

RE-CERTIFICATION ON WAQF LAND RIGHT ANNULLED BY COURT RULING IN SUKOHARJO REGENCY

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ABSTRACT

Land Right Certificate, as it is asserted in Basic Agrarian Law, is strong evidence. It means that as long as there is no other proves state it's an untruth, the information in the certificate is deemed valid and does not need supplementary evidence. Referring to the definition of the certificate, it can be known that land Right Certificate will provide legal certainty for the land right holder related to the type of land right, subject of the right, and the object of the right. The purpose of the current study is to find out and to analyze the procedure of re-issuance of Waqf Land Right Certificate that had been annulled by the Court ruling. The type of research employed in the current study is an empirical legal approach. The current study employed a qualitative research method. The qualitative study refers to a set of research that results in descriptive analysis data stated by the respondents in a written or spoken form, or by the actual behaviors, which is studied as an entity. The respondents of the current study were those who were directly involved with the object of the study. In the present study, interviews were conducted to several respondents who provided information in regard to their knowledge. Based on the result of the study, it could be concluded that: firstly waqif and Nazir come to the Office of Religious Affairs (KUA) to apply for a new Waqf Pledge Deed from Waqf Pledge Deed Official (PPAIW) which then is used by the Land Affairs Office to issue Waqf Land Right Certificate. Second, the legal certainty emerges from the waqf land whose certificate is annulled by court ruling is that the land does not possess legal protection since it does not possess valid evidence.

Keywords: Re-Certification of Waqf Land Right

INTRODUCTION

1. Background

Land right is a right that provides authority to an individual who holds the right to utilize or to take benefit over land. This land right provides authority to utilize the relating land, as well as the water and the airspace for the interest that is directly associated with land utilization under the limitation of Basic Agrarian Law (UUPA) and other regulation.

Land right certificate, as it is asserted in Basic Agrarian Law, is strong evidence. It means that as long as there is no other proves state it's an untruth, the information in the certificate is deemed valid and does not need supplementary evidence. As strong evidence means that it is essential for the protecting legal certainty of the land right holder. Referring to the definition of the certificate, it can be known that land Right Certificate will provide legal certainty for the land right holder related to the type of land right, subject of the right, and the object of the right. There are various types of land rights, as it is regulated in UUPA, one of them is rights of ownership Thus, Land Right Certificate refers to a letter of evidence of land right that prevails as strong evidence. However, although land right certificate works as the evidence of land right, it cannot provides legal certainty of the right holder. It happens because any party who believe that they own a certified land, they can file a lawsuit to the Court.

The lawsuit on the issuance of Land Right Certificate emerge because the certificate is the proof of ownership of land right, the certificate is also one of state's administrative stipulation (beschiking). Therefore, the land right certificate is also a concrete and individual government's decision as the recognition of the land right of the right holder.

In settling the land dispute on a legally binding court decree or on a juridical defect in the issuance of Land Right Certificate, the government through the responsible authorities may annul the land right certificate.

In the current study, Sukoharjo Regency, as a region with a broad administrative area and with both agricultural and non-agricultural land, cannot be separated from the land right transaction or transfer, both to the registered or to the unregistered ones, one of the objects of land rights transfer is waqf.

One of the land right issues in Sukoharjo regency is related to the waqf land right certificate that is legally annulled by the religious court. Due to this annulment of the certificate, the land does not hold legal certainty because The Office of Religious Affairs (KUA) has not issued the new waqf pledge deed to substitute the old ones, to be registered in Land Affairs Office for the issuance of the certificate to ensure the legal certainty on the land.

2. Problem Statement

Based on the background above, an interesting issue to be discussed is:

How is the procedure of re-issuance of Waqf Land Right Certificate that had been annulled by the Court ruling?

3. The Purpose of The Study

Based on the background and the problem statement above, the purpose of the current study is to find out and to analyze the procedure of re-issuance of Waqf Land Right Certificate that had been annulled by the Court ruling.

RESEARCH METHODOLOGY

Term methodology refers to compliance with a certain method, systematic refers to be based on a certain system, while consistent refers to the absence of matters contradict a certain framework.¹ Through a research process, analysis and construction were made on the collected and processed data.²

This study is categorized as an empirical legal study. The empirical legal study refers to a study that, in addition to conduct library study by analyzing books, journals, and regulation, perform field research.³ The current study, in addition to focuses on the legal norms related to waqf in the legislation and literature, perform field research in the Office of Religious Affairs of Mojolaban subdistrict. It aimed to find out and to analyze the waqf pledge. Then the field research was also carried out in National Land Affairs Body of Sukoharjo Regency to find out and to analyze the issuance of waqf certificate. The method employed in that two sites was the interview.

DISCUSSION

Waqf issues nowadays do not only relate to Islamic field but also associate with the implementation of the agrarian function, accordingly, waqf as a religious institution can be used as one of means to develop religious life, especially for Islam community.⁴ In Islamic law, there is no specific provision that requires waqf land registration, even more waqf land certification due to in Islam, waqf practice has Deemed valid if it satisfies the principle and requirements, without requirements to satisfy the administrative requirement as required by Indonesian law in Law no 41 of 2004 on Waqf.⁵

Waqf is a legal act of Waqif to separate and / or surrender a portion of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and / or general welfare according to sharia.⁶

The use of waqf land as long as it does not change the allocation of waqf significantly as intended by waqif, especially if it is more productive value and still within the scope of public welfare. Problems that often occur are impure transfers or even cancellation of waqf.

The utilization of waqf land, as long as it does not significantly change the purpose of waqf determined by waqif, even more can be more productive and within the scope of common welfare. The issues that often arise is an impure transfer or waqf cancellation.

Essentially, the function of waqf land registration is to obtain legal certainty and protection on the waqf land. If the land certificate has been transferred on behalf of nazhir by the issuance of a waqf certificate, nazhir will obtain legal certainty and warranty regarding the waqf land. To ensure the legal certainty on waqf land right, UUPA has determined a land registration in the entire territory of the Republic of Indonesia, as it is stated in article 19 paragraph 1 of UUPA. It reads:

“In order to provide legal certainty, the land registration is carried out in the whole territory of the Republic of Indonesia and is done based on the government's regulation.” While, the procedure of registration of waqf land before Government Regulation no.28 of 1977 on Land Waqf prevails was done based on the Regulation of Minister of Religious Affairs no. 1 of 1978, it is stated that after waqf land is issued, the Waqf Pledge deed is issued by the relating PPAIW.

Article 3 of Law no. 41 of 2004 on Waqf state that, the pledged waqf cannot be canceled. Basically, the Waqf Pledge deed cannot be annulled unless there is something that can annul it. The Judge as the determiner of justice seeker should be able to make a ruling that is in accordance with the facts and is consistent with the prevailing law for the masalah of the disputing parties.

Law on Waqf state that waqf will be considered valid and legal if it had waqf pledge deed and been registered under the mechanism and prevailing regulation, in this case is under the Law no. 41 of 2004 on Waqf. The procedure of waqf land registration according to the prevailing law is :

- a. Has made a waqf pledge before the Waqf Pledge Deed Official (PPAIW), in this case, is local KUA officer. Furthermore, in Law no. 41/2004, waqf pledge is regulated and explained in the seventh section of article 17,18, 19, 20, and 21.
- b. After making waqf deed before the PPAIW, the next step is, in accordance to this law, PPAIW on behalf of Nazir register the waqf object to the authorized institution no more than 7(seven) days since waqf pledge deed is signed. This

¹ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, pp. 42.

² Soerjono Soekanto dan Mahmudji Sri, 2001, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, pp. 1.

³ Hariwijaya, M., and Bisri M. Djaelani, 2008, *Teknik Menulis Skripsi dan Thesis*, Hanggar Kreator, Yogyakarta, pp. 45.

⁴ Rachmadi Usman, *Hukum Perwakafan di Indonesia*, (Jakarta: Sinar Grafika, 2009), pp 119

⁵ Departemen Agama RI, *Fiqih Wakaf*, (Jakarta: Direktorat Pemberdayaa Wakaf, Dirjen Bimas Islam, Depag RI, 2006), pp. 21

⁶ Pasal 1 ayat (1) UU No 41 Tahun 2004 tentang Wakaf

is regulated in article 32. Regarding waqf object registration meant in article 32, PPAIW submits the copy of waqf pledge deed and the ownership documents and other related documents. As it is regulated in article 32, further, this provision is regulated in article 34, 35, 36, 38, and 39 of Law no. 41/2004 on Waqf.⁷

Regarding uncertified waqf land, The Law adheres to Islamic Law. In the past, waqf is considered valid by Islamic law if it has satisfied the requirement and the principles, regardless of the registration in the authorized institution. It happens because, indeed, in Islamic law, waqf land registration and record is not required.

In practice, Majority of Muslim in Indonesia make waqf without registration and record, consequently many of waqf land is abused because there is no authentic evidence showing that it is a waqf land. Therefore, some regulations on waqf are issued. The most recent regulation is Undang-Undang Nomor 41 Tahun 2004 tentang wakaf (Law no 41 of 2004 on Waqf). It provides legal certainty on the annulled waqf, this certainty, as stated by Gustav Radbruch, possess two kinds of legal certainty definition, legal certainty by law or legal certainty from the law. Law that manages to ensure many legal certainties in society is a useful law. Legal certainty by law namely, equity of law and law should be useful. While, legal certainty in law is obtained if the law is mostly in legislation.

Article 2 of Law no 41/2004 on waqf states that waqf is valid if it is performed in accordance with sharia. In explaining the law, it is stated that in order to create administratively ordered waqf to protect waqf object, Waqf law assert that waqf legal action shall be recorded and written in Waqf Pledge Deed (AIW) and is registered and is published, which the implementation is carried out under the manner regulated in law regulating waqf.

The annulment of Waqf Land Right Certificate by the Court Ruling makes the land does not possess evidence upon the right. Since it does not possess evidence on the right, the legal certainty upon the land is not guaranteed. If an individual possesses a right upon a land, he shall prove it by showing the evidence of land right. The evidence of land right is Land Right Certificate. If an individual cannot show the land right certificate, it may result in land dispute — for instance, land border disputes, or land overlap.

Based on the result of the study, the land whose certificate is annulled by court decree will lose its status as waqf land and return to the status as before it is registered as waqf land. The status of the land will return to be under Right of Ownership on behalf of Wakif's name, however the land right does not possess legal certainty and legal protection since it does not possess valid proof of ownership. National Land Affairs Body (BPN) as will not issue the old certificate after a right transfer occurs. Waqf is one of the processes of land right transfer. So, BPN cannot issue the certificate of right of ownership although the waqf certificate has been annulled by the court ruling. The certificate of right of ownership will be the archive of BPN.

Based on the explanation from The head of Infrastructure section of BPN of Sukoharjo Regency, to ensure legal certainty on land that does not possess legal ownership certificate, as in the waqf land whose certificate has been annulled. Based on the court ruling, the application is filed to the KUA of Mojolaban sub-district to obtain new AIW. As one of the requirements of the covenant in making AIW, the Law requires the Waqif and nazir to come before the PPAIW. However, if Waqif is prevented from coming, he/she should appoint his authority with the letter of authority witnessed by two witnesses. After AIW is issued, it is used to register in the Land Affairs Office so that its waqf certificate can be issued.

To re-issue the waqf certificate that has been annulled by the court decree, Waqif and Nazir come to KUA to prepare the making of AIW. In this preparation, the administrative requirement is gathered. After all waqf administrative requirement is satisfied, the waqif, along with Nazhir and the witnesses shall come before the Head of Local KUA whose status is as PPAIW to perform waqf pledge. The intention to make the waqf pledge should be followed by the submission of the completed administrative requirement. After PPAIW see that the requirements are completed, PPAIW allows wakif to make his waqf pledge to Nazir. The pledge should be made in spoken with sound and clear before PPAIW.⁸ Then, the pledge is read to Nazir before local PPAIW. The form and model of waqf pledge should be stated by waqif is universal and is determined by the Minister of Religious Affairs.⁹ The pronouncing of waqf pledge, both in spoken, or its translation in AIW should be seen and listened directly by the witnesses. If it isn't, the witness is considered invalid. Thus, it can be said that the pronouncing and translation of waqf pledge without witness makes waqf become s invalid In addition to being spoken, PPAIW will also translate the pledge to Waqf Pledge Deed. It aims to obtain authentic evidence of the implementation of waqf pledge making. In addition, AIW is used as the requirement to register the land in local land affairs office and as evidence when there is a dispute in the future. After the waqf pledge has been made and the making of waqf pledge deed is finished. Waqf is considered done and valid, also possess strong evidence. Thus, the existence of the land is guaranteed and protected. In order to strengthen it, the registration of waqf land should be done in local land affairs office to be recorded in the land book and possess the right evidence.

After waqf pledge deed is finished in accordance with the procedure above,, the waqf land should be registered to the local land affairs office. The registration should be performed by PPAIW on behalf of nazhir by making application to the local Land Affairs Office no more than 7 days after the Waqf Pledge Deed is signed.¹⁰ In applying for Waqf Land Registration in Local

⁷ Departemen Agama RI, *Peraturan Perundang-undangan*, (Jakarta: Direktorat Pemberdayaa Wakaf, Dirjen Bimas Islam, Depag RI, 2006), pp. 17

⁸ PP No 28 Tahun 1977, Pasal 5 ayat (1)

⁹ PP Nomor 28 Tahun 1977, Pasal 9 ayat (1)

¹⁰ UU Nomor 41 Tahun 2004, Pasal 32

Land Affairs Office. After the application is received by the head of the local Land Affairs Office, and all required documents are completed, the Land affairs office will record it in the land book and the certificate. By registration and record in local Land Affairs Office, as well as the issuance of a certificate, the waqf land possesses strong evidence to protect its existence and protect it from the potential disputes in the future.

While the land right that does not possess proof of ownership like a land right certificate that has been annulled by the court decree, the certainty of the land right is not protected by the law. To obtain legal protection on the land right whose certificate is annulled by the court decree, the landowner shall re-register to the Land Affairs office so that the land right certificate can be issued. Of course, the registration should be in accordance with the prevailing procedures.

CONCLUSION

The procedure for re-certifying waqf land that has been canceled by the Court's decision procedure must be in accordance with the applicable rules. Most of the problems arise in applying for the certificate is caused by the registration that is not in accordance with the specified procedures. In re-certifying the waqf land, the role of nazir and wakif to be active in administering the application to KUA and land affairs office is necessary to issue Waqf Pledge Deed and Waqf Certificate. Especially for nazir, they should provide an optimum service to the waqif in regard to the application of waqf land in order to realize a legal certainty on the land right. Legal certainty will be realized if the certificate has been issued by the Land Affairs office. Certificate works as the proof of ownership as well as legal protection proof on land rights when a land dispute occurs. However, the principle of legal certainty should synergize with the value of justice for the wakif as well as their inheritor in the future to prevent disputes in the future.

RECOMMENDATION

1. For Nazir
It is expected that they provide optimum service, it is also expected that they can provide certainty and the benefit of waqf process that is annulled by the court ruling. So that the wakif does not feel being aggrieved regarding the land he pledges as waqf.
2. For Wakif
It is suggested that they respond and understand the normative regulation of Waqf Law so that the implementation of waqf can be carried out in accordance with the prevailing regulatory legislation. If wakif is prevented from coming to make a waqf pledge orally, he can appoint his representative with a letter of authority that is strengthened by 2 (two) witnesses.

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