, in practice, there are a number of cases where AIW's are not registered with the Land Office within the time limit set by regulation. This raises legal issues related to validity, protection of the rights of related parties, and implications for the sustainability of waqf land management.

Normatively, AIW registration with the Land Office has been regulated in various regulations, including Law Number 41 of 2004 on Waqf and Government Regulation Number 42 of 2006 on the Implementation of the Waqf Law. In this regulation, the registration of waqf land at the Land Office must be done after the AIW is issued by the

PPAIW (Waskur, 2022). The registration aims to provide legal certainty to the status of land that has been pledged as waqf and to prevent the possibility of a lawsuit or claim from other parties that could interfere with the designation of waqf land. However, when the deed is not registered immediately or exceeds the specified time limit, various legal issues can arise, ranging from unclear ownership status, potential claims from heirs, to the possibility of using the land for other purposes outside the waqf's intention.

One of the legal consequences of not registering the AIW with the Land Office within the stipulated time limit is that the legal status of the waqf land does not have full legal force. In the context of land administration, land that has not been registered as waqf land at the Land Office is still considered as the wakif's private property, so it still has the potential to be transferred, inherited, or even traded (Harnides & Hadana, 2021b). This contradicts the basic principle of waqf that requires waqf assets to be permanent. This is contrary to the basic principle of waqf, which requires that waqf assets are permanent and cannot be transferred to other parties other than for the benefit of the waqf itself. The absence of registration can also have implications for the nazir's difficulty in managing and developing waqf land, especially in terms of land utilisation for social, economic, or religious purposes.

In certain cases, delays in AIW registration with the Land Office can also trigger conflicts between the wakif's heirs and the nadzir or other interested parties. Heirs who feel they have rights to the land may file a lawsuit to cancel the waqf, arguing that legally the land is still registered under the wakif's name. On the other hand, the nazir as the waqf manager will have difficulty in maintaining the status of the waqf land if there is no official document proving that the land has been legally endowed. The AIW registration process is crucial in preventing conflicts and providing legal protection for the status of waqf land (Tinora, 2018).

In the civil law aspect, the delay in AIW registration can also have implications for the nazir's weak position in managing waqf assets. For example, if the nazir wants to utilise waqf land for the construction of public facilities such as mosques, schools, or hospitals, they often need valid documents to apply for construction permits or obtain financial assistance from third parties (Ismail, 2019). If the AIW has not been registered, the land cannot be officially recognised as waqf land, which ultimately hinders the management process. In addition, in terms of agrarian law, the unregistered status of land can lead to uncertainty in land use rights, especially in terms of licensing, utilisation, or cooperation with other parties. In the perspective of Islamic law, the non-registration of AIW to the Land Office does not necessarily invalidate the sharia status of waqf, because in Islam, waqf is considered valid if it fulfils the basic requirements, namely the existence of wakif (waqf giver), the existence of mauquf (waqf property), the existence of mauquf 'alaih (waqf beneficiaries), and the existence of a waqf pledge made with sincere and irrevocable intentions. However, although sharia waqf remains valid, in the national legal system, AIW registration remains an administrative requirement that must be fulfilled in order for waqf to be officially recognised and have stronger legal protection (Harnides & Hadana, 2021a).

To overcome the legal problems caused by the delay in AIW registration, several steps can be taken. *First*, there is a need for wider socialisation to the public on the importance of registering waqf land with the Land Office. Many cases of delays or omissions in registration occur due to the wakif's or nazir's lack of understanding of the applicable legal procedures (Harnides & Hadana, 2021b). *Second*, a more flexible mechanism for AIW registration is needed, such as dispensation or extension of the registration deadline under certain conditions. *Third*, strengthening the role of the Waqf Pledge Deed Official (PPAIW) in supervising and ensuring that every AIW issued is immediately registered with the Land Office. The PPAIW should not only act as a registrar, but also as a facilitator who assists the administrative process so that the waqf can have full legal force.

In terms of regulation, the government could issue stricter policies to ensure that all waqf land is officially registered. For example, by establishing administrative sanctions for nazir's or waqifs who do not immediately register AIW, or by requiring registration as a legal requirement for nazir's to manage waqf land. This can prevent potential legal disputes and provide more optimal legal protection for waqf land (Ismail, 2019).

METHOD

This research uses normative legal research. In this research, a *statutory approach* is used. The data processing technique uses a qualitative descriptive method, which will then be arranged systematically. The data sources of this research consist of primary legal materials and secondary legal materials; laws and regulations are primary legal materials, and secondary legal materials consist of scientific papers, articles, journals, books. Data collection techniques are carried out by literature study. To reach a conclusion, this research uses qualitative data analysis techniques based on the perspective of legal science.

Normative law in the context of legal provisions on unregistered waqf pledge deeds that exceed the registration period relates to legal certainty and legal protection of waqf land. Based on Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning the Implementation of Waqf, every waqf land must be registered with the Land Office to obtain a certificate as valid legal evidence. Further registration provisions are regulated by PERMEN ATR/BPN Number 2 of 2017, this registration aims to prevent disputes, guarantee that land that has been endowed cannot be transferred, and ensure waqf management in accordance with its original purpose. If the AIW is not registered within the prescribed time limit, the waqf land is at risk of facing unclear legal status, which can lead to ownership conflicts and misuse of waqf assets. In normative law, the rules regarding waqf land registration are imperative, meaning that they must be complied with in order for waqf rights to be legally protected. Although religiously waqf remains valid if it fulfils its pillars and conditions, in the perspective of positive law, AIW registration is an important requirement to ensure the sustainability of the benefits of waqf land legally and administratively.

RESULT AND DISCUSSION

The legal status of a Waqf Pledge Deed (AIW) that is not registered with the Land Office beyond the time limit as stipulated in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (Permen ATR/BPN) Number 2 of 2017 concerning Procedures for Registration of Waqf Land has serious legal implications, especially related to legal certainty and protection of waqf property (I Gusti Ayu Eviani Yuliantari et al., 2023). The regulation states that waqf land registration must be carried out within a maximum period of 30 (thirty) days from the issuance of the Waqf Pledge Deed by the Waqf Pledge Deed Official (PPAIW). This aims to ensure that waqf land immediately has a clear legal status and is recognised in the national land system, so as not to cause legal uncertainty that can lead to ownership disputes or misuse of waqf land by irresponsible parties.

If the AIW is not registered within the prescribed time limit, the waqf land does not have a waqf certificate as proof of legally valid land rights. Although religiously the land remains waqf status if it has fulfilled the pillars and conditions, in the perspective of agrarian law, its existence has not received adequate legal protection. The absence of a waqf certificate can cause problems in the future, such as ownership claims from other parties, overlapping land rights, and the potential for misuse of waqf land that is not in accordance with its original designation (Siregar et al., 2022). Without registration, waqf land is still recorded as the private property of the waqif, and thus at risk of being withdrawn, sold, or

inherited by his heirs, which in turn has the potential to eliminate the function of waqf as an asset that must be managed for the benefit of the people. Delays in AIW registration with the Land Office can also have administrative and legal implications for the nazir as the waqf manager.

In Indonesia's land law system, every form of transfer of land rights, including waqf, must be recorded and registered in order to obtain strong legal recognition. Waqf land registration serves not only as a form of administration, but also as a legal protection effort to ensure that waqf land continues to function in accordance with its original purpose (AKSINUDDIN, 2022). With a waqf certificate, all forms of use of the land must be in accordance with the regulated provisions, and cannot be transferred or sold for private interests. If the AIW is not registered in accordance with the provisions stipulated in Permen ATR/BPN Number 2 of 2017, then the land is still recorded as ordinary land in the national land system and does not get special status as waqf land. As a result, land that has actually been pledged as waqf may be at risk of legal problems in the event of a lawsuit or claim from another party, especially in situations where there is no official evidence of its waqf status (Sriwati, 2019).

Delay in AIW registration to the Land Office does not automatically invalidate the status of waqf from the perspective of Islamic law, because waqf remains valid if it fulfils the elements of sharia, such as the existence of waqif, waqf property, beneficiaries (*mauquf 'alaih*), and a legally performed waqf pledge (Pasandaran, 2021). However, in the context of positive law in Indonesia, delays in registration can result in the status of waqf land becoming legally unrecognised, making it difficult to manage and prone to disputes. The registration of AIW to the Land Office within a predetermined time limit is a crucial aspect that must be considered by all parties involved in the waqf process.

To overcome the problems arising from the delay in AIW registration, a clear legal approach is needed, both in the form of administrative policies and mechanisms for resolving waqf land disputes. One solution is to apply for late registration of waqf land by including supporting documents that clarify the status of the land, including the AIW that has been made previously (Sukananda, 2021). Nazir's who are responsible for waqf land must be proactive in taking care of the legalisation of waqf land in order to obtain optimal legal protection. The government, through the Indonesian Waqf Board (BWI) and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), also needs to strengthen supervision of the waqf land registration process to avoid delays that could harm the interests of the ummah.

The legal protection of nazir's against the Deed of Pledge of Waqf (AIW) that is not registered with the Land Office is an important issue in the management of waqf assets. As the party responsible for the maintenance, management, and development of waqf assets, the nazir has a legal obligation to ensure that waqf land is registered in accordance with applicable laws and regulations (Kumara et al., 2021). In the event that the AIW is not registered, the nazir may face various legal risks, both in terms of land administration and in the context of the protection of the waqf assets themselves. Regulations that provide legal protection for nazirs in this situation become very important in order to avoid disputes, maintain the sustainability of waqf management, and ensure that waqf continues to function in accordance with its original purpose.

Legally, the nazir acts as the manager of waqf assets as stipulated in Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning the Implementation of Waqf. The regulation states that one of the obligations of the nazir is to take care of the registration of waqf land to the Land Office in order to obtain a waqf certificate as proof of legal rights (Sondakh, 2021). However, in practice, not all AIW's are immediately registered with the Land Office within the specified time limit, as stipulated in

the Minister of Agrarian and Spatial Planning/National Land Agency Regulation (Permen ATR/BPN) Number 2 of 2017 which stipulates that waqf land registration must be done no later than 30 (thirty) days after the AIW is issued. If this registration is not done on time, the waqf land risks facing various legal issues, including unclear ownership status and potential disputes (Loupatty et al., 2019).

In the condition that AIW is not registered, the nazir still has legal protection in several aspects, both in terms of Islamic law and positive law. In the perspective of Islamic law, the status of waqf remains valid as long as it fulfils the pillars and conditions, namely the existence of waqif (the party who endows), waqf assets that have sustainable value, beneficiaries (*mauquf 'alaih*), and waqf pledges made with clear intentions (Alwajdi, 2021). Thus, even though the waqf land has not been administratively registered at the Land Office, the nazir can still carry out its duties as a waqf manager based on sharia principles. However, from a positive law perspective, the legal protection of the nazir may become more complex as the absence of a waqf certificate may open a gap for other parties to sue or claim the land.

One form of legal protection that can be given to the nazir in this condition is through administrative recognition of the status of the existing waqf. If the AIW has been made by the Waqf Pledge Deed Official (PPAIW) but has not been registered, the nazir can submit a late application for registration to the Land Office by including relevant supporting documents (Atikah, 2022). In many cases, the Land Office can still accept the registration of waqf land past the deadline, provided that the documents included are complete and there is no ongoing ownership dispute. This step can be a solution for nazir's to still get legal recognition for the waqf land they manage, while avoiding potential disputes in the future.

Legal protection for nazirs can also be strengthened through the role of the Indonesian Waqf Board (BWI) as an institution that has the authority to guide and supervise waqf management in Indonesia. BWI can play a role in assisting nazir's who experience difficulties in the process of registering waqf land, either through legal advocacy or by providing recommendations to the Land Office to continue to accept registration even though it exceeds the specified time limit. In addition, BWI can also provide assistance to nazirs in terms of preparing waqf administrative documents to avoid delays in the registration process in the future (Irfan & Marilang, 2021).

In the event of a dispute resulting from an unregistered AIW, the nazir can apply for legal protection through the judiciary. Based on Article 62 of the Waqf Law, waqf-related disputes can be resolved through religious courts, which have the authority to resolve legal issues related to waqf (Fathoni, 2021). If a party tries to take over or claim the waqf land due to the absence of a certificate, the nazir can file a lawsuit to the religious court by including relevant evidence, such as the AIW that has been made by the PPAIW, supporting documents from BWI, and evidence that the land has been used in accordance with the purpose of the waqf.

In order to strengthen the legal protection of nazirs, it is necessary to improve the administrative system of waqf land registration in Indonesia. One of the steps that can be taken is to provide convenience in the AIW registration process, including the simplification of administrative procedures so that nazir's can more easily manage the legalisation of waqf land. There needs to be wider socialisation to nazir's about the importance of waqf land registration to avoid delays that can harm the interests of the ummah (Maufiroh et al., 2021).

CONCLUSION

The legal status of a Waqf Pledge Deed (AIW) that is not registered with the Land Office beyond the time limit as stipulated in the Regulation of the Minister of ATR/BPN Number 2 of 2017 creates administrative and legal problems for waqf management. Although in Islamic law waqf remains valid as long as it fulfils its pillars and conditions, in the positive

legal system, delays in registration can cause legal uncertainty and open up opportunities for ownership disputes.

Legal protection for nazir's in this situation can be done through late registration mechanisms, advocacy from the Indonesian Waqf Board (BWI), and dispute resolution in religious courts if there are claims from other parties. Land administration reforms, such as simplification of waqf land registration procedures and socialisation to nazir's on the importance of compliance with registration rules, are also necessary to avoid future legal problems.

With better legal protection, waqf land management can run optimally, ensuring the benefits of waqf remain sustainable for the benefit of the people, and preventing the loss of waqf assets due to legality issues. It is important for nazir's to understand and comply with the provisions of waqf land registration to avoid potential legal risks that could harm the sustainability of waqf.

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